

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint no. : 3121of 2024
Complaint filed on : 08.07.2023
Date of first hearing: 31.10.2024
Date of decision : 29.07.2025

Sankhesara Harshad Kumar & Khushbu Amul Shah
R/o- 103, Premier Urban Appts, Sect 15, Part 2, Gurgaon,
Haryana-122001

Complainants

Versus

Sunrays Heights Private Limited
Registered Office: 211, 2nd Floor, Ansal Bhawan, 16
Kasturba Gandhi Marg, New Delhi 110001.

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

APPEARANCE:

Sh. Vijay Pratap Singh, Advocate
Sh. Gagan Sharma

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

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

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.	G-26 (page 42 of complaint)
6.	Unit admeasuring	613.31 sq. ft. (carpet area) 95.10 sq. ft. (balcony area)
7.	Allotment letter	11.01.2016 (page 11 of complaint)
8.	Date of execution of Buyers agreement	04.02.2016 (page 12 of complaint)
9.	Possession clause	<p>4.Possession</p> <p><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 & timely payment by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.</i></p> <p>As per affordable housing policy 2013</p> <p><i>"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 license shall not be renewed beyond the said 4 years from the date of commencement of project."</i></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.25,00,790/- (page 13 of complaint)
14.	Amount paid by the complainants	Rs.22,75,731/- (page 13 of complaint)
15.	Occupation certificate	31.12.2024
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the respondent made advertisement in the newspaper 'Hindustan Times' with regard to the location, specification and amenities and time of completion of the project under the name "63 GOLF DRIVE", Sector- 63A floated under Haryana Government's Affordable Housing Policy, Gurugram, Haryana. The complainants approached the respondent for booking of a unit vide application no. SGDC1164. The complainants were allotted flat no. G-26 at tower G having carpet area of 63.31 sq. ft. and balcony area of 95.10 sq. ft.
- II. That the respondent to dupe the complainants in their nefarious net executed a one-sided builder buyer agreement on 04.02.2016, just to create a false belief that the project shall be completed in time bound manner, and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants. That the total consideration of the flat was Rs.225,00,790/- along with applicable taxes. The complainants have paid Rs.22,75,731/- against demand of

Rs.22,75,731/- from the builder till date of filing of present case as and when the demands were raised by the respondent in time bound manner.

- III. That as per clause 4.1 of the buyer's agreement, the respondent was liable to hand over the possession of a subject unit before 16.09.2020(exclusive of the grace period of 6 months) considering the project commencement date from the date of environment clearance being 16.09.2016.
- IV. That owing to slow-paced construction and absence of basic amenities, respondent delayed in giving possession of the unit to the complainants. That as per Section 19(6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainants has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants herein is not in breach of any of the terms of the agreement.
- V. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of BBA with a malicious and fraudulent intention and caused deliberate and intentional mental and physical harassment of the complainants and his family who has been rudely and cruelly dashed the savoured dreams, hopes and expectations of the complainants to the ground and the complainants is eminently justified in seeking delayed possession charges. The builder buyer agreement consists of very stringent and biased contractual terms which are illegal, arbitrary, unilateral, and discriminatory in nature. As every clause of the agreement is drafted in a one-sided way, even a single breach of unilateral terms of builder buyer agreement by complainants, will cost him forfeiting of earnest money and delay payment charges @15%. Respondent has neither prepared the builder buyer agreement as per the terms and conditions mentioned under the Haryana Affordable Policy 2013 nor as per the Act, 2016.

- VI. That keeping in view the snail-paced work at the construction site and half-hearted promises of the respondent, the inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.
- VII. That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainants in time have accrued huge losses on account of the career plans of their family member and themselves and the future of the complainants and their family are rendered dark as the planning with which the complainants invested her hard-earned monies have resulted in subzero results and borne thorns instead of bearing fruits.
- VIII. That the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble Authority as the apartment which is the subject matter of this complaint is situated in Sector 63A, Gurugram which is within the jurisdiction of this Hon'ble Authority.

C. Relief sought by the complainants

4. The complainants have sought following relief:
- Direct the respondent to pay interest @ 8.65% per annum as per prevailing MCLR plus 2%, on paid amount of Rs.22,75,731/- for delay period starting from 16.09.2020 till actual handover of physical possession by the respondent to complainants.
 - Direct the respondent to handover possession of the unit in habitable condition with all the amenities as mentioned in the brochure of the project.
5. The respondent/promoter put in appearance through its counsel and marked attendance on 02.01.2025, 18.02.2025, 08.04.2025, 01.07.2025. Despite giving specific directions to file reply, it has failed to comply with the orders of the authority. It shows that the respondent is intentionally avoiding filing of the

written reply. Therefore, vide proceeding dated 01.07.2025, the defence of the respondent was ordered to be struck off for not filing reply.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions oral as well as written (filed by the complainants) made by the parties.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

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 purpose 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 complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(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.

8. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings regarding relief sought by the complainants.

F.I Direct the respondent to pay interest @ 8.65% per annum as per prevailing MCLR plus 2%, on paid amount of Rs.22,75,731/- for delay period starting from 16.09.2020 till actual handover of physical possession by the respondent to complainants.

F.II Direct the respondent to handover possession of the unit in habitable condition with all the amenities as mentioned in the brochure of the project.

9. The complainants were allotted unit no. G-26, tower G, in the respondent's project at sale price of Rs.25,00,790/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties on 09.02.2016. The possession of the unit was to be offered within 4 years from approval of building plans (10.03.2015) or from the date of environment clearance (16.09.2016), whichever is later, which comes out to be 16.09.2020 calculated from the date of environment clearance being later. Further, as per ***HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having 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 complainants is 06.09.2020 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 outbreak of Covid-19 pandemic. Therefore, the due date of handing over possession comes out to be

16.03.2021. The complainants paid a sum of Rs.22,75,731/- towards the subject unit, and the complainants is ready and willing to retain the allotted unit in question.

10. The Authority notes that the complainants had already paid an amount of Rs.22,75,731/-(i.e., 91%) against the total consideration of Rs.25,00,790/- to the respondent. 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 to 16.03.2021, the respondent failed to complete the project. More than three years later, the project remained incomplete, and 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 complainants. Upon adjustment of this interest, the respondent would, in fact, be liable to pay the complainants.
11. 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)

12. In the present case, the promoter was obligated to complete the construction within four years from the date of either the environment clearance or the building plan approval, whichever was later, i.e., by 16.09.2020. However, the promoter failed to complete the project within this timeline. Even after granting

a six-month extension due to the Covid-19 pandemic, extending the deadline to 16.03.2021, the promoter did not complete the construction. Thus, in accordance with Clause 9.2, the allottee was fully justified in stopping further payments.

13. Herein, the complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso 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."

14. **Due date of handing over possession:** The project was to be developed under the Affordable Housing Policy, 2013, which clearly mandates that the project must be delivered within 4 years from the date of commencement of project (as per clause 1(iv) of Affordable Housing Policy, 2013, 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). However, the respondent has chosen to disregard the policy provision. Clause 1(iv) of the Affordable Housing Policy, 2013 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."

15. 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 complainants 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.

16. Admissibility of delay possession charges at prescribed rate of interest:

The complainants is seeking delay possession charges at the prescribed rate. However, 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."

17. 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 so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. 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., 29.07.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
19. 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;"*
20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
21. 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. By virtue of

clause 4 of the buyer's agreement, the possession of the subject apartment was to be delivered within 4 years from the date of commencement of project (*as per clause 1(iv) of Affordable Housing Policy, 2013, 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*). In the present case, the date of approval of building plans is 10.03.2015, and the date of environment clearance is not given, so the date is taken from another file of the same project i.e., 16.09.2016. The date of environment clearance being later, the due date of handing over of possession is reckoned from the date of environment clearance. 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 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 complainants 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 outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to be 16.03.2021. Further, a relief of 6 months will be given to the allottee that no interest shall be charged from the complainants-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

22. 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 complainants is entitled to delay possession charges at rate of the

prescribed interest @ 10.75% p.a. w.e.f. 16.03.2021 till the actual handing over of possession or offer of possession + 2 months, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

23. Further, as per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainants. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties, after receiving occupation certificate from the competent authority.

G.II Direct the respondent to handover actual possession of the booked to the complainants.

24. In the present complaint, the grievance of the complainants is that the physical possession has not been handed over by the respondent to the complainants.
25. 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 complainants complete in all respect as per specifications mentioned in BBA and thereafter, the complainants-allottee is obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act, 2016.
26. In view of the above, the respondent is directed to handover the possession of allotted unit to the complainants 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.
27. 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 complainants as per norms of the state government as per Section 17 of the Act, failing which the complainants may approach the adjudicating officer for execution of order.

H. Directions of the Authority:

28. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under Section 34(f) of the act of 2016:

- I. The respondent is directed to pay interest on the amount paid by the complainants 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 complainants 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act. Further no interest shall

be charged from complainants-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

- V. The respondent is directed to handover physical possession of the subject unit to the complainants within a period of 60 days after obtaining occupation certificate 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 complainants as per norms of the state government as per Section 17 of the Act, failing which the complainants may approach the adjudicating officer for execution of order.
- VII. The respondent shall not charge anything from the complainants which is not a part of the buyer's agreement and the provisions of the Affordable Housing Policy, 2013.
29. Complaint stands disposed of.
30. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
29.07.2025