

**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/166/2025	Avanish Kumar Yadav Vs. Sunrays Heights Pvt. Ltd.	Avanish Kumar Yadav Complainant in person Tushar bahamni, Advocate
2.	CR/1046/2025	Ashish Sharma Vs. Sunrays Heights Pvt. Ltd.	Ashish Sharma Complainant in person Tushar bahamni,

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:

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 <i>"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."</i>
Possession clause as per Affordable Housing Policy, 2013	As per clause 1(iv) of the Affordable Housing Policy, 2013 <i>"All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later,</i>

	<i>This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project."</i>
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, 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 publication of cancellation
1.	CR/166/2025 Avanish Kumar Vs. Sunrays Heights Pvt. Ltd. DOF: 10.02.2025 Reply: 27.05.2025	A-75, Tower A Carpet area- 361.89 sq. ft. Balcony area- 69.84sq. ft. (Page 34 of Complaint)	26.02.2016 (admitted by the respondent)	BSP-₹14,82,480/- (Page 164 of reply) AP-₹13,50,064/- (Page 165 of reply)	OOP: Not Offered Publication in Hindi newspaper "Aaj Samaj": 16.10.2024
2.	CR/1046/2025 Ashish Sharma Vs. Sunrays Heights Pvt. Ltd. DOF: 03.03.2025 Reply: 27.05.2025	D-102, Tower D Carpet area- 604.83 sq. ft. Balcony area- 95.10 sq. ft. (Page 33 of Complaint)	03.10.2016 (Page 17 of Complaint)	BSP-₹24,66,870/- (Page 164 of reply) AP-₹22,85,749/- (Page 164 of reply)	OOP: Not Offered Publication in Hindi newspaper "Aaj Samaj": 16.10.2024 (Page 50 of reply)

The complainant herein is seeking the following reliefs:

1. Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2% on the paid amount for delay period starting from 15.03.2021 till the date of actual handing over of physical possession or offer of possession plus 2 months after obtaining OC, whichever is earlier.
2. To quash letter dated 15.03.2024 issued by the respondent demanding illegal arbitrary amount of Rs.7,96,970/- without even raising the last tax invoice/demand letter.
3. Direct the respondent to handover actual physical possession of the booked unit.
4. To raise the last demand as per Haryana Affordable Housing Policy towards consideration of the said unit in order to make the payment.
5. The Authority to guide as to in which bank account complainant should deposit last demand if raised by respondent as escrow account of respondent is freezed by Authority vide its order dated 12.07.2024.

6. Direct the respondent to get the copy of application for OC as such the respondent claims that they have applied for 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
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/166/2025 titled as "Avanish Kumar Yadav 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/166/2025 titled as "Avanish Kumar Yadav Vs. Sunrays Heights Private Limited"

S.No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 63-A, Gurugram
2.	Project area	5.90 acres
3.	Nature of the project	Affordable Group Housing
4.	DTPC License no. and validity	82 of 2014 dated 08.08.2014 valid upto 07.08.2019
5.	Name of licensee	Sunrays Heights Pvt. Ltd., Smt. Kiran W/o Dharam
6.	RERA registration details	Registered Registration no. 249 of 2017 dated 26.09.2017
7.	Allotment letter	(N/A)
	Builder Buyer Agreement	26.02.2016 (admitted by the respondent, page 5 of reply)
8.	Unit no.	A-75, Tower A (page 31 of complaint)
9.	Unit area admeasuring	361.89 sq. ft. (carpet area) 89.84 sq. ft. (balcony area)

		(page 31 of complaint)
10.	Possession clause	<p>4. Possession</p> <p><i>"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."</i></p> <p>(BBA at page 25 of complaint)</p> <p><i>*As per affordable housing policy 2013 -</i></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 licences shall not be renewed beyond the said 4 years period from the date of commencement of project."</i></p> <p><i>(Emphasis supplied)</i></p>
11.	Date of building plan approval	10.03.2015 (Page 33 of reply)
12.	Date of environment clearance	16.09.2016 (Page 39 of reply)
13.	Due date of possession	16.03.2021 (Calculated from date of environment clearances i.e., 16.09.2016 being later, which comes out to be 16.09.2020 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic)

