

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM****Date of decision: 29.07.2025**

NAME OF THE BUILDER		SUNRAYS HEIGHTS PRIVATE LIMITED	
PROJECT NAME		"63 Golf Drive" at Sector 63A, Gurugram, Haryana	
Sr. No.	Case No.	Case title	Appearance
1.	CR/4820/2024	Dheeraj Kumar Vs. Sunrays Heights Pvt. Ltd.	Shri Abhishek Bhardwaj, Advocate  Shri Tushar Behmani, Advocate
2.	CR/6399/2024	Rattan Lal Raina Vs. Sunrays Heights Pvt. Ltd.	Shri Daman Sharma, Advocate  Shri Tushar Behmani, Advocate

**CORAM:**

Shri Arun Kumar

Shri Ashok Sangwan

**Chairman****Member****ORDER**

1. This order shall dispose of both the complaints titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Sixty-Three Golf Drive" situated at Sector-63 A, Gurugram being developed by the same respondent/promoter i.e., "Sunrays Heights Private Limited." The terms and conditions of the allotment letter, buyer's agreements and the fulcrum of the issue involved in all these cases pertain to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.
3. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given below:

<b>Project Name and Location</b>	"63 Golf Drive" at Sector – 63A, Gurugram, Haryana
<b>Project area</b>	9.7015625 acres
<b>DTCP License No. and validity</b>	82 of 2014 dated 08.08.2014 Valid up to 31.12.2023
<b>RERA Registered or Not Registered</b>	<b>Registered</b> Registration no. 249 of 2017 dated 26.09.2017 valid up to 25.09.2022
<b>Date of approval of building plans</b>	10.03.2015
<b>Date of environment clearance</b>	16.09.2016
<b>Possession clause as per the buyer's agreement</b>	<b>4. Possession</b> "4.1 The developer shall endeavour to handover possession of the said flat within a period of four years i.e., 48 months from the date of commencement of the project, subject to force majeure and timely payment by the allottee towards the sale consideration, in accordance with the terms stipulated in the present agreement."
<b>Possession clause as per Affordable Housing Policy, 2013</b>	<b>As per clause 1(iv) of the Affordable Housing Policy, 2013</b> "All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later."



	<i>This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project."</i>
<b>Due date of possession</b>	<b>16.03.2021</b> (Calculated from the date of environment clearance being later including grace period of 6 months in lieu of Covid-19)
<b>Occupation certificate</b>	<b>31.12.2024</b>

Sr. No.	Complaint No., Case Title, Date of filing of complaint and reply status	Unit no. and size	Allotment letter and date of execution of BBA	Total Consideration / Sale Total Amount paid by complainant	Offer of possession (OOP) and publication of cancellation
1.	CR/4820/2024  Dheeraj Kumar Vs. Sunrays Heights Pvt. Ltd.  DOF: 01.10.2024 Reply: 11.04.2025	114, Tower E  Carpet area- 613.31 sq. ft.  Balcony area- 95.10 sq. ft.	2016 (Date not specified on buyer's agreement)	BSP-₹25,56,577/- (Page 70 of reply)  AP-₹22,76,731/- (Page 71 of reply)	OOP: Not Offered  Publication in Hindi newspaper "Aaj Samaj": 16.10.2024 (Page 64 of reply)
2.	CR/6399/2024  Rattan Lal Raina Vs. Sunrays Heights Pvt. Ltd.  DOF: 26.12.2024 Reply: 01.07.2025	F-121  Carpet area- 356.18 sq. ft.  Balcony area- 69.84 sq. ft.	2016 (Date not specified on buyer's agreement)	BSP-₹14,59,640/- (Page 52 of reply)  AP-₹11,32,227/-	OOP: Not Offered  Publication in Hindi newspaper "Aaj Samaj": 16.10.2024 (Page 50 of reply)

**The complainant herein is seeking the following reliefs:**

1. Direct the respondent to complete the development of the unit along with all facilities and amenities like water, electricity, roads, parks, clubs etc. immediately.
2. Direct the respondent to handover the legal and rightful possession of the unit to the complainant, after receiving the OC or CC and other required approvals from the competent authorities.
3. DPC
4. Direct the respondent to set aside the final reminder notice dated 31.08.2024 as there was not default of the complainant since, no demand notice was served to the complainant..

