

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

Complaint no. : 2203 of 2024
Date of filing : 22.05.2024
Date of decision : 01.07.2025

Kavita Bhasin**R/o:** 5/5228, Krishn Nagar, Karol Bagh, Delhi-11005**Complainants****Versus****M/s Sunrays Heights Pvt. Ltd.****Regd. office :** 211 Ansal Bhawan, 16 k.g. Marg, New Delhi.**Respondent****CORAM:**

Shri Arun Kumar

Shri Ashok Sangwan

Chairman**Member****APPEARANCE:**

Sh. Vijay Partap Singh(Advocate)

Sh. Tushar Bhamni

Counsel for complainant**Counsel for respondent****ORDER**

1. That the present complaint has been filed by the complainant/allottees 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 parties.

A. Project and unit related details

2. 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:

S.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.	B-68 (page 21 of complaint)
6.	Unit admeasuring	356.18 sq. ft. (carpet area) 69.84 sq.ft. (balcony area) (page 23 of complaint)
7.	Allotment letter	19.06.2017 (page 21 of complaint)
8.	Date of execution of Buyers agreement	01.07.2016 (page 23 of complaint)
9.	Possession clause	<p>4.Possession</p> <p><i>The developer shall endeavour to handover possession of the said flat within a period of four years i.e., 48 months from the date of commencement of project, subject to force majeure & timely payment by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.</i></p> <p>As per affordable housing policy 2013</p> <p><i>"1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The license shall not be renewed beyond the said 4 years</i></p>

		<i>from the date of commencement of project."</i>
10.	Date of building plan	10.03.2015 (Page 45-50 of reply)
11.	Date of environment clearance	16.09.2016 (page 51-61 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/- (4043)
14.	Amount paid by the complainant	Rs.13,29,280/- (as per SOA, Annexure R-14)
15.	Occupation certificate	31.12.2024
16.	Offer of possession	Not offered
17.	Final reminder	01.03.2024 (page no. 88-89 of reply)
18.	Publication	06.04.2024 (page 90 of reply)

B. Facts of the complaint

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

- a) That the original allottee late Smt. Rajin Mehra was interested in the project namely " 63 Golf Drive " located at 63- A , Gurgaon Haryana, because it was a housing project and the complainant needed own home for their family. The respondent made advertisement in the newspaper ' Hindustan Times' with regard to the location, specification and amenities and time of completion of the project under the name "Affordable Group Housing Colony "commonly known as"63 GOLF-DRIVE" floated under Haryana Government's Affordable Housing Policy, located at Sector 63A, Gurgaon, Haryana. The original allottee late Smt. Rajin Mehra approached the respondent for booking of a

residential flat vide application bearing no. SGD(C)0273 having carpet area of 356.18 sq ft and balcony area of 69.84 sq ft. The draw of the said project was held, wherein the original allottee Late Smt. Rajin Mehra was allotted flat no. B68 at tower B.

- b) That the apartment buyers' agreement got executed between the original allottee late. Smt Rajin Mehra and the respondent on dated 1.07.2016. The total consideration of the flat was Rs. 14,59,640/-. The complainant has paid Rs. 13,29,280/- against demand of Rs. 13,29,280/- from the builder, as and when the demand were raised by the respondent in time bound manner ,till date of filing of case before the Authority. The builder has charged illegal interest of Rs 1,84,114/- without raising any demand nor getting the Occupancy Certificate till date. The Authority on dated 29.03.2024 in case no.**1244 of 2022, title Sixty Three Golf Drive Buyers Association vs Sunrays Heights Pvt. Ltd.** has already stayed on such illegal demands and has further directed the respondent not to create any third party interest on the said unit . The same was brought to the knowledge of the respondent telephonically but every time the respondent threatened that if the amount is not paid the said unit shall be cancelled.
- c) Subsequently the son of late Smt. Rajin Mehra visited the respondent office and stated that the original allottee late Smt. Rajin Mehra left for heavenly body, on dated 24.06.2023, leaving behind the legal heirs namely Mrs. Kavita Bhasin, Mrs, Neena Nagpal & Mr. Lovey Mehra. Thereafter Mr Lovey Mehra, the son of the original allottee, further asked the procedure for deletion and substitution of name in case of death of original allottee from the respondent. The respondent gave the details of the documents to be furnished for substitution of name and transfer of

rights and interest in favor of Mrs. Kavita Bhasin of the flat no. B-68, tower B, with carpet area 356.18. Sq. ft. and balcony area of 69.84 Sq. ft. in the above said project.

