

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

Date of decision: 01.07.2025

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/1056/2024	Vipin Verma & Kay Bajaj Vs. Sunrays Heights Pvt. Ltd.	Sh. Rohit Dhankar Advocate  Tushar bahamni, Advocate
2.	CR/1057/2025	Kay Bajaj Vs. Sunrays Heights Pvt. Ltd.	Sh. Rohit Dhankar Advocate  Tushar bahamni, Advocate

**CORAM:**

Shri Arun Kumar

Shri Ashok Sangwan

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

1. This order shall dispose of both the complaint 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

	<i>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."</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	Execution of BBA	Total Consideration / Total Amount paid by complainant	Offer of possession (OOP) and Cancellation
1.	CR/1056/2024  Vipin Verma & Kay Bajaj Vs. Sunrays Heights Pvt. Ltd.  DOF: 20.03.2024 Reply: 22.05.2024	J-151, Tower J  Carpet area- 356.18 sq. ft.  Balcony area- 69.84 sq. ft. (Page 56 of Complaint)	10.10.2016 (as per stamp paper dated of BBA page 42 of complaint)	BSP-₹14,60,640/- (Page 59 of reply)  AP-₹13,34,625/- (Page 60 of reply)	OOP: Not Offered  Cancellation: 12.2.2024 (through Email, page 40 of reply)
2.	CR/1057/2024  Kay Bajaj Vs. Sunrays Heights Pvt. Ltd.  DOF: 20.03.2025 Reply: 22.05.2024	B-31, Tower B  Carpet area- 356.18 sq. ft.  Balcony area- 69.89 sq. ft. (Page 52 of Complaint)	04.02.2016 (page 36 of complaint)	BSP-₹14,59,640/- (Page 56 of complaint)  AP-₹13,29,280/- (Page 60 of reply)	OOP: Not Offered  Cancellation: 12.02.2024 (through Email, page 40 of reply)

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

1. Direct the respondent to handover possession of unit in question or alternative unit if allotment of unit declared unlawful.
2. Direct the respondent to refund the paid-up amount.
3. Litigation cost of Rs.1,50,000/-.

**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/1056/2024 titled as "Vipin Verma & Kay Bajaj 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/1056/2024 titled as "Vipin Verma & Kay Bajaj 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-151 (page 56 of complaint)
6.	Unit admeasuring	556.18 sq. ft. (carpet area) 69.84 (balcony area) (page 56 of complaint)
7.	Allotment letter	20.07.2017 (page 59 of complaint)
8.	Date of execution of Buyers agreement	10.10.2016 (as per stamp paper dated of BBA page 42 of complaint)
9.	Possession clause	<b>As per affordable housing policy 2013</b> 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,

		<i>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.</i>
10.	Date of building plan	10.03.2015 (Page 41 of reply)
11.	Date of environment clearance	16.09.2016 (page 47 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.14,60,640 (page 59 of reply)
14.	Amount paid by the complainant	Rs.13,34,625/-(page 60 of reply)
15.	Occupation certificate	31.12.2024 (taken from another file of the same project.
16.	Offer of possession	Not offered
17.	Cancellation	E-mail dated 12.02.2024 (page 40 of reply)

## B. Facts of the complaint

6. The complainants have made following submissions in the complaint:

- a) That in 2015, the complainants got information about an advertisement in local newspaper about affordable housing project "Sixty Three Golf Drive" at Sector 63A, Gurugram, Haryana. The staff of the respondent company showed a rosy picture of the project and allured the complainants with proposed specifications and invited them for a site visit. The complainants visited the project site and met with the local



staff of the respondent who gave an application form and assured that the possession would be delivered within 48 months since the said project was a govt. project having fixed payment installments in every six months with the last installment being payable on handover of the possession by the respondent.