**Note:** In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
BSP	Basic Sales Price

AP	Amount paid by the allottee/s
OOP	Offer of Possession

4. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/4820/2024 titled as "Dheeraj Kumar Vs. Sunrays Heights Private Limited"** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

**A. Project and unit related details**

5. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

**CR/4820/2024 titled as "Dheeraj Kumar Vs. Sunrays Heights Private Limited"**

Sr. No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 63A Gurugram
2.	Nature of the project	Affordable Group Housing
3.	RERA registered or not registered	249 of 2017 dated 26.09.2017 valid up to 25.09.2022
4.	DTCP license	82 of 2014 dated 08.08.2014 valid up to 31.12.2023
5.	Unit no.	E-114
6.	Unit admeasuring	613.31 sq.ft. (carpet area) 95.10 sq.ft. (balcony area)
7.	Provisional allotment letter	03.06.2016 (page 43 of complaint)
8.	Date of execution of Buyers agreement	2016
9.	Possession clause	<b>4.Possession</b> <i>The developer shall endeavour to handover possession of the said flat within a period of four years i.e., 48 months from the date of commencement of project, subject to force majeure &amp; timely payment by the allottee towards the sale consideration, in accordance</i>

		<p>with the terms as stipulated in the present agreement.</p> <p><b>As per affordable housing policy 2013</b></p> <p>"1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the <b>"date of commencement of project"</b> for the purpose of this policy. The license shall not be renewed beyond the said 4 years from the date of commencement of project."</p>
10.	Date of building plan	10.03.2015 (taken from another file of the same project)
11.	Date of environment clearance	16.09.2016 (taken from another file of the same project)
12.	Due date of possession	16.03.2021 (16.09.2020 plus six months in lieu of covid-19) (calculated from the date of environment clearance)
13.	Total sale consideration	Rs.26,56,577/- (page 70 of reply)
14.	Amount paid by the complainant	Rs.22,76,731/- (page 71 of reply)
15.	Occupation certificate	31.12.2024
16.	Offer of possession	Not offered
17.	Date of publication	16.10.2024 (page 64 of reply)

## B. Facts of the complaint

6. The complainant has made following submissions in the complaint:

- That in the year 2015, the respondent promoter published a very attractive advertisement in the newspaper 'Hindustan Times', highlighting the residential flats in the project as part of the "affordable group housing colony" under the Affordable Housing Policy, 2013 dated



19.08.2013 made by the Government of Haryana. The project was launched in the year 2014 and accordingly, a license no. 82 of 2014 dated 08.08.2014 was granted by the Director General Town & Country Planning, Haryana, Chandigarh to the respondent.

- b) That the complainant approached the respondent and submitted an application form bearing no. SGDC9681 dated 03.06.2015 for booking a residential flat admeasuring 613.31 sq. ft @Rs. 4,000/- per sq. ft. and balcony area of 95.10 sq. ft @Rs. 500 per sq. ft. and paid a booking amount of Rs. 1,25,000/- vide cheque bearing no. 605273 dated 03.06.2015 to the respondent. Subsequently, the draw of lots was conducted on 06.01.2016, whereby, the respondent confirmed the allotment of a flat bearing no. E114, Tower E along with a free two-wheeler parking, having carpet area of 613.31 Sq. ft. (approx..) and balcony area of 95.10. Sq. ft., amounting to a basic sale price of Rs. 25,00,790/- along with other charges.
- c) That the respondent after a delay of almost 5 months from the date of the draw of lots issued a provisional allotment letter cum demand letter to the complainant and demanded a sum of Rs. 5,29,331/- from the complainant to confirm the allotment of the subject Unit which was duly paid by the complainant.
- d) That the respondent in order to dupe the complainant in its nefarious net executed a one-sided builder buyer agreement dated 01.07.2016, just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently with its *mala fide* intention raised demands due to which it extracted huge amount of money from the complainant. The respondent at the time of the booking represented to the complainant that there is only one payment plan which shall be time linked plan and thus, duped the complainant in its

pre-conceived *mala fide* intention to extract monies from the *bonafide* complainant.