14.	Basic sale consideration Total sale consideration	Rs.14,82,480/- (As per agreement on page 31 of complaint)
15.	Amount paid by the complainant	Rs. 13,50,064/- (As alleged by complainant on page 16 of the complaint)
16.	Final Reminder letter sent by respondent to complainant	22.07.2024, 12.08.2024 (page 88-90)
17.	Publication of cancellation in newspaper	16.10.2024 (Page 91 of reply, respectively)
18.	Final reminder to clear the outstanding dues.	27.11.2024 (page 93 of reply)
19.	Occupation certificate	31.12.2024 (Taken from another file of the same project) (Applied on 08.12.2023)
20.	Offer of possession	Not offered

B. Facts of the complaint

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

- a) That the complainants after seeing advertisements of the respondent/ builder, in the newspaper for launching the affordable housing project namely "63A Golf Drive" situated at Sector 63A, Gurugram, Haryana, came into contact with Mr. Pritam Kumar the executives of the respondent, who embarked upon the complainant with their sales team with various promises of timely completion of project and swift delivery of possession on time.
- b) That the unit no. A-75 at tower-A was allotted to the complainant vide allotment letter dated 11.01.2016. The total area of allotted unit is 361.89 sq.ft. and balcony area 69.84 sq.ft.

- c) That the builder buyer agreement was executed between the complainant and respondent on 26.02.2016. The total sale consideration of the flat is Rs.14,82,480/- exclusive of taxes and any other charges. The complainant has paid total amount of Rs.13,50,064/- to respondent against demand letters issued by the respondent till date of filing of present complaint as and when the demands were raised by the respondent in time bound manner, the total amount paid constitute around 91% of total cost of the said flat.
- d) That the complainant had availed a home loan against mortgage of the said apartment from M/S PNB Housing Finance for payment of instalments. The banks paid all five instalments whenever demanded by the respondent till September, 2019. The respondent never issued demand for last instalment after laps of enough time complainant visited the corporate office of the respondent to collect demand letter and account statement on 15.03.2021 account statement was handed over to the complainant but no demand letter issued till the date.
- e) Since respondent had not delivered the possession of the apartment, due to which the complainant is suffering from economic loss as well as mental agony, pain and harassment by the act and conduct of the respondent and thus, the complainant is entitled to a compensation. Furthermore, the complainant has been constrained by the respondent to live in a rented accommodation and pay extra interest on home loan due to delay of possession of the said.
- f) That on 19.03.2018 complainant wrote an email for update communication address of complainant in respondent's records. The respondent asked for any address proof which was sent by the

complainant by return email but respondent did not update communication address of the complainant. Respondent claiming sending notices and reminder on old communication address of the complainant while request for change of communication address was pending with the respondent since 19.03.2018. As per clause 21.1 of builder buyer agreement is clearly mentioned that all notices will be sent through e-mail speed post etc. on address mentioned on first page of builder buyer agreement but respondent used to send all notices reminders on old office address, hence such notice reminders etc. were undelivered to the complainant due to change of office address. Complainant informed to the respondent to update office address in his records but the respondent never cared or paid any attention towards complainant requests.

- g) That on 18.07.2022 complainant wrote an email to respondent for issue of demand letter required by lender bank for payment of last instalment but respondent neither replied email nor shared the demand letter and bank details. The respondent is much aware that as per tripartite agreement the unit of complainant is mortgage with a PSU bank and payment can be made only when demand is issued by the respondent. The complainant followed up with respondent through calls, physical visits but the respondent did not pay any heed to the said request. Also, the respondent neither ever replied nor responded in a satisfactory manner to the complainant, despite establishing contact through emails.
- h) That on 07.12.2024, complainant received an email from respondent attaching a pre-cancellation notice for payment of last instalment by 11.12.2024. On next working day 09.12.2024 complainant visited office

of the respondent and requested them to issue demand letter share the bank details for immediate payment but respondent neither shared demand letter nor bank details for remittance of outstanding amount. Having visited respondent office, the complainant contacted to the respondent through email as explained in point no. 6 above but the respondent did not pay any attention towards written emails.

- i) That on 18.07.2022 complainant wrote an email to respondent for executing agreement for sale/builder buyer agreement registration as per H-RERA compliances. The complainant requested them to share schedule for registration of builder buyer agreement, respondent acknowledged the mail and replied concern team will contact but till the date respondent could not arrange to register the agreement for buyer agreement.
- j) That complainant got allotment of the said unit on 11.01.2016 with a hope of obtaining possession in four years and now it has been more than eight years respondent could not fulfilled his commitment it has caused the complainant huge financial losses, till the date complainant has paid Rs. 9,36,837/- as interest to lender bank and still living in a rental accommodation, it has cost great financial and emotional loss to the complainant.
- k) That on 13.05.2024 Authority published a public notice on a daily newspaper instructing to the respondent to not cancel any unit of any allottee where 85% or more of total cost of the said unit is made by such allottee, but the respondent threatening to the complainant to cancel the allotment of unit while complainant made numerous attempts to pay outstanding amount.

