

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

Complaint no. : 5592 of 2024
Date of filing : 27.02.2025
Date of decision : 01.07.2025

1. Md. Hasnuzzaman
2. Shirin Parveen
Both RR: C-1143, first floor, Suhsant lok-1,
Gurugram

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. Shashi Kant Sharma(Advocate)
None

Counsel for complainants
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:

Sr. No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 63-A, Gurugram"
2.	Project area	5.9 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 249 of 2017 dated 26.09.2017
7.	Allotment letter	19.07.2019 (Page 42 of complaint)
	Builder Buyer Agreement	09.07.2019 (page 26 of complaint)
8.	Unit no.	H-55, Tower H (page 41 of complaint)
9.	Unit area admeasuring	366.25 sq. ft. (carpet area) 69.84 sq. ft. (balcony area) (page 41 of complaint)
10.	Possession clause	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> <i>*As per affordable housing policy 2013 -</i>

		<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>
11.	Date of building plan approval	10.03.2015 (Page 47 of complaint)
12.	Date of environment clearance	16.09.2016 (Page 53 of complaint)
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	Rs.14,99,920/- (page 17 of complaint)
15.	Amount paid by the complainants	Rs.12,15,952/- (page 17 of complaint)
16.	Final Reminder letter sent by respondent to complainants	02.09.2024 (page 55 of complaint)
17.	Occupation certificate	31.12.2024 (Taken from another file of the same project) (Applied on 08.12.2023)
18.	Offer of possession	Not offered

B. Facts of the complaint

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

- That the complainants after going through the inducement of respondent's project wherein the respondent has given huge advertisement and offers on the project shown their willingness to

book/purchase an flat bearing no. H-55, Tower-H measuring super area of 436 sq. ft. on 5th floor, Type-C, along-with one two wheeler parking at a total sale consideration of Rs. 14,99,920/-. The said flat was booked on 15.09.2018 and the buyer's agreement was also executed between complainants and respondent on 09.07.2019 and allotment letter was issued in favour of complainants on 19.07.2019.

- b) That as per terms and conditions of the buyer's agreement, respondents were supposed to handover the flat within 48 months from the date of commencement of project and the date of commencement of project was 26.09.2017 and as per the promised of the respondent the project should be completed on or before 25.09.2021. After execution of buyers agreement the complainants have made a total sum of Rs.12,15,952/- till 22.10.2022.
- c) That after completion period the possession of the apartment was supposed to be delivered to complainants, but despite completion of the time it is observed that respondent miserably failed to give the possession of the flat till date. Till date the developer has not received OC from the concerned department. As on date the flat is also not in a condition to take possession. The complainants visited the flat in March 2024 and astonished to shock that flat is in very worst position.
- d) That the complainants paid the amount from time to time as and when such demands were raised by respondent except the demand letter dated 15.05.2023 because there was a lot of delay in completion of the project. The complainants visited the office of respondent in the month of March 2024 to know about the status of the project but till date the respondent has not given any satisfactory answer to the complainants about the

project. In this regard the complainants have sent an e-mail to developer on 02.03.2024 and 04.03.2024 but till date neither they replied not give any intimation for possession.

- e) That from the date of booking to till date the complainants cleared all the dues as demanded by the respondent and the complainants have already made 80% payment to the respondent but till date neither physical possession intimation given by the respondent nor given any information with regards to OC.
- f) That from September 2021 the complainants various personal visit regarding to complete the work and handing over the flat but on each and every visit the respondent continuously gave the answer that the project is under construction and the possession of the flat would be delivered very shortly. Till date neither the OC has received by the respondent nor the offer of possession issued in favour of complainants.
- g) That from 2019 the complainants sent various reminders by mail in addition to telephonic calls, messages to handover the possession of the flat, but the respondent has not confirmed any confirm date for physical possession of the flat. The complainants had communicated financial hardships leading to mental and financial distress with request to handover flat possession on priority. However there had been no update till date on the confirm date of physical possession of the flat.
- h) That the complainants had paid the hard-earned money with respondent, on the promise and inducement. The respondents have cheated complainants with malafide intentions from the very beginning as respondent took the money from the pockets of complainants by way of misrepresentation, inducement and commitment which were totally

false and fake from the very beginning. It is very surprising that respondents have duly executed all the necessary documents but after completion of the documents and payments respondent have not honoured their commitments.

- i) That complainants visited respondent personally as well as made various telephonic talks and through emails also requested to handover the physical possession of the flat but respondents are adamant and have not completed the project and have not handed over the possession of the flat till date. From the above it revealed that respondents have cheated and defrauded the complainants from the very beginning to till date and wants to misuse the hard earned money of complainants.
- j) That on 02.09.2024 the respondent sent a letter in which they have demanded a sum of Rs.7,62,754/- but they have not provided the proper account details to the complainants.
- k) That on 15.10.2024 the respondent sent a letter in which they have mentioned that they have applied for the OC but till date the respondent have not received any OC from the government departments.
- l) That in view of the above facts and circumstances of the case, it is evident that from the date of booking till today respondent is playing a game of cheating and fraud with applicants/complainants in order to grab the precious amount of applicants/complainants.