- e) That the respondent, with its malicious intent to gain unlawfully, has on multiple occasions without issuing any prior demand notices directly issued reminder letters to the complainant and arbitrarily charged interest rate @15% p.a. compounded quarterly on the due amount by directly issuing reminder letters. One such instance was when the respondent promoter directly intimated to the complainant by issuing a reminder letter dated 24.08.2017 without issuing any prior demand notice and thereafter, unlawfully levied an interest rate @15% on the due amount and threatened the complainant that on failing to pay such an amount would lead to cancellation of the allotment of the said unit. Being shocked by such an arbitrary reminder/demand letter and the interest charged by the respondent, the complainant immediately wrote a letter to the respondent informing that, no demand notice for the due amount was ever received to him and the interest is wrongly charged on the amount and thus, requested to waive the interest rate.
- f) That furthermore, even after the arbitrary demand, the complainant under protest has paid an amount of Rs. 6,10,000/- without the interest, to the respondent duly complying with demand and as such requested to waive the interest charged by the respondent of which there was no default of the complainant however, the respondent chose not to answer the same and as such no response was ever given by the respondent to the letter written by the complainant.
- g) That the complainant paid the amount towards the cost of the unit as and when demanded by the respondent in a time bound manner. As per clause 4.1 of the agreement the respondent was liable to hand over the

- possession of the said unit within a period of 6 months i.e., latest by 01.07.2020. The complainant paid a total sum of Rs. 22,76,731/- by September 2019 i.e., more than 90% of the total sale consideration.
- h) That no demands were ever being raised by the respondent after the last demand notice of 06.09.2019 and owing to the slow pace of construction and absence of basic amenities, the respondent caused huge delay in giving possession of the said unit to the complainant. The complainant has fulfilled his responsibility by making necessary payments in the manner and within the time specified in the agreement. Therefore, the complainant herein is not in breach of any of the terms of the agreement.
- i) That even after knowing the fact that the project is delayed and not progressing as per the construction milestone, in spite of this, the complainant in a hope to get the possession of the unit has duly complied with the payment demands as and when raised by the respondent and as per the agreed upon time-linked payment plan. Apparently, on a bare perusal of the quarterly report submitted on the portal of the Authority it is seen that till date the project is not near completion and there is a lot of interior work which is yet to be completed by the respondent. The complainant lost their confidence and in fact has got no trust left in the respondent as it has deliberately and wilfully indulged in undue enrichment, by cheating him besides being guilty of indulging in unfair trade practices and deficiency in services in not delivering the legitimate and rightful possession of the plot in time and then remaining non-responsive to the requisitions of the complainant.
- j) That shockingly, the respondent on 31.08.2024 has directly sent a final reminder notice without raising any prior demand to the complainant. The complainant was further shocked to see that vide the said letter the



respondent is asking the complainant to make a payment of Rs. 11,33,622/- when in fact there is only last demand of Rs. 3,31,189/- left as per the payment schedule as mentioned in the agreement which is to be paid by the complainant upon a due service of demand notice. No demand notice was ever received by the complainant for such an demand, neither there was any email communication pertaining to the said demand and therefore, the final reminder notice is bad in law and hence liable to be set aside by the Authority.