- b) That the complainants, believing the assurances and pledges of timely possession given by the respondents herein to be *bonafide*, applied for allotment in the said project via application no. SGDB1578 in good faith and along with the same, complainants herein paid an advance payment of Rs. 75,000/-.Further, it is to be noted that the complainant no. 2, co-allottee also for his personal residential requirements individually applied as a sole allottee for the allotment of a unit in the said project.
- c) Subsequently vide Letter dated 11.01.2016 the complainant no. 1 was informed that pursuant to the application of the complainants, for allotment of residential flat in the said project, the complainant no. 1 has been selected as one of the successful allottee in the draw of lots as constituted under Affordable Housing Policy, 2013 dated 19.08.2013 and accordingly has been provisionally allotted unit no. J-151 in the said project. Furthermore, along with such provisional allotment the complainant no. 2 was also declared as a successful bidder and was also provisionally allotted unit no. B-31 in tower B of the said project by the respondent.
- d) That the complainants being successfully provisionally allotted unit no. J-151 in the said project, complying with terms as envisaged under

provisional allotment letter dated 11.01.2016 made payment of an amount of Rs. 3,20,558/- through two cheques bearing no. 138181 and 153379 dated 21.01.2016 drawn on Punjab National Bank and State Bank of India respectively for an amount of Rs. 1,60,280/- each towards the first Installment as due and payable under the said letter within timeline specified. Subsequently, in furtherance to the provisional allotment letter issued by the respondent and installment/payment made by the complainant no. 1, the respondent and the complainant entered into a builder buyer agreement dated 10.10.2016, governing the rights and obligations between the complainants and respondent. The unit was purchased under the time linked payment plan as per the mandate under the affordable housing policy 2013 for a total sale consideration of Rs. 14,59,640/-. In pursuance thereof, the complainants were allotted by the respondent herein vide letter dated 20.07.2017 a residential unit namely in tower - J, flat no. J-151 as per clause 4.1 of the builder buyer agreement, the possession of the unit in question had to be offered within a time period of 48 months i.e., four years.

- e) That the complainant has paid an amount of Rs. 13,34,628/- to the respondent in a time bound manner as agreed to between the parties. Subsequent, to the complainants making all the payments and fulfilling its obligations accruing under the allotment letter and builder agreement, the complainants received no intimation from the respondent, about the progress or construction status of the unit in question. Anytime, the complainant enquired about the construction status of the project, representatives of the respondent gave a

fabricated completion date which was never adhered to by the respondent. As such it was amply clear from respondent's conduct that neither any progress has been made in the construction of the unit in question nor the respondent intent to offer the possession of the unit in question within the timelines as agreed to under the allotment agreement. It is apposite to note in this regard that there is a delay of almost four years from the date of delivery as specified under clause 4 of the builder-buyer agreement. Moreover, it is submitted that the respondents at this stage also cannot come and take the relief of COVID-19 before the Authority as a force majeure event because the timeline for delivery of possession was much before when the COVID-19 pandemic started.

- f) That despite the respondent being in default under the builder buyer agreement by failing to provide the possession of the unit in question as per the agreed timelines, the respondent vide letter/email dated 12.02.2024 cancelled the allotment of the Unit in question about alleged defaults in payments of installments and further on account of an alleged misrepresentation by the complainants. On detailed inquiry made by the complainants with the staff of the respondent, the complainants were informed that on account of complainant no. 2, co-allottee of the unit in question i.e. Mr. Kay Bajaj also being allottee of unit no. B-31 in the said project was violative under Haryana Affordable Housing Policy, 2013 and accordingly, the instant allotment of the unit in question to the complainants is illegal, under the garb of which the respondent had arbitrarily and unilaterally cancelled the allotment of the unit in question and unit of complainant no. 2 as well, i.e., unit no.



B-31 stood forfeited and the entire amount paid by the complainants under the unit in question.

