HARERA
GURUGRAM

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 06.08.2025

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/3531/2024	Ritu Dahiya Vs. Sunrays Heights Pvt. Ltd.	Shri Vijay Pratap Singh, Advocate Shri Tushar Bahmani, Advocate
2.	CR/4225/2024	Anil Kumar Trehan Vs. Sunrays Heights Pvt. Ltd.	Shri Vijay Pratap Singh, Advocate Shri Harsh Jain, Advocate

CORAM:
Shri Ashok Sangwan **Member**

ORDER

1. This order shall dispose of both the aforesaid 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:

Project Name and Location	"63 Golf Drive" at Sector – 63A, Gurugram, Haryana
Project area	9.7015625 acres
DTCP License No. and validity	82 of 2014 dated 08.08.2014 Valid up to 31.12.2023
RERA Registered or Not Registered	**Registered** Registration no. 249 of 2017 dated 26.09.2017 valid up to 25.09.2022
Date of approval of building plans	10.03.2015
Date of environment clearance	16.09.2016
Possession clause as per the buyer's agreement	**4. Possession** *"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."*
Possession clause as per Affordable Housing Policy, 2013	**Clause 1(iv) of the 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. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project."*

Due date of possession	16.03.2021 (Calculated from the date of environment clearance being later including grace period of 6 months in lieu of Covid-19)
Occupation certificate	31.12.2024

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Total Sale Consideration / Total Amount paid by the complainant	Offer of possession
1.	**CR/3531/2024** **Ritu Dahiya** Vs. Sunrays Heights Private Limited **DOF:**09.08.2024 **Reply:** 16.04.2024	**34, Tower J** **Carpet area-** 361.89 sq. ft. **Balcony area-** 69.84 sq. ft. (Page no. 19 of complaint)	**13.10.2016** (Page no. 22 of complaint)	**TSC-Rs. 14,82,480/-** (Page 35 of complaint) **AP-Rs. 13,5,072/-** (Payment Detail Report dated 18.09.2024 at page 90 of reply)	**Due date:** 16.03.2021 **OOP:** Not Offered **Final Reminder** 19.06.2024 (Page 88 of reply)
2.	**CR/4225/2024** **Anil Kumar Trehan** Vs. Sunrays Heights Private Limited **DOF:** 29.08.2024 **Reply:** 31.01.2025	**76, Tower D** **Carpet area-** 605.10 sq. ft. **Balcony area-** 94.94 sq. ft. (Page no. 18 of complaint)	**2016** (No specific date is mentioned ta page no. 20 of complaint)	**TSC-Rs. 24,67,870/-** (Page 34 of complaint) **AP-Rs. 22,60,356/-** (Payment Detail Report at page 67 of reply)	**Due date:** 16.03.2021 **OOP:** Not Offered **Final Reminder** 14.08.2024 (Page 58 of reply)

The complainant herein is seeking the following reliefs:

1. Direct the respondent to pay DPC for the period of delay in handing over of possession at prescribed rate of interest from the due date of possession till the actual handing over of possession.
2. Direct the respondent to handover actual physical possession of the booked unit.
3. Direct the respondent to get the copy of application for occupancy certificate as such the respondent claims to have applied for the OC.

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
DPC	Delayed possession charges
TSC	Total sale consideration
AP	Amount paid by the allottee/s
OOP	Offer of Possession
OC	Occupation Certificate

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/3531/2024 titled as "Ritu Dahiya 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/3531/2024 titled as "Ritu Dahiya 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.	J-34, Tower J (page 19 of complaint)
6.	Unit admeasuring	361.89 sq. ft. (carpet area) 69.84 (balcony area) (page 19 of complaint)
7.	Allotment letter	21.07.2017 (page 19 of complaint)
8.	Date of execution of Buyers agreement	13.10.2016 (page 22 of complaint)
9.	Possession clause	***4. POSSESSION*** *"4.1 The developer shall endeavor 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."* (page 25 of complaint) ****As per Affordable Housing Policy 2013*** *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 licence shall not be renewed beyond the said 4 years from the date of commencement of project.* ***(Emphasis Supplied)***
10.	Date of building plan	10.03.2015 (Page 54 of reply)
11.	Date of environment clearance	16.09.2016 (Page 60 of reply)
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. 14,82,480/- (page 35 of complaint)
14.	Amount paid by the complainant	Rs. 13,50,072/- (As per Payment detail report dated 18.09.2024 at page 90 of reply)
15.	Final Reminder to clear outstanding dues of Rs.8,61,997/-	19.06.2024 (Page 88 of reply)
16.	Occupation certificate	31.12.2024
17.	Offer of possession	Not offered

B. Facts of the complaint

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

a) That in 2015, the complainant got information about an advertisement in a local newspaper about affordable housing project "63 Golf Drive" at Sector 63-A, Gurugram, Haryana. The complainant visited the project site and met with local staff of respondents who gave an application form and assured him that possession will be delivered within 48 months as they were told that it is a govt. project having fixed payment of instalment every 6 months and on the last instalment, the possession would be delivered.

b) That the unit in question is J108 in Tower J, admeasuring 356.18 sq. ft. and 69.84 sq. ft. balcony area, in the project "63 Golf Drive". The complainant got the unit in the draw of lots and had remitted Rs 75,000/- on 15.01.2015 towards booking the unit along with application form no. 0865. The said payment was duly acknowledged in the application form.

c) That on 21.07.2017, the respondent issued allotment letter against which unit J-34, admeasuring 361.89 sq. ft. and 69.84 sq. ft. balcony. The unit was booked under the time linked payment plan as per the mandate under Affordable Housing Policy 2013 for sale consideration of Rs. 14,82,480/-.