- k) The grievance of the complainant is *inter-alia* that the respondent, despite receiving more than 90% of the total consideration of the unit have failed to hand over the possession of the unit within the promised time period i.e., by 01.07.2020. Since the complainant had opted for a time-linked payment plan, the complainant has diligently followed the payment plan and had made all the payments, as and when the demands for payments were raised by the respondent. The respondent has by 06.09.2019 collected Rs. 22,76,731/- from the complainant, and thereafter till date no further demand for payments have been raised by the respondent.
- l) That despite collecting a substantial amount towards consideration of the unit, the respondent utterly failed to provide regular updates of the status of construction to the complainant. The complainant was shocked to find that on the promised date of possession i.e., 01.07.2020 the project was far from completion. Despite an inordinate delay of more than 4 years from the promised date of possession as per the agreement, the respondent has failed to offer the possession of the unit till date.

### **C. Relief sought by the complainant**

7. The complainant has sought the following relief(s):

- I. Direct the respondent to handover the legal and rightful possession of the subject unit to the complainant, after receiving the occupancy certificate or completion certificate (CC) and other required approvals from the competent authorities.
  - II. Direct the respondent to pay interest for every month of delay in handing over the possession of the subject unit since 01.07.2020 to the complainant, on the amount taken from him towards sale consideration and other charges for the aforesaid plot, with interest at the prescribed rate as per the Act, 2016, till the respondent hands over the legal and rightful possession of the subject unit to the complainant.
  - III. Direct the respondent to set aside the final reminder notice dated 31.08.2024 as there was not default of the complainant since, no demand notice was served to the complainant.
  - IV. Direct the respondent to provide a definite and fixed date of delivery of possession, as the complainant cannot be made to wait till eternity for enjoying the rights over the unit, with liberty to him to seek appropriate remedy if it fails to handover the possession on the date before the Authority, Gurugram.
  - V. Direct the respondent to not charge anything beyond the charges stipulated in the builder buyer's agreement.
8. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

9. The respondent has contested the complaint on the following grounds.
- a) That thereafter the complainant, vide application form applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. E-114, admeasuring carpet area of 613.31 sq. ft. (approx.) and balcony area of 95.10 sq. ft. (approx.) was provisionally allotted vide allotment letter dated 03.06.2016. The complainant represented to the respondent that they shall remit every installment on time as per the

payment schedule. The respondent had no reason to suspect the *bonafide* of the complainant and proceeded to allot the unit in question in their favor.

- b) Thereafter, an agreement to sell was executed between the complainant and the respondent on 01.07.2017. The agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- c) That as per clause 4.1 of the agreement, the due date of possession was subject to the allottee having complied with all the terms and conditions of the agreement. That being a contractual relationship, reciprocal promises are bound to be maintained. The respondent endeavored to offer possession within a period of 4 years from the date of obtainment of all government sanctions and permissions including environment clearance, whichever is later. The possession clause of the agreement is on par with clause 1(iv) of the Affordable Housing Policy, 2013.
- d) That the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of EC, comes out to be 21.08.2021. The Ld. Authority vide notification no.9/3-2020 dated 26.05.2020 had allowed an extension of 6 months for the completion of the project the due of which expired on or after 25.03.2020, on account of unprecedented conditions due to outbreak of Covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.
- e) That the offer of possession was also subject to the incidence of force majeure circumstances under clause 16 of the agreement. That additionally, even before normalcy could resume, the world was hit by

the Covid-19 pandemic. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I (A) recognized that India was threatened with the spread of the COVID-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana, have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of the Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. It is also to be noted that on the same principle, the Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing Projects vide Order/Direction dated 26th of May, 2020 on account of 1st wave of COVID-19 Pandemic. The said lockdown was imposed in March 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.

- f) That as per license condition, developer are required to complete these projects within a span of 4 years from the date of issuance of environmental clearance since they fall in the category of special time



bound project under Section 7B of the Haryana Development and Regulation of Urban Area Act 1975, for a normal Group Housing Project there is no such condition applied hence it is required that 4 years prescribed period for completion of construction of Project shall be hindrance free and if any prohibitory order is passed by competent authority like National Green Tribunal or Hon'ble Supreme Court then the same period shall be excluded from the 4 years period or moratorium shall be given in respect of that period also.