- g) That the complainant no. 1 and complainant no. 2 are related to each other as cousins and had in a *bonafide* manner for the purpose of their joint residential requirements, had applied for the allotment of the unit in question in the said project and there was no element of fraud or misrepresentation or deceits as alleged by the respondent.
- h) That the respondent at this stage when the respondent itself is in default under the builder buyer agreement cannot rely upon such objection in order to prevent themselves from performing its mandatory obligations as contained under the allotment letter and builder-buyer agreement. Moreover, it is submitted that any such objection of dual allotment, or deficiency or ineligibility of the application of the complainants, as per the Haryana Affordable Housing Policy, 2013 if any had to be raised by the respondent at the stage of application or provisional allotment itself, further even before the stage of conducting of bidding and the same cannot be raised by the respondent at this stage when approximately entire amount/ consideration for the unit in question has been received by the respondent under the builder - buyer agreement. Accordingly, failure of respondent to raise such objection by the respondent at the stage of allotment amounts to waiver of respondent's right to exercise such right of cancellation later on under the agreement.
- i) Moreover, it is in fact the respondent who has acted in malafide and fraudulent manner where the respondent being aware of the allotment

in favor of complainant no. 2 a unit, bearing no. B-31 in the projects itself, kept on accepting the payment for the unit in question as well as the other unit from the complainants only to cancel the allotment of unit at a later stage and usurped the hard earned money of the complainants by forfeiting all amounts paid under the agreement.

- j) At this stage reference is also invited to clause 5(ii)(c) and (d) of the Affordable Housing Policy, 2013 where specific duty is casted upon the colonizer and district town planner to reject the applications of all ineligible applicants within three months from the date of the receipt of the applications by the applicants. Specification of time period for rejection under the policy makes it implied that any rejections by the coloniser cannot be made after the lapse of three months. Further the power of such rejection has been vested upon coloniser jointly with DTP and coloniser cannot without DTP supervision cancel or reject any of the applications of the applicant.
- k) From the perusal of the above power to reject the application no. SGDB1578 of the complainants vested with coloniser i.e., respondent in the present case only under the guidance and supervision of DTP that too within a period of three months from date of application i.e., power of rejection of application vested with respondent jointly with DTP by or before 23.06.2015, pursuant to which such right of rejection would stand to be waived.
- l) That the fact that the application of the complainants was scrutinized by respondent under supervision of DTP at initial stage when the same was not rejected and was declared to be eligible to take part in draw of

lots, makes it evident that the respondent herein is unilaterally without DTP supervision is cancelling the allotment only to hide its shortcoming of inordinate delay in the handing over the possession.

- m) Further it is to be noted that clause 5(ii)(a) of the Affordable Housing Policy, 2013 as amended from time to time, specifies that *"An applicant in a specific colony shall make only one application. Any successful applicant under this policy shall not be eligible for allotment of any other flat under this policy in any other colony. In case, he/she is successful in more than one colony, he/she will have choice of retain only one flat....."*
- n) From the perusal of the above it is evident that such condition is only applicable to the main applicant and is not per se applicable in the case of co-applicant, had the legislature intended to make such condition applicable for co-applicants as well, specific directions would have been made under the policy itself. Considering the aforesaid submission it is evident that the complainants being the *bonafide* purchaser is entitled to receive possession of the unit in question from the respondent along with subsequent relief as prayed for under this complaint.
- o) Now, reference is further invited to Section 11(5) of Act, 2016 wherein the allottee is entitled to approach the Authority against cancellation of Allotment by the Builder where such cancellation is not as per terms of agreement for sale, unilateral and without any sufficient cause.

- p) Without prejudice to above submissions, it is submitted even assuming without admitting the allotment to the complainants is bad in the eyes of law, the respondent under the term of clause 3.4 of the builder buyer agreement was only entitled to deduct an amount of Rs. 25,000/- in the event of breach of any terms and condition of the allotment of the unit in question. Accordingly, forfeiting the entire amount paid for the unit in question along with other unit of the complainant no. 2 is itself violated of terms and condition of allotment. At the risk of repetition it is stated that since the respondent had the power to cancel the applications of the applicant only under the supervision of DTP under the Haryana Affordable Housing Policy, 2013, accordingly cancellation of the application by the respondent after the allotment that to at such a belated stage when complete payments have been received from such applicant amounts to unilateral exercise of the power by the respondent.
- q) That from the facts of the case and aforesaid submissions it is evident that main ingredients or factors to be taken into consideration by the Authority for declaring cancellation of allotment by the respondent, unlawful as per the provision of RERA Act are evident in the present case making it a fit case for the Authority to exercise its power under proviso to Section 11(5) and declare such cancellation as illegal.
- r) Without prejudice to the above submission relating to grant of relief of possession, Section 18 of the Act, 2016 makes it mandatory for the promoter of the project to refund the consideration paid towards the allotment of flat in case possession is not offered within the timelines