- d) That on 15.05.2024 the ultimate nominated legal heir Mrs. Kavita Bhasin, the daughter of the original allottee submitted all the document related to substitution of name and transfer of rights at the front desk office on the directions of the CEO Shri Vijay, the representative of the respondent. All the affidavits were duly accompanied with the legal heirs Aadhar card, the deceased original allottee death certificate and certificate of legal heirs of the original allottee from the SDM/ADM Office, along with the death certificate of the original allottee.
- e) That Kavita Bhasin daughter and Lovey Mehra son of original allottee and ultimate legal heir of late Smt. Rajin Mehra had several times telephonically contacted the respondent asking about the status of substitution of name but the respondent never responded , ultimately on dated 26.03.2024 , she mailed a reminder to the respondent with regard to the substitution of the name/transfer letter along with copy of attachment of above said documents.
- f) As per the slow pace construction status and absence of basic amenities respondents are delayed heavily in giving possession. As per Section 19 (6) Act, 2016 complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore the complainant is not in breach of any of its terms of the agreement. The respondent is deliberately and intentionally not raising the last demand as per the Haryana affordable policy 2013.

- g) That respondent has charged illegal interest on delayed instalment @ 15% P.A. compounded quarterly. The respondent has charged illegal interest of Rs. 250626/- and despite the respondent protest the same has not yet been waived off by the respondent .This is totally illegal, arbitrary and unilateral.
- h) That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainant in time has accrued huge losses on account of the career plans of their family member and themselves and the future of the complainant and their family are rendered dark as the planning with which the complainant invested her hard earned monies have resulted in sub-zero results and borne thorns instead of bearing fruits.
- i) That the cause of action to file the instant complaint has occurred within the jurisdiction of the Authority as the apartment which is the subject matter of this complaint is situated in Sector 63A, Gurugram which is within the jurisdiction of the Authority.

C. Relief sought by the complainant

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

- I. Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2% on the paid amount of ₹13,29,280/- 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.
- II. Direct the respondent to substitute the original allottee name with the legal heir Smt Kavita Bhasin (daughter of the original allottee) and raise the pending demand in her favour.
- III. Direct the respondent to get the copy of application for Occupancy Certificate, as such the respondent claims that they have applied for the OC.

5. 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

6. 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. B-68 in tower B, having carpet area of 356.18 sq. ft. and balcony area of 69.84 sq. ft was provisionally allotted. The respondent had no reason to suspect the Bonafide of the complainant and proceeded to allot the unit in question in their favor.
 - b) Thereafter, an agreement to sell was executed between the parties on 01.07.2016. 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 I.d. 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 26.10.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.17.2019 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. 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 3 of the BBA.
- o) That the complainant has failed to make any payment of installment at "within 36 months from the due date of Allotment" along with partial payment towards previous instalments. The complainant cannot rightly

contend under the law that the alleged period of delay continued even after the non-payment and delay in making the payments. The non-payment by the complainant affected the construction of the project and funds of the respondent. That due to default of the complainant, the respondent had to take loan to complete the project and is bearing the interest on such amount. The respondent reserves the right to claim damages before the appropriate forum.

- p) That it is the obligation of the complainant under the Affordable Housing Policy, 2013 (as on the date of Allotment) and the Act to make timely payments for the unit. In case of default by the complainant the unit is liable to be cancelled as per the terms of Affordable Housing Policy, 2013.
- q) That the respondent sent a final reminder letter dated 14.03.2024 to clear the outstanding dues of Rs. 3,80,986/-, mentioning the relevant clauses of the Affordable Housing Policy 2013, wherein if the installments are not paid timely, the respondent can cancel the unit allotted to the complainant.
- r) That the complainant, despite the issuance of the first final reminder dated 14.03.2024, 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 Affordable Housing Policy, 2013, the respondent gave enough opportunity to the complainant to clear her outstanding dues. The complainant evaded the issue and did not clear the outstanding dues and the respondent had no option but to cancel the allotment of the unit in dispute in name of the original allottee. The same was intimated to the complainant on 25.04.2024 via email.