- g) That it is safely concluded that the said delay of **422 days** in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. Thus, from the facts indicated above and the documents appended, it is comprehensively established that a period of 422 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of aforesaid Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure* in terms with the agreement.
- h) That in a similar case where such orders were brought before the Ld. Authority was in Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr. vs. M/s. Venetian LDF Projects LLP" which was decided on 17.05.2022, wherein the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the respondent.
- i) That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days



for 26.70.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.17.2019 to 74.02.2020. The Authority was also pleased to consider and provided benefit of 6 months to the developer on account of the effect of COVID also.

- j) That the Hon'ble UP REAT at Lucknow while deciding appeal No. 541 of 2011 in the matter of Arun Chauhan Versus Gaur sons Hi- Tech Infrastructure Pvt Ltd vide order dated 02.11.2021 has also granted the extension of 116 days to the promoter on account of delay in completion of construction on account of restriction/ban imposed by the Environment Pollution (Prevention & Control) Authority as well vide order of Hon'ble Supreme Court Dated 14.11.2019.
- k) That Karnataka RERA vide notification No. K-RERA/Secy/04/2019-20 and No. RERA/SEC/CR-04/2019-20 has also granted 9 months extension in lieu of Covid-19 pandemic. Moreover, this Ld. Authority had in similar matters of the had allowed the benefit of covid grace period of 6 months in a no. of cases.
- l) That despite there being several defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. Despite the default caused, the respondent got sanctioned loan from SWAMIH fund of Rs. 44.30 Crores to complete the project and has already invested Rs. 35 Crores from the said loan amount towards the project. The respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for water connection and electrical inspection report.
- m) That the respondent has applied for occupation certificate on 08.12.2023. Once an application for grant of occupation certificate is submitted for approval in the office of the statutory authority concerned, respondent

ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. Therefore, the time utilized by the statutory authority to grant occupation certificate to the respondent is required to be excluded from computation of the time utilized for implementation and development of the project.

- n) That the complainant has been allotted unit under the Affordable Housing Policy, 2013 which under clause 5(iii)(b), clearly stipulated the payment of consideration of the unit in six equal installments. The complainant is liable to make the payment of the instalments as per the government policy under which the unit is allotted. At the time of application, the complainant was aware of the duty to make timely payment of the installments. Not only as per the Policy, but the complainant was also under the obligation to make timely payment of installments as agreed as per clause of the BBA.
- o) That the complainant has failed to make any payment of installment at "within 36 months from the due date of Allotment" along with partial payment towards previous instalments. The complainant cannot rightly contend under the law that the alleged period of delay continued even after the non-payment and delay in making the payments. The non-payment by the complainant affected the construction of the project and funds of the respondent. That due to default of the complainant, the respondent had to take loan to complete the project and is bearing the interest on such amount. The respondent reserves the right to claim damages before the appropriate forum.

- p) That it is the obligation of the complainant under the Affordable Housing Policy, 2013 (as on the date of Allotment) and the Act to make timely payments for the unit. In case of default by the complainant the unit is liable to be cancelled as per the terms of Affordable Housing Policy, 2013.
- q) That the respondent company sent a final reminder letter dt. 31.08.2024 to clear the outstanding dues of Rs. 11,33,622/- mentioning the relevant clauses of the Affordable Housing Policy 2013, wherein if the installments are not paid timely, the respondent can cancel the unit allotted to the complainant.
- r) That the complainant despite the issuance of final reminder dt. 31.08.2024, evaded the matter, and chose not to clear his outstanding dues as requested by the respondent company. Thereafter, the respondent company after giving sufficient opportunity to the complainant to clear the outstanding dues, proceeded further as per the terms and conditions of the Affordable Housing Policy, 2013, and published the complainant's details in the local newspaper dt. 16.10.2024 and again requested him to clear the outstanding dues in 15 days from the date of the said publication else, the allotment will be cancelled purely as per the said policy.
- s) That the respondent has duly received its Occupation Certificate from the Director, Town and Country Planning, Chandigarh on 31.12.2024. Since the OC has been received, the complainant is legally bound to settle all outstanding payments and come forward to take possession of the unit, subject to clearing outstanding dues, following the offer of possession of the unit.
- t) That the complainant has hopelessly delayed in making the payment of the balance installment to the respondent and hence the unit of the