specified under the agreement. Accordingly, as specified above, the respondents have completely disregarded the timelines specified under the agreement which makes the complainants liable to be refunded the amount paid towards allotment of the unit in question along with compensation.

- s) That in light of the submissions made by the complainants again reiterates that more than nine years have passed from the date of allotment, the complainants has not been handed over the possession of the unit in question and the respondent is resorting to unlawful ends to usurp and forfeit the hard earned money of the respondent.

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

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

- I. Direct the respondent to handover the possession of the unit in questions to the complainants along with interest at the rate of 12% per annum on the amount paid by the complainants, payable from the due date of possession till the date of actual handover of possession by the respondent or without prejudice to above submissions in the alternate where the allotment of the unit is declared unlawful.
- II. Direct the respondent to refund the total amount paid by the complainant along with an interest at the rate of 12% p.a. from the date of the deposit of the amount till the date of realization.

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 complainants approached the respondent and expressed interest in booking of an apartment in the affordable housing developed group housing developed by respondent known as "63 Golf Drive" situated in Sector 63, Gurugram, Haryana. Prior to the booking, the complainants conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
- b) That thereafter the complainants, vide application form applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. J-151, tower J, Type A, measuring carpet area of 356.18 sq.ft. and balcony area of 69.89 sq.ft. was provisionally allotted via allotment letter dated 20.07.2017. The complainants represented to the respondent that they shall remit every installment on time as per the payment schedule.
- c) That, an agreement to sell dated 10.10.2016 was executed between the complainants and the respondent. The agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- d) That the complainants stand in the fundamental breach of the Affordable Housing Policy, 2013. The policy clearly provided the "*Eligibility Criteria*" in clause 5(iii)(a) that no person shall make more than one application for the unit in the project.
- e) That it is a mandatory direction to the applicant that one should have made only one application under the policy. The complainants wilfully misrepresented the respondent as well as the government and

complainant no. 2 filed two applications, followed by gaining unlawful allotment of two units. The complainant no.2 made another application and gained allotment of unit no. B-31 in the respondent on 19.06.2017 and executed the BBA on 04.02.2016 which is much before the allotment of the present unit. The complainants being the cousin were aware of the previous allotment and were under the obligation to inform the respondent about the previous allotment of the co-applicant. However, the complainants tactfully concealed such information and let the complainant no. 2 have share of ownership in both the units.

- f) That the complainants also filed a false affidavit with the BBA as required to be filed under the policy declaring he does not own any other unit in the project and that he has not made any other application. The aim of the Affordable Housing Policy is to provide roof over the head of all the people. The complainants have illegally stolen that opportunity from the public who is genuinely in need.
- g) That the complainants are ineligible to own a house under the policy as it has failed to abide by the terms of it. When misrepresentation of the complainants came in the knowledge of the respondent, the respondent immediately cancelled the unit of the complainants vide email dated 12.02.2024 and requested for assistance in the refund process. The complainants on the event of being caught, to arm twist the respondent has falsely filed the present complaint before the Authority. Respondent has validly cancelled the unit of the complainant as he does not meet the eligibility criteria.
- h) 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 endeavoured 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.

- i) 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.
- j) That the offer of possession was also subject to the incidence of force majeure circumstances under clause 16 of the agreement. 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.

- k) 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.

- l) 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.
- m) 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.
- n) 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 26.10.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.12.2019 to 24.02.2020. The Authority was also pleased to consider and provided benefit of 6 months to the developer on account of the effect of COVID also.
- o) 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.

- p) 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.
- q) 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.
- r) 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.