- 1) That due to the malafide intention of the respondent and not deliver of the apartment the complainant in time accrued huge losses on huge amount paid as interest and rental for accommodation and facing difficulties on account of career plan of family members and future of the complainant and his family are rendered dark as the planning which the complainant invested hard earned monies have resulted zero results and borne throne instead of bearing positive result. After waiting more than 9 years when a hope for possession is near the respondent threatening to cancel the allotment of the apartment.

C. Relief sought by the complainant

7. The complainant has sought the following relief(s):
- I. Direct the respondent to pay delay possession charges for every month of delay at prevailing rate of interest for total delayed month.
 - II. Direct the respondent to not cancel the allotted unit and to not create any third party charges.
 - III. Direct the respondent to reinstate the unit if the respondent cancel the allotment of unit during the proceedings of the case.
 - IV. Direct the respondent to serve a final demand notice after adjusting interest payable by the respondent.
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 vide an application form applied to the respondent for allotment of a unit and was allotted a unit bearing no. A-75, having carpet area of 361.89 sq. ft. and balcony area of 69.84 sq. ft. balcony was provisionally allotted.. The respondent had no reason to suspect the

Bona fide of the complainant and proceeded to allot the unit in question in their favor.

- b) Thereafter, an agreement to sell was executed between the parties on 26.02.2016. 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 **422 days** in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. Thus, from the facts indicated above and the documents appended, it is comprehensively established that a period of 422 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of aforesaid Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure* in terms with the agreement.
- h) That in a similar case where such orders were brought before the Id. Authority was in Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr. vs. M/s. Venetian LDF Projects LLP" which was decided on 17.05.2022, wherein the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the respondent.
- i) That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.70.2019 to 30.10.2019, 5 days for the period 04.11.2019 to

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

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

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

- n) That the complainant has been allotted unit under the Affordable Housing Policy, 2013 which 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.
- o) That the complainant has failed to make any payment of installment at "within 36 months from the due date of Allotment" along with partial payment towards previous instalments. The complainant cannot rightly contend under the law that the alleged period of delay continued even after the non-payment and delay in making the payments. The non-payment by the complainant affected the construction of the project and funds of the respondent. That due to default of the complainant, the respondent had to take loan to complete the project and is bearing the interest on such amount. The respondent reserves the right to claim damages before the appropriate forum.
- p) That it is the obligation of the complainant under the Affordable Housing Policy, 2013 (as on the date of Allotment) and the Act to make timely payments for the unit. In case of default by the complainant the unit is liable to be cancelled as per the terms of Affordable Housing Policy, 2013.

- q) That the respondent sent a first final reminder letter dated 22.07.2024 to clear the outstanding dues, mentioning the relevant clauses of the Affordable Housing Policy 2013, wherein if the installments are not paid timely, the respondent can cancel the unit allotted to the complainant.
- r) That the respondent sent a 2nd final reminder letter dated 12.08.2024 to clear the outstanding dues of Rs.5,11,860/- mentioning the relevant clauses of the AHP, 2013, wherein if the installments are not paid timely, the respondent can cancel the unit allotted to the complainant.
- s) That the complainant, despite the issuance of the both above mentioned final reminders, the complainant intentionally and willfully evaded the matter, and chose not to clear his outstanding dues as requested by the respondent. Thereafter, the respondent, after giving sufficient opportunity to the complainant to clear the outstanding dues, proceeded further as per the terms and conditions of the AHP, 2013, and published the complainant's details in the local newspaper dated 16.12.2024 and again requested him to clear the outstanding dues in 15 days from the date of the said publication else, the allotment will be cancelled purely as per the said policy.
- t) That the respondent, despite publishing the name of the complainant in the list of defaulters in making the payment of instalments in the local newspaper, once again out of good gesture, sent a letter dated 20.11.2024, asking the complainant to clear the outstanding dues, otherwise, the respondent will act and take necessary steps as per the Affordable Housing Policy 2013 and cancel the unit allotment to the complainant as per the terms and conditions agreed upon.
- u) That the complainant once again failed to clear the outstanding dues as demanded rightfully and legally by the respondent, despite 3 to 4

reminders for payment. The respondent once again gave an opportunity to the complainant to clear the outstanding dues and send a letter dated 27.11.2024, wherein the complainant was asked to make the payment, which is outstanding, latest by 11.12.2024, otherwise, the allotment of the unit in dispute will be considered cancelled absolutely as per the guidelines of the AHP, 2013 and terms and conditions of BBA executed between the parties.