- s) That the respondent has duly received its OC from the DTCP, Chandigarh on 31.12.2024. Since the OC has been received, the complainant is legally bound to settle all outstanding payments and come forward to take possession of the unit, subject to clearing outstanding dues, following the offer of possession of the unit.
- t) That 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, as 31.03.2023.
- u) That the stand of the allottees is contradictory with respect to the due date of possession in two different competent authorities i.e., before Authority, 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.
- v) That the complainant has hopelessly delayed in making the payment of the balance installment to the respondent, and hence the unit of the complainant is liable to be canceled in terms of clause 5(iii) (i) Affordable Housing Policy and the clause 3.7 of the BBA.
- w) 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.

- 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 @15% p.a.
 - 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.
7. 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

8. 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

9. 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

10. 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.

11. 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.

12. 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.
13. 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"

14. 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.1 Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2% on the paid amount of ₹13,29,280/- 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.**

15. The factual matrix of the case reveals that the complainant was allotted unit no. B-68, Tower-B admeasuring carpet area of 356.18 sq. ft. and a balcony

area of 69.84 sq. ft., in the respondent's project at basic sale price of ₹14,59,640/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties in 2016. The possession of the unit was to be offered by 16.03.2021 as delineated hereinbelow. The complainant paid a sum of ₹13,29,280/- towards the subject unit.

16. During the course of proceedings dated 01.07.2025, 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.
17. 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 manner 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.

18. The complainant is seeking a direction to not create any third party interest to the said allotted unit and revoking the cancellation letter issued by the respondent. A final reminder letter dated 14.03.2024 was being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make a payment of ₹3,80,986/- within a period of 15 days of the said reminder, it shall result in automatic cancellation of the allotment without any further notice of communication by the respondent. Thereafter, the respondent made a publication in the newspaper "AAJ SAMAJ" on 06.04.2024 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 an email dated 25.04.2014 was sent by the respondent and informed the complainant that allotment of her unit was cancelled on 21.04.2024.
19. 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?"
20. 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."

21. The Authority observes that the respondent issued "Final Reminder Letter" dated 14.03.2024, directing the complainant to clear the outstanding dues amounting to ₹3,80,986/-. It is pertinent to mention here that the complainant had already paid an amount of ₹13,29,280/- (i.e., 91.06%) against the total consideration of ₹14,59,640/- to the respondent. Perusal of case file reveals that the demand raised by the respondent via letter dated 14.03.2024 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(z) 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.
22. 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.

23. The Authority further 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.

24. Additionally, as per Clause 9.2 of the Agreement for Sale, annexed as Annexure A to the Rules, 2017, the allottee has the right to stop making further payments if the promoter defaults on its obligations. The relevant portion is reproduced below:

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

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

(Emphasis Supplied)

25. In the present case, the respondent-promoter was obligated to complete the construction by 16.03.2021, including a six-month extension due to the

Covid-19 pandemic. However, the respondent-promoter failed to complete the project within this timeline. Thus, in accordance with Clause 9.2, the allottee was fully justified in stopping further payments.

26. Considering the above findings, the cancellation of the allotment is deemed invalid and is hereby quashed as issued in bad faith. Thus, the respondent is directed to reinstate the unit allotted to the complainant.

27. Herein, the complainant intends to continue with the project and is seeking delay possession charges at a prescribed rate of interest on the amount already paid by him as provided under the proviso to Section 18(1) of the Act, which reads as under:-

"Section 18: - Return of amount and compensation

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

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

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

"1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date

shall be referred to as the "date of commencement of project" for the purpose of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project."

