

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

Complaint no.: 715 of 2024
Complaint filed on: 27.02.2024
Date of order: 20.05.2025

Ms. Rupali Singhal
R/o- H-093, Forest County,
Eon IT Park Road,
Kharadi, Pune, Maharashtra

Complainant

Versus

Sunrays Heights Private Limited
Registered Office: 211, 2nd Floor, Ansal
Bhawan, 16 Kasturba Gandhi Marg, New Delhi
110001.

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Vijay Pratap Singh (Advocate)
Sh. Harshit Batra (Advocate)

Complainant
Respondent

ORDER

1. This order shall dispose of the aforesaid 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.

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.	A114 (page 19 of complaint)
6.	Unit admeasuring	605.10 sq. ft. (carpet area) 94.94 sq. ft. (balcony area) (page 19 of complaint)
7.	Provision Allotment Letter	11.01.2016 (page 19 of complaint)
8.	Date of execution of Buyers agreement	Annexed but undated (page no. 22 of complaint)
9.	Possession clause	4.1 <i>The Developer shall endeavor to handover possession of the said flat within a period of four years i.e. 48 months from the date of commencement of project, subject to force majeure & timely payments by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.</i> (page 34 of complaint) *Note: As per affordable housing policy 2013 1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This

		<i>date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licence shall not be renewed beyond the said 4 years from the date of commencement of project.</i>
10.	Date of building plan	10.03.2015 (taken from another file CR/2814/2021 decided on 30.11.2023 of same project)
11.	Date of environment clearance	16.09.2016 (taken from another file CR/5238/2022 of same project)
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.	Basic sale price	Rs.24,67,870/- (as per allotment letter page 19 of complaint)
14.	Amount paid by the complainant	Rs.22,46,777/- (as per SOA dated 27.12.2022 page 55 of complaint)
15.	Final reminder	12.04.2024 (page 09 of reply)
16.	Newspaper publication	06.04.2024 (page 10 of reply)
17.	Occupation certificate	31.12.2024
18.	Offer of possession	Not offered

B. Facts of the complaint.

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

- a) That 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 complainant approached to the respondent for booking of a flat vide

application bearing no SGDB1810 having carpet area of 605.10 sq. ft. and balcony area of 94.94 sq. ft.

- b) The draw of the said project was held, wherein the complainant was allotted flat no. A-114 at Tower A. The apartment buyer's agreement got executed between the complainant and the respondent on dated 28.12.2016. The total consideration of the flat was Rs.24,67,870/-. The complainant has paid Rs.22,46,777/- against demand of Rs.22,46,777/- from the builder till date of filing the present case, as and when the demand was raised by the respondent in time bound manner.
- c) That respondent is hereby threatening and pressurising the complainant telephonically that she has to make the payment as per the affordable housing policy as per agreed terms of BBA, without considering the amendment with regard to the time linked plan substituted to construction linked plan amended in the said policy from month November 2021 onward, in other word the respondent is trying to pressurise the complainant to align the complainant in cancellation pool illegally without even raising the demand letters nor caring the hard fact that as per the BBA terms the project is already delayed by more than 3 year from the date of promise.
- d) Further, the Time Link Payment Plan has been amended to Construction Link Plan from November 2021 onwards. As per the slow pace construction status and absence of basic amenities respondents are delayed heavily in giving possession. As per section 19 (6) the Act, 2016 complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainant herein is not in breach of any of its terms of the agreement. But the respondent is deliberately and intentionally not raising the last demand as per the amended construction linked plan of the Haryana affordable policy, 2013.

- e) That keeping in view the snail-paced work at the construction site and half-hearted promises of the respondent, the inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss.

C. Relief sought by the complainant

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

- I. Direct the respondent to handover the possession along with interest till actual handover of possession.
 - II. Direct the respondent to allow the complainant to visit the site to inspect her allotted unit.
 - III. Direct the respondent to raise the demands as per the new construction linked new plan vide amendment in the Haryana Affordable Housing Policy towards consideration of the said unit.
 - IV. Direct the respondent to get the copy of application for occupancy certificate as 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.

- i. That the complainant approached the respondent and expressed interest in booking of an apartment in the affordable housing developed group housing developed by respondent known as "63 Golf Drive" situated in Sector 63, Gurugram Haryana. Prior to the booking, the complainant conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, that they took an independent and informed

decision, uninfluenced in any manner by the respondent, to book the unit in question.

- ii. That thereafter the complainant, vide an application form applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. A-114, Tower A, admeasuring carpet area of 605.10 sq. ft. and balcony area of 94.94 sq. ft. (tentative area) was provisionally allotted vide allotment letter dated 11.01.2016. The complainant represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the *bonafide* of the complainants and proceeded to allot the unit in question in their favor.
- iii. Thereafter, an agreement to sell dated 28.12.2018 was executed between the complainant and the respondent. The agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- iv. 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 rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect. As per clause 4.1 of the agreement the respondent endeavored to offer possession within a period of 4 (four) 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 with par with the clause 1(iv) of the Affordable Housing Policy 2013.

- v. That, the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance of the project 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 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 25th March 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.
- vi. That the offer of possession was also subject to the incidence of *force majeure* circumstances under clause 16 of the agreement. That the construction and development of the project was deeply affected by such circumstances which are beyond the control of the respondent. The respondent was faced with certain other *force majeure* events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 (Two) years that the scarcity as detailed aforesaid continued, despite which, all efforts were made and materials were procured at 3-4 times the rate and the construction of the Project continued without shifting any extra burden to the customer. The development and

implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts:

S. No.	Date of Order	Directions	Period Of Restriction	Days Affected	Comments
1.	07.11.2017	Environment Pollution (Prevention and Control Authority) had directed the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 07.11.2017 till further notice.		90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21.12.2019 and 30.01.2020.
2.	Notification HSPC B/MS/2018/293 9-52 dated 29.10.2018	Haryana State Pollution Control Board	01.11.2018 to 10.11.2018	11 days	All construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material is used) to remain closed in Delhi and other NCR Districts from November 01.10.2018
3.	Notification DPCC/PA to MS/2018/7919-7954 dated 24-12-2018	DELHI POLLUTION CONTROL COMMITTEE	24-12-2018 to 26-12-2018	3 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida to remain closed till December 26 2018
4.	Direction dated 01.11.2019 bearing no. EPCAR/2019/L-53	Environment Pollution (Prevention and Control) Authority for National Capital Region	01.11.2019 to 05.11.2019	6 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida to remain closed till morning of November 5, 2019 (current ban on construction was only 6 PM to 6 AM and this is now extended to be complete banned till Monday, November 5, 2019, morning)
5.	01.11.2019	Environmental Pollution (Prevention and Control) Authority, NCR vide its notification bearing no. R/2019/L-53 dated 01.11.2019 converted the partial ban of 12 hours to a complete ban	01.11.2019 to 05.11.2019	4 days	This was in addition to the partial ban on construction by the EPCA vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to by

6.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 - 14.02.2020	103 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court
7.	11.10.2019	Commissioner of Municipal Corporation Gurugram issued direction to issue Challan for Construction Activities and lodging of FIR from 11 th October to 31 st December, 2019 as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019.	11.10.2019 to 31.12.2019	81 days	
			Total days	298 days	

vii. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. The covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. 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 Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days

which started on March 25, 2020. By virtue of 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 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.

- viii. 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 (EC) 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, it is needless to mention that 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. Section 7(2)(i) of the act itself recognizes the relaxation for renewal of license in case the delay in execution of development work was the reason beyond control of the colonizer, here also colonizers were estopped because of force majeure.

- ix. Therefore, 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 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.
- x. That in a similar case where such orders were brought before the Authority was in the *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 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 builder.
- xi. 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 effect of COVID also.

- xii. 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 Developer/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.
- xiii. 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 Authority had in similar matters of the had allowed the benefit of covid grace period of 6 months in the following matters, *Sukhbir Singh v. Vatika Ltd in Complaint bearing No. 1243 of 2023 vide order dated 30.11.2023, Abhay Singh Mehta v. DSS Buildtech Pvt Ltd in Complaint bearing No. 6845 of 2022 vide order dated 30.01.2024.*
- xiv. Despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. That it must be noted by the Authority that despite the default caused, as a gesture of goodwill, with good intent 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. That further the respondent has already received the FIRE NOC, LIFT NOC, received the sanction letter for water connection, and electrical inspection report. That the respondent applied for occupation certificate in respect of the said unit on 08.12.2023. Once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, 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. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the Occupation Certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the Respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

- xv. That the complainant was under the obligation to make timely payments of installments as agreed as per the allotment letter and the BBA. The complainant herself has failed to make the payment of the installment of *“within 36 months from the due date of Allotment”* due in April 2019. That in accordance with the same, the complainant, cannot rightly contend under law that the alleged period of delay continued even after the non-payment and delay in making the payments as stated above. 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.
- xvi. That Haryana Real Estate Appellate Tribunal has held that Affordable Housing Policy (amendment) 2019 cannot be applied retrospectively to alter the financial obligations outlined in pre-existing agreement. That HREAT in the case of *Selvaraj Damiyon Raju And D Prema V/S Forever Buildtech Private Limited* vide order dated 06.02.2024 held that the Amendment of Affordable Housing Policy is to be applied prospectively and not retrospectively.
- xvii. That in compliance of the above-mentioned provision the respondent issued a reminder letter dated 29.03.2024, 09.04.2024 and 12.04.2024 requesting the complainant to make the outstanding payment. That in complete default

the complainant failed to make payment within 15 days and thus, the respondent also made publication in the Hindi Newspaper on 06.04.2024.