complainant is liable to be cancelled in terms of Clause 5(iii) i affordable housing policy and the clause 3.7 of the BBA.

- u) That the complainant despite all the reminders failed to make payment against the instalment. The respondent earnestly requested the complainant to make payment. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent. All requests of the respondent to make payment fell on deaf ears of the complainant. The respondent has yet not cancelled the unit in dispute till date and the complainant should clear all his outstanding dues as per the BBA and take the possession of the unit.
- v) That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, the unit of complainant can be retained only after payment of interest on delayed payments from the due date of installment till the date of realization of amount. Further delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the sales consideration of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any taxes/statutory payments, etc.
- w) That in light of the bona fide conduct of the respondent and no delay for development of project as the respondent was severely affected by the force majeure circumstances and no cause of action to file the present complaint this complaint is bound be dismissed in favor of the respondent.

10. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be



decided on the basis of these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the authority**

11. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E.I Territorial jurisdiction**

12. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has a complete territorial jurisdiction to deal with the present complaint.

##### **E.II Subject matter jurisdiction**

13. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

##### **Section 11....**

*(4) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

##### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

14. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of



obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the objections raised by the respondent.**

**F.I Objection regarding delay due to force majeure circumstances.**

15. It is contended on behalf of respondent that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in delays such as various orders passed by NGT and Hon'ble Supreme Court, lockdown due to outbreak of Covid-19 pandemic.

16. The Authority, after careful consideration, finds that in the present case, the project falls under the Affordable Housing Policy, 2013, which contains specific stipulations regarding the completion of the project. As per Clause 1(iv) of the said Policy:

*"All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the 'date of commencement of project' for the purpose of this policy. The licenses shall not be renewed beyond the said 4-year period from the date of commencement of project"*

17. The respondent/promoter, having applied for the license under the Affordable Housing Policy, was fully aware of these terms and is bound by them. The Authority notes that the construction ban cited by the respondent, was of a short duration and is a recurring annual event, usually implemented by the National Green Tribunal (NGT) in November. These are known occurring events, and the respondent being a promoter, should have accounted for it during project planning. Similarly, the various orders passed by other Authorities cannot be taken as an excuse for delay as it is a well-settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainant**

**G.I Direct the respondent to pay interest for every month of delay in handing over the possession of the subject unit since 01.07.2020 to the complainant, on the amount taken from him towards sale consideration and other charges for the aforesaid plot, with interest at the prescribed rate as per the Act, 2016, till the respondent hands over the legal and rightful possession of the subject unit to the complainant.**

**G.II Direct the respondent to set aside the final reminder notice dated 31.08.2024 as there was not default of the complainant since, no demand notice was served to the complainant**

18. The factual matrix of the case reveals that the complainant was allotted unit no. E-114, Tower-E admeasuring carpet area of 613.31 sq. ft. and a balcony area of 95.10 sq. ft., in the respondent's project at basic sale price of ₹26,56,577/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties in 2016. The possession of the unit was to be offered by 16.03.2021 as delineated hereinbelow. The complainant paid a sum of ₹22,76,731/- towards the subject unit.

19. The complainant is seeking a direction to set-aside the letter dated 31.08.2024 issued by the respondent as "final reminder". A final reminder letter dated 31.08.2024 was being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make a payment of ₹11,33,622/- within a period of 15 days of the said reminder, it shall result in automatic cancellation of the allotment without any further notice of communication by the respondent. Thereafter, the respondent made a publication in the newspaper "AAJ SAMAJ" on 16.10.2024 as required under Affordable Group Housing Policy, 2013. The said publication also stated that failure to make payment within the stipulated period would lead to automatic cancellation of the allotment, without any further notice or communication by the respondent.

20. The foremost question which arises before the authority for the purpose of adjudication is that "whether the said publication would tantamount to a valid cancellation in the eyes of law or not?"
21. Clause 5(iii) (i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:-

*"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a **reminder** may be issued to him for depositing the due instalments within a **period of 15 days** from the date of issue of such notice. If the allottee still defaults in making the payment, the **list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State** for payment of due amount **within 15 days** from the date of publication of such notice, **failing which allotment may be cancelled**. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list."*

22. The Authority observes that the respondent issued "Final Reminder Letter" dated 31.08.2024, directing the complainant to clear the outstanding dues amounting to ₹11,33,622/-. It is pertinent to mention here that the complainant had already paid an amount of ₹22,76,731/-(i.e., 85.70%) against the total consideration of ₹26,56,577/- to the respondent by 06.05.2024. Perusal of case file reveals that the demand raised by the respondent via letter dated 31.08.2024 was towards the payment of last instalment accompanied with interest on delay payments. Therefore, the rate of interest chargeable from the allottee by the promoter, in case of default, if any shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act. Also, the respondent is obligated to raise last demand only in accordance with the builder buyer agreement and as per Affordable Housing Policy, 2013 and shall not charge anything from

the complainant which is not the part of the builder buyer agreement and under the Affordable Housing Policy, 2013.

23. The Authority notes that the complainant has paid approximately 85% of the sale consideration, and the respondent was required to hand over the project by 16.09.2020 under the Affordable Housing Policy, 2013, excluding the COVID-19 grace period. Even with a six-month grace period in lieu of Covid-19 pandemic, the possession was to be handed over by 16.03.2021, however, the respondent has failed to complete the project. Thereafter, the respondent has obtained the occupation certificate from the competent authority on 31.12.2024. The interest accrued during the delay period significantly reduces the amount payable by the complainant. Upon adjustment of this interest, the respondent would, in fact, be liable to pay the complainant. Despite this, the respondent chose to cancel the unit on grounds of non-payment, while neglecting its own obligations. Such actions by the respondent displays bad faith, as it failed to adjust the delay period interest.
24. Additionally, as per Clause 9.2 of the Agreement for Sale, annexed as Annexure A to the Rules, 2017, the allottee has the right to stop making further payments if the promoter defaults on its obligations. The relevant portion is reproduced below:

***9.2 In case of Default by Promoter under the conditions listed above, Allottee is entitled to the following:***

- (ii) Stop making further payments to Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction/development milestones and only thereafter the Allottee be required to make the next payment without any interest for the period of such delay; or...*

***(Emphasis Supplied)***



25. In the present case, the respondent-promoter was obligated to complete the construction by 16.03.2021, including a six-month extension due to the Covid-19 pandemic. However, the respondent-promoter failed to complete the project within this timeline. Thus, in accordance with Clause 9.2, the allottee was fully justified in stopping further payments.
26. Considering the above findings, the cancellation of the allotment is deemed invalid and is hereby quashed as issued in bad faith. Thus, the respondent is directed to reinstate the unit allotted to the complainant.
27. Herein, the complainant intends to continue with the project and is seeking delay possession charges at a prescribed rate of interest on the amount already paid by him as provided under the proviso to Section 18(1) of the Act, which reads as under:-

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*.....*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, **interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.**"*

28. **Due date of handing over possession:** As per clause 4.1 of the BBA executed inter se parties, the respondent proposed to handover possession of the subject unit ***within a period of four years i.e. 48 months from the date of commencement of project.*** It is pertinent to mention here that the project was to be developed under the Affordable Housing Policy, 2013. However, the respondent has chosen to disregard the policy provision. Clause 1(iv) of the Affordable Housing Policy, 2013 deals with the date of possession of the unit and completion of the project. The relevant clause is reproduced as under:



**"1(iv)** All such projects shall be required to be necessarily completed **within 4 years from the approval of building plans or grant of environmental clearance, whichever is later.** This date shall be referred to as the **"date of commencement of project"** for the purpose of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project."