- v) That the respondent has duly received its OC on 31.12.2024. Since the OC has been received, the complainant is legally bound to settle all outstanding payments and come forward to take possession of the unit, subject to clearing outstanding dues, following the offer of possession of the unit.
- w) That to add to the misery of the respondent, the hundreds of allottees of the project in dispute have filed a claim petition having no. IB/48(ND)/2025 under Section 7 of the IBC, 2016, and have claimed Rs. 26 Crores interest of 24% and declared the respondent insolvent as per the provisions of the IBC, 2016. The allottees in this claim petition have admitted the date of default, i.e., the due date of handing over the possession is 31.03.2023.
- x) That the stand of the allottees is contradictory with respect to the due date of possession in two different competent authorities i.e., before HARERA, Gurugram, they are claiming interest on delayed possession from September 2020, whereas before Ld. NCLT admitted the due date of possession as 31.03.2023. Hence, there is a huge discrepancy in the admitted due date of possession and therefore, the due date of possession in the present case, which is alleged as 15.03.2021, is false and wrong.

- y) That this Hon'ble Authority has adjudicated similar issues of termination/ cancellation and has upheld the same noting the default on part of the Complainant. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation is valid.
 - z) 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.
 - aa) 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.
 - bb) 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 pay delay possession charges for every month of delay at prevailing rate of interest for total delayed month.**
- G.II Direct the respondent to not cancel the allotted unit and to not create any third-party charges.**

G.III Direct the respondent to reinstate the unit if the respondent cancel the allotment of unit during the proceedings of the case.

18. The factual matrix of the case reveals that the complainant was allotted unit no. A-75, Tower-A admeasuring carpet area of 361.89 sq. ft. and a balcony area of 89.84 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 in 2016. The complainant paid a sum of ₹13,50,064/- towards the subject unit.
19. During the course of proceedings dated 08.04.2025, learned counsel for the respondent submitted that the complainant has instituted proceedings before the Hon'ble National Company Law Tribunal (NCLT), Delhi Bench in Case No. IB-48 of 2025, seeking a refund along with interest at the rate of 24% per annum. It was further submitted that in the said NCLT proceedings, the date of default has been stated as 31.03.2023, whereas in the present complaint(s) before this Authority, the complainants have asserted the due date as 16.03.2021 and have sought relief in the form of delayed possession charges and delivery of possession. In response, learned counsel for the complainant submitted that the matter before the Hon'ble NCLT is at the admission stage and that no order has been passed therein as of yet.
20. Upon considering the submissions made by both parties, the Authority is of the considered view that the complaint filed before this Authority is with respect to the statutory provisions under the Real Estate (Regulation and Development) Act, 2016 which is a special Act to regulate and promote the real estate sector and to ensure sale of plot, apartment or building, as the case may be in an efficient and transparent matter and to protect the interest of consumers in the real estate sector. It is noted that the objective and scope of the Insolvency and Bankruptcy Code, 2016 (IBC) are distinct and serve a

different legal purpose. It is further observed that the matter before the Hon'ble NCLT is presently at the stage of admission and no order initiating Corporate Insolvency Resolution Process (CIRP) against the respondent has been passed as on date. Therefore, at this juncture, there exists no bar under any law that prevents this Authority from proceeding to adjudicate the present complaint(s) on merits.

21. The complainant is seeking a direction to not cancel the allotted unit and to not create any third party charges. A reminder letter dated 12.08.2024 was sent to the complainant, wherein it was specified that the complainant's failure to clear the outstanding dues has resulted in his allotment being classified as a default under AHP, 2013. Hence, the complainant is requested to pay the total outstanding amount of Rs. 5,11,860/- at the earliest, as there has already been a significant delay in clearing the outstanding payment. Thereafter, the respondent made a publication in the newspaper "AAJ SAMAJ" on 16.10.2024 as required under Affordable Group Housing Policy, 2013. The said publication also stated that failure to make payment within the stipulated period would lead to automatic cancellation of the allotment, without any further notice or communication by the respondent. Thereafter a letter dated 27.11.2024 was sent by the respondent giving an opportunity to the complainant to clear the outstanding dues and upon non-payment of the same shall be cancelled and re-allocate his unit to some other client to fulfil the deficit outstanding amount.