- xviii. Thus, the unit of the complainant is liable to be cancelled in terms of the Clause 5(iii) affordable housing policy and the clause 3.7 of the BBA. It is clearly evident that the complainant despite all the reminders failed to make payment against the instalment. The respondent earnestly requested the complainant to make payment. However, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent. All requests of the respondent to make payment fell on deaf ears of the complainant.
- xix. However, despite the final opportunity, the complainant failed to make complete payment towards the said unit which led to the issuance of the cancellation letter dated 22.04.2024. That the respondent no. 1 had the right to terminate the unit as per the agreed terms and conditions in under the agreement.
- xx. The above-mentioned provisions note the mandatory obligation of the complainant to make the due payments against the unit, which under no circumstance whatsoever, can be escaped. The Hon'ble Supreme Court noted in case *Saradmani Kandappan and Ors Vs S. Rajalakshmi and Ors*, decided on 04.07.2011, MANU/SC/0717/2011: (2011) 12 SCC 18 held that the payments are to be paid by the purchaser in a time bound manner as per the agreed payment plan and he fails to do so then the seller shall not be obligated to perform its reciprocal obligations and the contract shall be voidable at the option of the seller alone and not the purchaser.
- xxi. That this Authority has adjudicated similar issues of termination/cancellation and has upheld the same noting the default on part of the complainant. For instance, this Authority in *Rahul Sharma Vs Roshni Builders Private Limited* MANU/RR/0975/2022 noted that the respondent had issued reminders, pre-

cancellation letter and the last and final opportunity letter to the complainant. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation is valid.

- xxii. That the complainant has not only in breach of the buyer's agreement but also in breach of the Affordable Housing Policy and the RERA Act, by failing to make the due payments of instalments. The complainant is responsible for all the consequences of breach of the buyer's agreement and violation of RERA.
- xxiii. That the complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the respondent.
- xxiv. That in light of the *bona fide* conduct of the respondent, the fact that no delay has been caused to the complainant. The non-existence of cause of action this complaint is bound to be dismissed with costs in favor of the respondent.
- xxv. Without prejudice, assuming though not admitting, relief of delayed possession charges, if any, cannot be paid without adjustment of the outstanding instalment from the due date of instalment along with the interest at the rate of 15%. Moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/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 allottees/complainants towards Delayed Payment Charges (DPC) or any taxes/statutory payments, etc.

xxvi. 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 favor of the respondent.

7. All other averments made in the complaint were denied in toto.
8. 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

9. 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

10. 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

11. 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.

12. 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.**

13. 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.
14. 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"

15. 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 handover the possession along with interest till actual handover of possession.

G.II Direct the respondent to allow the complainant to visit the site to inspect her allotted unit.

16. The factual matrix of the case reveals that the complainant was allotted unit no. A114 admeasuring carpet area of 605.10 sq. ft. and a balcony area of 94.94 sq. ft., in the respondent's project at basic sale price of Rs.24,67,870/- 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 Rs.22,46,777/- towards the subject unit.
17. The respondent herein contends that the subject unit stands cancelled as the respondent has sent reminders letters dated 29.03.2024, 09.04.2024 and 12.04.2024 to pay the outstanding payment. Further, on failure the respondent has made a publication in the Hindi Newspaper on 06.04.2024. However, the complainant failed to make the outstanding payment which led to issuance of the cancellation letter dated 22.04.2024.
18. 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?"
19. 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."

20. The Authority observes that the respondent issued "Final Reminder Letter" dated 12.04.2024, directing the complainant to clear the outstanding dues. It is pertinent to mention here that the complainant had already paid an amount of Rs.22,46,777/- (i.e., 91%) against the sale consideration of Rs.24,67,870/- to the respondent. Perusal of case file reveals that the demand raised by the respondent via letter dated 12.04.2024 was towards the payment of last instalment accompanied with interest on delay payments. The respondent is obligated to raise last demand only in accordance with the builder buyer agreement and as per Affordable Housing Policy, 2013.
21. 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.
22. It has been observed that notwithstanding this express direction, the respondent proceeded to cancel the allotment of the subject unit. Such conduct not only amounts to a deliberate and conscious defiance of the Authority's directions but

also reflects a lack of bona fide on the part of the respondent in its dealings with the allottees.

23. The Authority further notes that the complainant has paid approximately 91% 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., 20.05.2025 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(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:
- "(z) "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*.
37. 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.
38. 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.
39. 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.

G.III Direct the respondent to raise the demands as per the new construction linked new plan vide amendment in the Haryana Affordable Housing Policy towards consideration of the said unit.

40. The Authority, vide its order dated 29.04.2024, had already directed the de-freezing of the respondent's bank accounts to a limited extent, thereby permitting the receipt of incoming funds and authorizing the respondent to withdraw amounts from the escrow account for the specific purpose of discharging statutory liabilities, including renewal of license, furnishing of bank guarantees, and payment of fees to RERA/DTCP.
41. Accordingly, the complainant is directed to deposit the amount raised in the last demand by the respondent, if any outstanding dues remain after adjusting the amount towards delayed possession charges.

G.IV Direct the respondent to get the copy of application for occupancy certificate as the respondent claims that they have applied for the OC.

42. As per the additional documents placed on record by respondent on 03.04.2025, the Authority finds that the respondent has obtained the occupation certificate for the said project on 31.12.2024.
43. 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."*

44. 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

45. 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 valid 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(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 complainant complete in all aspects as per specifications of buyer's agreement within two months 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.

46. The complaints stand disposed of.

47. File be consigned to the registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.05.2025