(Emphasis supplied)

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

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

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

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

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate

prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

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

31. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, has determined the prescribed rate of interest. The rate of interest, determined by the legislature, is reasonable and if the said rule is followed to award interest, it will ensure uniform practice in all cases.
32. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 01.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
33. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
Explanation. — *For the purpose of this clause—*
- (i) The rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
 - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

34. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent which is the same as is being granted to them in case of delayed possession charges.
35. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement.
36. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at the prescribed rate of interest i.e., @ 11.10% p.a. w.e.f. 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

G.II Direct the respondent to substitute the original allottee name with the legal heir Smt. Kavita Bhasin (daughter of the original allottee) and raise the pending demand in her favour.

37. The complainant has submitted that the original allottee, Late Smt. Rajin Mehra, passed away on 24.06.2023, and the same was informed to the respondent as well as published in the newspaper. There are three legal heirs of the original allottee, namely Mrs. Neena Nagpal, Mrs. Kavita Bhasin, and Mr. Lovey Mehra. The son of the original allottee inquired about the procedure for deletion and substitution of the name in the event of the original allottee's death. Accordingly, the respondent provided the details of the documents required for the substitution of name and transfer of rights

and interest in favour of Mrs. Kavita Bhasin for Flat No. B-68, with a carpet area of 356.18 sq. ft. and a balcony area of 69.84 sq. ft., in the aforementioned project. On 15.05.2024, the nominated legal heir, Mrs. Kavita Bhasin, daughter of the original allottee, submitted the following documents as desired by the respondent.

- a. The letter dated 15.05.2024 for substitution of name and transfer of rights and interest in favour of Mrs. Kavita Bhasin.
- b. Indemnity bond cum undertaking of Mrs. Kavita Bhasin.
- c. Affidavit of legal heirs for substitution (Mr. Lovey Mehra).
- d. Affidavit of legal heirs for substitution (Mrs. Neena Nagpal).

The above affidavits were duly accompanied by the Aadhaar cards of the legal heirs, the death certificate of the deceased original allottee, and the certificate of legal heirs issued by the SDM/ADM office. The respondent also published a notice in various national and local newspapers on 03.12.2023, inviting any claims or objections from legal heirs or objectors regarding the transfer of the said property of the deceased Rajin Mehra in favour of the ultimate legal heir, Smt. Kavita Bhasin. Furthermore, an application for the transfer of the unit was made by Mrs. Kavita Bhasin, one of the legal heirs, along with "No Objection Certificates" from Mr. Lovey Mehra and Mrs. Neena Nagpal, which were also submitted to the respondent. Despite the submission of all the required documents and the publication of the notice, the respondent has, till date, not substituted the name of the original allottee with that of Smt. Kavita Bhasin.

38. The Authority is of the view that the original allottee passed away on 23.06.2024. As per the succession certificate, there are three legal heirs of the original allottee, namely Mrs. Kavita Bhasin, Mrs. Neena Nagpal, and Mr. Lovey Mehra. Mr. Lovey Mehra and Mrs. Neena Nagpal have transferred all their rights in respect of the subject unit in favour of Mrs. Kavita Bhasin. On 15.05.2024, the ultimate nominated legal heir, Mrs. Kavita Bhasin, daughter

of the original allottee, submitted the documents for substitution of name and transfer of rights in her favour. All relevant documents and affidavits were duly submitted, including the Aadhaar cards of the legal heirs, the death certificate of the deceased original allottee, and the legal heir certificate issued by the office of the SDM/ADM. Therefore, the respondent is directed to substitute the name of the original allottee with that of the legal heir, Mrs. Kavita Bhasin, and raise the pending demand in her favour.

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

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

"11(4)....

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

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

H. Directions of the Authority

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

- I. The cancellation is hereby set aside being bad in the eyes of law. The respondent is directed to reinstate the subject unit. Further, the respondent is directed to pay interest on the amount paid by the complainant at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier.
- II. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules, *ibid*.
- III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(z) 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 is directed to substitute the original allottee name with the legal heir Smt. Kavita Bhasin.
- VIII. 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.
43. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
44. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
45. Files be consigned to the registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.07.2025