C. Relief sought by the complainants

4. The complainants have sought the following relief(s):
 - I. Direct the respondent to pay interest@10.75% per annum on the amount already paid by the complainants i.e., Rs.12,15,952/- from 25.09.2021 till actual handover of the physical possession

- II. Direct the respondent that after marketing the payment of the above amount of delayed interest, the possession should be handed over to the complainants within the stipulated time period as per the direction of the Authority.
 - III. Direct the respondent to waive of the interest charges imposed by the respondent on the complainants and issued a fresh demand note of balance payment after adjustment of delayed possession charges.
5. The respondent/promoter put in appearance through its Advocate and marked attendance on 27.02.2025, 08.04.2025 and 20.05.2025 respectively. Despite specific directions, it failed to comply with the orders of the Authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, vide order dated 01.07.2025, the defence of the respondent was struck off. However, in view of justice, an opportunity is granted to the parties to file written submissions.
6. 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.

D. Jurisdiction of the Authority

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

D.1 Territorial jurisdiction

8. 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.

D.II Subject matter jurisdiction

9. 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.

10. 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.

E. Findings on the relief sought by the complainant

- IV. E.I Direct the respondent to pay interest@10.75% per annum on the amount already paid by the complainants i.e., Rs.12,15,952/- from 25.09.2021 till actual handover of the physical possession

11. The factual matrix of the case reveals that the complainant was allotted unit no. H-55, Tower H admeasuring carpet area of 366.25 sq. ft. and a balcony area of 69.84 sq. ft., in the respondent's project at basic sale price of 14,99,920/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties on 09.07.2019. The possession

of the unit was to be offered by 16.03.2021 as delineated hereinbelow. The complainant paid a sum of 12,15,952/- towards the subject unit.

12. 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.
13. 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.

14. It is pertinent to note that a final reminder letter dated 02.09.2024 was being sent to the complainant-allottee to make a payment of Rs.7,62,754/-, thereby affording him an opportunity to clear the outstanding dues.
15. The Authority notes that the complainant had already paid an amount of Rs.12,15,952/- against the total consideration of Rs.14,99,920/- to the respondent. The respondent was required to hand over the project by 16.09.2020 under the Affordable Housing Policy, 2013, excluding the COVID-19 grace period. Even with a six-month grace period in lieu of Covid-19 pandemic to 16.03.2021, the respondent failed to complete the project. More than three years later, the project remained incomplete, and the respondent has obtained the occupation certificate from the competent authority on 31.12.2024. The interest accrued during the delay period significantly reduces the amount payable by the complainant. Upon adjustment of this interest, the respondent would, in fact, be liable to pay the complainant.
16. 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)

17. In the present case, the promoter was obligated to complete the construction within four years from the date of either the environment clearance or the building plan approval, whichever was later, i.e., by 16.09.2020. However, the promoter failed to complete the project within this timeline. Even after granting a six-month extension due to the Covid-19 pandemic, extending the deadline to 16.03.2021, the promoter did not complete the construction. Thus, in accordance with Clause 9.2, the allottee was fully justified in stopping further payments.
18. 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 them 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."***

19. **Due date of handing over possession:** The project was to be developed under the Affordable Housing Policy, 2013, which clearly mandates that the project must be delivered within 4 years from the date of commencement of project (as per clause 1(iv) of Affordable Housing Policy, 2013, all such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy). However, the

respondent has chosen to disregard the policy provision. Clause 1(iv) of the Affordable Housing Policy, 2013 is reproduced as under:

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

20. 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.

21. 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."

22. 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.
23. 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%.
24. The definition of term 'interest' as defined under Section 2(z a) 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;"

25. 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.
26. 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.
27. 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 that after marketing the payment of the above amount of delayed interest, the possession should be handed over to the complainants within the stipulated time period as per the direction of the Authority.**
28. In the present complaint, the grievance of the complainant is that the physical possession has not been handed over by the respondent to the complainants.
29. The authority observes that the respondent-promoter has obtained Occupation Certificate of the said project from the competent authority on 31.12.2024. Further, Section 17(1) of the Act of 2016 obligates the

respondent-promoter to handover the physical possession of the subject unit to the complainant complete in all respect as per specifications mentioned in BBA and thereafter, the complainant-allottee is obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act, 2016.

30. In view of the above, the respondent is directed to handover the possession of allotted unit to the complainant complete in all respect as per specifications of buyer's agreement within a period of one month from date of this order after payment of outstanding dues, if any, as the Occupation Certificate for the project has already been obtained by it from the competent Authority.

31. Further, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the Occupation Certificate/Completion Certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the 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.

H. Directions of the Authority

32. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent is directed to pay interest on the amount paid by the complainant at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier.
- II. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules, *ibid*.
- III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- 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 complainants 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 complainants as per norms of the state government as per Section 17 of the Act, failing which the complainants may approach the adjudicating officer for execution of order.
- VII. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement and the provisions of the Affordable Housing Policy, 2013.

33. The complaint stand disposed of.

34. Files be consigned to the registry.

(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.07.2025