- s) That the complainant has been allotted unit under the Affordable Housing Policy, 2013 which 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.
- t) That the complainant has failed to make any payment of installment at "within 36 months from the due date of Allotment" due in the year 2018 and 2019. In accordance with the same, it is submitted that the complainants, cannot rightly contend under law that the alleged period of delay continued even after the non-payment and delay in making the payments as stated above. The non-payment by the complainant's severally affected the construction of the project and funds of the respondent. Due to default of the complainants, the respondent had to take loan to complete the project and is bearing the interest on such amount. The respondent reserves its right for claim of damages before the appropriate forum.
- u) That the complainants have also failed to make payment against the last instalment due from the year October 2018. 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 complainants. Hence, for that reason also the unit of the complainants is liable to be cancelled.

- v) That the complainant has not only in breach of the BBA but also in breach of Affordable Housing Policy and the Act, 2016 by failing to make the due payments of instalments. The complainant is responsible for all consequences of breach of the BBA and violation of RERA.
- w) That the complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsist in favour of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.
- x) 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.
- y) 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.

- z) 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 favour 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 hand over the possession of the unit in questions to the complainants along with interest at the rate of twelve (12) per cent per annum on the amount paid by the complainants, payable from the due date of possession till the date of actual handover of possession by the respondent. OR. Without prejudice to above submissions in the alternate where the allotment of the unit is declared unlawful.**

**G.II Direct the respondents to refund the total amount paid by the Complainant i.e., Rs. 13,29,280/- along with an interest at the rate of 12% p.a. from the date of the deposit of the amount till the date of realization.**

18. The factual matrix of the case reveals that the complainants were allotted unit no. J-151, tower-J admeasuring carpet area of 356.18 sq. ft. and a balcony area of 69.84 sq. ft., in the respondent's project at total sale price of ₹14,59,640/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties in 10.10.2016. The complainants paid a sum of ₹13,29,280/- towards the subject unit. They submitted that there unit has been cancelled without following due process as defined under the Affordable Housing Policy. Moreover, the co-allottee

cannot be treated at par with the first allottee. Further, the complainant submitted that the onus for scrutinizing the application was on the respondent and the respondent failed to point out the discrepancy at the initial stage and even allowed the complainants to deposit more than 90% of the amount.

19. On the contrary, the counsel for respondent states that the unit of the complainants has been cancelled on account of ineligibility as one of the co-complainant i.e., Kay Bajaj has secured allotment of 2 units including the present unit in violation of the provisions of Section 5(ii)(a) of the Affordable Housing Policy, 2013.
20. Upon submissions made by both the parties, the Authority is of the considered view that the co-complainant i.e., Kay Bajaj has procured the allotment of 2 units including the present unit which is clear violation of Section 5(ii)(a) of the Affordable Housing Policy, 2013, wherein it has been stated that:

**5. ALLOTMENT RATES; ALLOTMENT & ELIGIBILITY CRITERIA**

**(ii) Eligibility Criteria:**


**(a) Any person can apply but person which includes his/her spouse or his/her dependent children who do not own any flat/plot in any HUDA developed colony/ sector or any licensed colony in any of the Urban Areas in Haryana, UT of Chandigarh and NCT Delhi shall be given first preference in allotment of flats. An applicant in a specific colony shall make only one application. Any successful applicant under this policy shall not be eligible for allotment of any other flat under this policy in any other colony. In case, he/she is successful in more than one colony, he/she will have choice of retain only one flat. All such applicants shall submit an affidavit to this effect."**

21. The Authority is of the view that in the present case, a unique situation has arisen where there is a violation of the provisions of Affordable Housing Policy, 2013 which is a special dispensation/policy issued by the state

government through the Town and Country Planning Department. In view of the above, any relief in the matter would lie before the competent authority and not before the Authority. Therefore the Authority holds the matter to be not maintainable. The complainants may approach the competent authority for any relief with regard to their grievance, if so advised.

22. The complaints stand disposed of.

23. Files be consigned to the registry.

  
**(Ashok Sangwan)**  
Member  
**Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.07.2025