**(Emphasis supplied)**

29. In the present case, the date of approval of building plans is 10.03.2015, and the date of environment clearance is 16.09.2016. The due date of handing over of possession is reckoned from the date of environment clearance being later. Therefore, the due date of handing over of possession comes out to be 16.09.2020. Further as per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is granted for the projects having a completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 16.09.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to the outbreak of Covid-19. As such the due date for handing over of possession comes out to be **16.03.2021**.

**30. Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges till the date of delivery of possession to the complainant. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

**"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

31. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, has determined the prescribed rate of interest. The rate of interest, determined by the legislature, is reasonable and if the said rule is followed to award interest, it will ensure uniform practice in all cases.
32. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 29.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
33. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***  
***Explanation. —For the purpose of this clause—***
- (i) The rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
  - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

34. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent which is the same as is being granted to them in case of delayed possession charges.
35. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement.
36. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at the prescribed rate of interest i.e., @ 11.10% p.a. w.e.f. 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- G.III Direct the respondent to handover the legal and rightful possession of the subject unit to the complainant, after receiving the occupancy certificate or completion certificate (CC) and other required approvals from the competent authorities.**
- G.IV Direct the respondent to provide a definite and fixed date of delivery of possession, as the complainant cannot be made to wait till eternity for enjoying the rights over the unit, with liberty to him to seek appropriate remedy if it fails to handover the possession on the date before the Authority, Gurugram**
37. In the present complaint, the grievance of the complainant is that the physical possession has not been handed over by the respondent to the complainant.

38. The authority observes that the respondent-promoter has obtained occupation certificate of the said project from the competent authority on 31.12.2024. Further, Section 17(1) of the Act of 2016 obligates the respondent-promoter to handover the physical possession of the subject unit to the complainant complete in all respect as per specifications mentioned in BBA and thereafter, the complainant-allottee is obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act, 2016.
39. In view of the above, the respondent is directed to handover the possession of allotted unit to the complainant complete in all respect as per specifications of buyer's agreement within a period of one month from date of this order after payment of outstanding dues, if any, as the occupation certificate for the project has already been obtained by it from the competent authority.
40. Further, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

**G.V Direct the respondent to get the copy of OC as such the respondent claims that they have applied for OC.**



41. As per the additional documents placed on record by respondent on 03.04.2025, the Authority finds that the respondent has obtained the occupation certificate for the said project on 31.12.2024.
42. As per Section 11(4)(b) of Act of 2016, the respondent is under an obligation to supply a copy of the occupation certificate/completion certificate or both to the complainant-allottee. The relevant part of section 11 of the Act of 2016 is reproduced as hereunder: -

**"11(4)....**

**(b) The promoter shall be responsible to *obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be.***"

43. Even otherwise, it being a public document, the allottee can have access to the it from the website of DTCP, Haryana.

#### **H. Directions of the Authority**

44. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The cancellation is hereby set aside being bad in the eyes of law. The respondent is directed to reinstate the subject unit. Further, the respondent is directed to pay interest on the amount paid by the complainant at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier.

- II. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules, *ibid*.
- III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- V. The respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects as per specifications of buyer's agreement within one month from date of this order, as the occupation certificate in respect of the project has already been obtained by it from the competent authority.
- VI. The respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

VII. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement and the provisions of the Affordable Housing Policy, 2013.


45. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

46. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

47. Files be consigned to the registry.



**(Ashok Sangwan)**  
Member



**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 29.07.2025**

**HARERA**  
GURUGRAM