22. The foremost question which arises before the authority for the purpose of adjudication is that "whether the said publication would tantamount to a valid cancellation in the eyes of law or not?"

23. Clause 5(iii) (i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:-

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

24. The Authority observes that the respondent issued "Final Reminder Letter" dated 22.07.2024, directing the complainant to clear the outstanding dues. It is pertinent to mention here that the complainant had already paid an amount of Rs. 13,50,064/- against the basic sale consideration of Rs. 14,82,480/- to the respondent by 06.05.2024. Perusal of case file reveals that the demand raised by the respondent via letter dated 22.07.2024 was towards the payment of last instalment accompanied with interest on delay payments. Therefore, the rate of interest chargeable from the allottee by the promoter, in case of default, if any shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act. Also, the respondent is obligated to raise last demand only in accordance with the builder buyer agreement and as per Affordable Housing Policy, 2013 and shall not charge anything from the complainant which is not the part of the builder buyer agreement and under the Affordable Housing Policy, 2013.
25. Further, the Authority takes serious note of the conduct of the respondent in wilfully violating the directions issued to it vide order dated 23.04.2024 in M.A. No. 233/2024 in CR/1244/2022 titled *"Sixty-Three Golf Drive Flat Buyers Association vs. Sunrays Heights Private Ltd."*, wherein a clear directive

was issued restraining the respondent from cancelling the allotment of any unit in cases where more than 85% of the sale consideration had already been paid by the allottee, and without adhering to the due process stipulated under the Affordable Housing Policy.

26. The Authority notes that the complainant has paid approximately 91.06% of the sale consideration, and the respondent was required to hand over the project by 16.09.2020 under the Affordable Housing Policy, 2013, excluding the COVID-19 grace period. Even with a six-month grace period in lieu of Covid-19 pandemic, the possession was to be handed over by 16.03.2021, however, the respondent has failed to complete the project. Thereafter, the respondent has obtained the occupation certificate from the competent authority on 31.12.2024. The interest accrued during the delay period significantly reduces the amount payable by the complainant. Upon adjustment of this interest, the respondent would, in fact, be liable to pay the complainant. Despite this, the respondent chose to cancel the unit on grounds of non-payment, while neglecting its own obligations. Such actions by the respondent displays bad faith, as it failed to adjust the delay period interest.

27. 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)

28. In the present case, the respondent-promoter was obligated to complete the construction by 16.03.2021, including a six-month extension due to the Covid-19 pandemic. However, the respondent-promoter failed to complete the project within this timeline. Thus, in accordance with Clause 9.2, the allottee was fully justified in stopping further payments.
29. Considering the above findings, the cancellation of the allotment is deemed invalid and is hereby quashed as issued in bad faith. Thus, the respondent is directed to reinstate the unit allotted to the complainant.
30. 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."

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

possession of the unit and completion of the project. The relevant clause is reproduced as under:

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

(Emphasis supplied)

32. 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**.

33. 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."

34. 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.

35. 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., 01.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

36. The definition of term 'interest' as defined under Section 2(z) 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;"

37. 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.

38. 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.

39. 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*.

H. Directions of the authority

40. 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):

1. The cancellation is hereby set aside being bad in the eyes of law. The respondent is directed to reinstate the subject unit. Further, the

respondent is directed to pay interest on the amount paid by the complainant at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier.

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

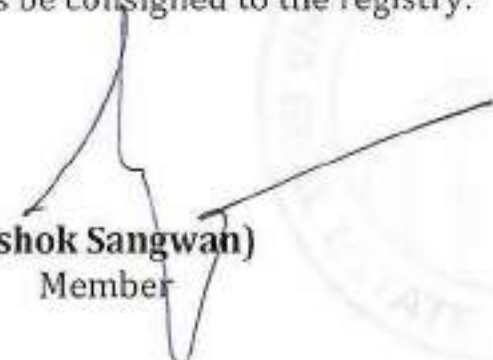
outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

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

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

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

43. Files be consigned to the registry.



(Ashok Sangwan)
Member



Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.07.2025