d) That on 02.03.2017, a pre-printed one sided, arbitrary and unilateral buyer's agreement was executed between the parties. As per clause 4.1 of the said agreement, the respondent had to complete the construction of the unit and handover the possession within 4 years from the date of commencement of project.

e) That as per Rule 1(iv) under the Affordable Housing Policy 2013, notified by DTCP, Govt. of Haryana on date 19.08.2013 in the Haryana Government Gazette, the possession is necessarily to be given in 4 years from the approval of building plans or grant of environmental clearance, whichever is later. The building plans were approved on 10.03.2015 and environmental clearance was granted on 29.09.2016. Therefore, the due date of possession becomes on or before 29.09.2020.

f) That till date the complainant had paid Rs.13,50,064/- i.e., 100% of the amount demanded by the respondent, but when complainant observed that there is very slow progress in the construction of the said unit for a long time.

g) That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainant 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 complainant herein is not in breach of any of the terms of the agreement. The respondent deliberately did not raise the demand as per the amended construction linked plan of the affordable housing policy, 2013.

h) That the respondent is hereby threatening and pressurizing the complainant that he has to make the payment as per the affordable housing policy without even raising the demand, the respondent is trying to pressurize the complainant align the complainant in cancellation pool not caring the hard fact that as per the BBA terms the project is already delayed by more than 3 year from the date of promise.

i) That keeping in view the slow-paced construction status and absence of basic amenities respondent is delayed in giving possession. As per section 19 (6) the Act, 2016 complainant 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 complainant herein is not in breach of any of the terms of the agreement. But the respondent is deliberately and intentionally not raising the last demand as per the amended construction linked plan of the Haryana Affordable Policy, 2013.

j) That the cause of action to file the instant complaint has occurred within the jurisdiction of this Authority as the unit which is the subject matter of this complaint is situated in Sector 63A, Gurugram, which is within the jurisdiction of this Authority.

C. Relief sought by the complainant

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

I. Direct the respondent to pay DPC for the period of delay in handing over of possession at prescribed rate of interest from the due date of possession till the actual handing over of possession.

II. Direct the respondent to handover peaceful physical possession of the booked unit to the complainant.

III. Direct the respondent to get the copy of application for occupancy certificate as such the respondent claims to have applied for the OC.

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 the complainant applied to the respondent for allotment of the unit vide an application form no. SGDC-8330 and was allotted a unit bearing no. J-34 in tower J, having carpet area of 361.89 sq. ft. and balcony area of 69.84 sq. ft. vide allotment letter dated 11.01.2016. The complainant represented to the respondent that they should remit every instalment on time as per the payment plan. 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, a builder buyer agreement was executed between the parties on 13.10.2016. The agreement was consciously and voluntarily executed between the parties and 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 450 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 450 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. 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. OC for the project was finally obtained on 31.12.2024.

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 installments 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 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 without prejudice, assuming though not admitting, relief of delayed possession charges, if any, cannot be paid without adjustment of outstanding instalment from due date of instalment along with interest @15% p.a. 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 instalment till the date of realization of amount. Further delayed interest if any must be calculated only on the amounts deposited by the complainant towards the sales consideration of the unit in question and not on any amount

credited by the respondent, or any payment made by the complainant towards delayed payment charges or any taxes/statutory payments, etc.

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. Hence, all the pleas advanced in this regard, except for that of Covid-19 for which relaxation of 6 months is allowed by the authority are devoid of merits.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to pay DPC for the period of delay in handing over of possession at prescribed rate of interest from the due date of possession till the actual handing over of possession.

18. The factual matrix of the case reveals that the complainant was allotted unit no. J-34, Tower J admeasuring carpet area of 361.89 sq. ft. and a balcony area of 69.84 sq. ft., in the respondent's project at basic sale price of 14,82,480/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties on 13.10.2016. The possession of the unit was to be offered by 16.03.2021 as delineated hereinbelow. The complainant paid a sum of 13,50,072/- towards the subject unit.

19. It is pertinent to note that a final reminder letter dated 19.06.2024 was being sent to the complainant-allottee to make a payment of ₹8,61,997/-, thereby affording him an opportunity to clear the outstanding dues.

20. The Authority notes that the complainant had already paid an amount of 13,50,072/-(i.e., 91.06%) against the total consideration of ₹14,82,480/- to the respondent. Per se, it is evident that the amount demanded by the respondent vide letter dated 19.06.2024 is more than 50% of the total sale consideration and prima facie seems to be arbitrary and cryptic. 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 complainant. Upon adjustment of this interest, the respondent would, in fact, be liable to pay the complainant.

21. 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)***

22. 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.

23. 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."*

24. **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."*

25. 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.

26. **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."*

27. 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.

28. 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., 06.08.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

29. 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;"*

30. 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.

31. 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.

32. 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.II Direct the respondent to handover peaceful physical possession of the booked unit to the complainant.

33. 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.

34. 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 allottee 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.

35. 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.

G.III Direct the respondent to get the copy of application for occupancy certificate as such the respondent claims to have applied for the OC.

36. Perusal of case file reveals that the respondent had already placed on record copy of application for occupation certificate dated 08.12.2023. (Annexure R5 at page no. 71 of reply) Further, the occupation certificate for the project has also been obtained by the respondent-promoter on 31.12.2024 (Annexure R6 at page no. 72-74 of reply). Therefore, no direction to this effect is required.

H. Directions of the authority

37. 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 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, as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, ibid.

II. The arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) 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. Further, no interest shall be payable by both the parties for delay, if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

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.

38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
39. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
40. Files be consigned to the registry.

Dated: 06.08.2025

Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram