BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: **4910 of 2024**
Date of decision: **09.10.2025**

Mr. Babu Lal Yadav
R/o: - Taxila Public School, Teacher's Colony, Behror, District- Alwar, Rajasthan- 301701 **Complainant**

Versus

M/s Sunray Heights Private Limited
Regd. office at: 211,2nd floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, New Delhi- 110001 **Respondent**

CORAM:
Shri Arun Kumar **Chairman**
Shri Phool Singh Saini **Member**

APPEARANCE:
Shri Vijay Pratap Singh (Advocate) **Complainant**
Shri Gagan Sharma (Advocate) **Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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.	E-67, in tower-E (Page no. 34 of complaint)
6.	Unit admeasuring	605.10 sq. ft. (carpet area) 94.94 sq. ft. (balcony area) (Page no. 34 of complaint)
7.	Allotment Letter	11.01.2016 (Page no. 18 of complaint)
8.	Date of execution of Buyers agreement	19.04.2016 (As alleged by the complainant at page no. 14 of complaint)
9.	Possession clause	**4.1** ***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.*** *(Page no. 25 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 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.*

10.	Date of building plan	10.03.2015 (Taken from another case pertaining to same project of the respondent i.e., CR/3037/2024 titled as *"Deepak Jakhar vs. Sunrays Heights Pvt. Ltd."* decided on 06.05.2025)
11.	Date of environment clearance	16.09.2016 (Taken from another case pertaining to same project of the respondent i.e., CR/3037/2024 titled as *"Deepak Jakhar vs. Sunrays Heights Pvt. Ltd."* decided on 06.05.2025)
12.	Due date of possession	16.03.2021 (Note:- Due date of possession calculated from the date of environment clearance i.e., 16.09.2020 being later plus six months in lieu of covid-19)
13.	Total price of the unit	Rs.24,67,870/- (As per annexure-A at page no. 34 of the complaint)
14.	Amount paid by the complainant	Rs.22,46,774/- (As alleged by the complainant at page 15 of complaint)
15.	Final reminder	31.08.2024 (Page no. 45 of the compliant)
16.	Occupation certificate	31.12.2024
17.	Offer of possession	Not offered
18.	Newspaper publication	16.10.2024 (Page no. 10 of the application dated 01.10.2025, filed by the respondent)

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 known as "63 GOLF DRIVE" floated under Haryana Government's Affordable Housing Policy, located at Sector 63A, Gurgaon, Haryana. That

the complainant approached to the respondent for booking of a flat vide application bearing no SGD(A)6955 having carpet area of 605.10 sq. ft. and balcony area of 94.94 sq. ft. The draw of the said project was held, wherein the complainant was allotted flat no E-67 at Tower E.

b) That the respondent to dupe the complainant in their nefarious net even executed a one-sided builder buyer agreement between complainant and respondent through their authorized representative in year 2016, just to create a false belief that the project shall be completed in time bound manner, and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.

c) That the complainant further submits that the BBA drafted is unilateral and biased as such it is not as per the approved model format as approved by the Affordable Housing Policy 2013 and also by DTCP. The clause relating to raising demand periodically is well mentioned in the model agreement to sale as approved by the DTCP & AHP 2013, the model format of builder buyer agreement duly approved by Affordable Housing Policy.

d) That the builder has raised 6 demand letter out of 7 demand as per the payment plan against the sales consideration to the buyers, and the complainant has paid the demand as and when raised ,thereafter after 2021 the respondent remain silent on the said subject and suddenly in year 2024 the respondent with all its malafide intention and also in order to extort huge amount of money from buyers came with a self-imaginary story under presumption that the buyer was supposed to make the payment themselves and the respondent was not obligated to raise any demand letters. It is also categorically stated that whenever the complainant asked for the last demand letter the respondent stated that the last demand letter shall be

raised at the time of handing over possession. This all shows that the respondent wants to encash the appreciation in price of the flats, but forgets that that as on date the buyers has more than 90% stake on the said project and the whole structure being made from the capital paid by the buyers. The syphoning of money and diverting the said project money to other project is not hidden by the any one.

e) That the apartment buyer's agreement was executed on 19.04.2016, between the parties for the total consideration of the unit was fixed for Rs.24,67,870/- and applicable taxes payable. He has paid an amount of Rs.22,46,774/- against the raised demand of Rs.22,46,774/- from the builder till date of filing of case before this Authority, as and when the demand were raised by the respondent in time bound manner.

f) That as per clause 4.1 of the buyer's agreement the respondent was liable to hand over the possession of a said unit on or before 16.09.2020 considering the project commencement date from the date of environment clearance i.e., 16.09.2016.

g) That the slow pace construction status and absence of basic amenities respondents are delayed heavily in giving possession. As per section 19(6) of the Act, 2016 the 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.

h) That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of BBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainant and his family who has been rudely and cruelly dashed the savoured dreams, hopes and expectations of the complainant to the

ground and the complainant is eminently justified in seeking delayed possession charges. The buyer's agreement consists very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature. As every clause of the agreement is drafted in a one sided way, even a single breach of unilateral terms of builder buyer agreement by complainant, will cost him forfeiting of earnest money and about delay payment charges 15%. Respondent has not prepared the builder buyer agreement as per the terms and conditions mentioned under the Haryana Affordable Policy 2013 and also the builder buyer agreement not drafted as per the provisions of the Act 2016.

i) 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 subzero results and borne thorns instead of bearing fruits.

j) That the cause of action to file the instant complaint has occurred within the jurisdiction of this Authority as the apartment which is the subject matter of this complaint is situated in Sector 63A, Gurugram which is within the jurisdiction of this 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 paid amount of Rs.22,46774/- for delay period starting from 16.09.2020 till actual hand over of the physical possession by the respondent to the complainant with penal interest, given that 16.09.2020 was the promised date of delivery (along with pendente lite and

future interest till actual possession) and wave off the illegal demand raised by the respondent like the interest etc.

II. Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in brochure after getting occupancy certificate.

III. Direct the respondent to not create any third party rights interest and maintain the status quo of the said unit as such the respondent is forcefully with all its malafide intension is making publications in the newspaper of various allottees for cancellation by raising illegitimate demands.

IV. To part litigation expenses of Rs.50,000/-.

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 has miserably and willfully failed to make payments in time or in accordance with the terms of the builder buyer's agreement. The complainant has frustrated the terms and conditions of the builder buyer's agreement, which were the essence of the arrangement between the parties and therefore, the complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. It is further submitted that timely payment was the essence to ensure timely completion of construction & handover of the apartments as per the terms of the policy. The 'Pith & Substance' of the Affordable Housing Policy is clearly captured in its essence, wherein the 'Intended Beneficiaries' were given Thirty-Six (36) months to pay the entire cost of the apartment (25% upfront and rest 75% in 6 equal monthly instalments), against which

the Developer (respondent) was provided with the timeline of forty-eight (48) months to complete the project subject to timely payment.

b) It has been categorically agreed between the parties herein that subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the project within a period of 48 months from the date of commencement of project subject to force majeure and timely payment by the allottee toward the sale consideration. Reference may be made to clause 4.1of the builder buyer's agreement.

c) That the present complaint is liable to be dismissed on the sole ground that the complainant has concealed the true and necessary facts from the Authority. It is submitted that the complainant is chronic defaulter in timely payment of the installments as per the payment plan annexed with the builder buyer agreement. It is pertinent to mention here that respondent has sent many payment reminder letter to complainant but the complainant never approached the respondent to made payment.

d) Despite many undulations such as Covid (loss of 6 months), GRAP restrictions and most importantly non-compliance on the part of the 'Intended Beneficiaries'/allottees/complainant(s); i.e. non-payment, the respondent has still fulfilled our obligations in terms of completing the construction, and has already applied for the OC in the month of December 2023; even whilst facing the disruption in supply chain, migration of labourers due to Covid-19, and without seeking any escalation linked to escalated cost of construction due to inflation. Further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the

control of the respondent company then the respondent/promoter shall be automatically entitled to the extension of time for delivery of possession.

e) That as per Affordable housing policy whom can apply this scheme only who have no house their name and his spouse but in this case applicant are trying to put the curtain on this fact. Because complainant has grab the shelter of a needy person due to field the Affordable housing scheme because complainant has his own house and enjoying his life in a highly expensive society. The complainant has put the certain on real fact that he has gone in NCLT to demand refund from respondent.

f) That it is crystal and clear case of payment defaulter and complainant want to ruin and wipe out the images of respondent in society, and want to put the curtain her illegal act and conduct.

g) That, moreover the applicant somehow wants to harass the answering respondent as the plea of the applicant is mere a façade/pretense through the real intentions are otherwise and such a calculative and cunning act of the applicant has conveyed not only a wrong message to mislead this but also posed a threat in mind of answering respondent so as to succumb to the illegal, illogical and unjustified demand of the applicant.

h) Thus the application under reply is not maintainable in law and facts as the same is false, frivolous, and vexatious, uncalled for, unwarranted, without any cause and justification and has been presented with sole intention to mislead the court only.

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. Hence, all the pleas advanced in this regard, except for that of Covid-19 for which relaxation of 6 months is allowed by the authority are devoid of merits.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2%, on paid amount of Rs.22,46774/- for delay period starting from 16.09.2020 till actual hand over of the physical possession by the respondent to the complainant with penal interest, given that 16.09.2020 was the promised date of delivery (along with pendente lite and future interest till actual possession) and wave off the illegal demand raised by the respondent like the interest etc.

G.II Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in brochure after getting occupancy certificate.

15. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

16. The factual matrix of the case reveals that the complainant booked a unit in the affordable group housing colony project of the respondent known as "Sixty-Three Golf Drive" situated at sector 63-A, District- Gurgaon, Haryana and was allotted unit no. E-67, in tower E for a sale consideration of Rs.24,67,870/-. A buyer's agreement was executed between the parties on 19.04.2016. The possession of the unit was to be offered with 4 years from approval of building plans (10.03.2015) or from the date of environment clearance (16.09.2016), whichever is later which 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 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 outbreak of Covid-19 pandemic. Therefore, the due date of handing over possession comes out to be 16.03.2021.

17. It is pertinent to note that a final reminder letter dated 31.08.2024 was being sent to the complainant-allottee to make a payment of Rs.10,58,358/-, thereby affording him an opportunity to clear the outstanding dues. The complainant is seeking a direction to quash the letter dated 31.08.2024 issued by the respondent as "final reminder". A final reminder letter dated 31.08.2024 was being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make a payment of Rs.10,58,358/- 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 16.10.2024 as required under Affordable Group Housing Policy, 2013. The said publication also stated that failure to make payment within the stipulated period would lead to automatic cancellation of the allotment, without any further notice or communication by the respondent.

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 31.08.2024, directing the complainant to clear the outstanding dues amounting to Rs.10,58,358/-. It is pertinent to mention here that the complainant had already paid an amount of Rs.22,46,774/- (i.e., 91.04%) 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 31.08.2024 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.,

10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act. Also, the respondent is obligated to raise last demand only in accordance with the builder buyer agreement and as per Affordable Housing Policy, 2013 and shall not charge anything from the complainant which is not the part of the builder buyer agreement and under the Affordable Housing Policy, 2013.

21. Further, the Authority 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."***, and also in CR/1474/2024, titled as ***Avindra Kumar Singh Vs. Sunrays Heights Pvt. 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. The Authority notes that the complainant had already paid an amount of Rs.22,46,774/-(i.e., 91.04%) against the sale consideration of Rs.24,67,870/- to the respondent. Per se, it is evident that the amount demanded by the respondent vide letter dated 31.08.2024 is more than 100% of the total sale consideration and prima facie seems to be arbitrary and cryptic. 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.

23. 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)***

24. 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.

25. 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."*

26. **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."*

27. 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.

28. **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."*

29. 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.

30. 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., 09.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

31. 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;"

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent which is the same as is being granted to them in case of delayed possession charges.

33. 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.

34. 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., @ 10.85% 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.

35. It is pertinent to note that the rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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.

36. Also, as per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainant. Occupation

certificate has also been obtained by the respondent-promoter on 31.12.2024. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties within a period of 30 days from date of this order after payment of outstanding dues, if any.

37. 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 60 days 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, 2016.

G.III Direct the respondent to not create any third party rights interest and maintain the status quo of the said unit as such the respondent is forcefully with all its malafide intension is making publications in the newspaper of various allottees for cancellation by raising illegitimate demands.

38. The complainant in the present matter is seeking possession of the unit along with delay possession charges and the Authority has already deliberated the same in the findings w.r.t. relief no. 1 & 2 in the above paragraphs accordingly, in view of the same the present relief stands redundant.

G.IV Direct the respondent to pay litigation expenses of Rs.50,000/-.

39. The complainant is seeking the above-mentioned relief with respect to compensation. The Hon'ble Supreme Court of India in ***Civil Appeal nos. 6745-6749 of 2021 titled as "M/s Newtech Promoters and Developers Ltd. V/s State of UP and Ors."*** has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided

by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

H. Directions of the Authority

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

I. The cancellation if any is hereby set aside being bad in the eyes of law. The respondent is directed to reinstate the subject unit within a period of 30 days from the date of this order. Further, the respondent is directed to pay interest on the amount paid by the complainant at the prescribed rate of 10.85% 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 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, ibid.

II. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

III. 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.

IV. 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.

V. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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. Further, no interest shall be payable by both the parties for delay, if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

VI. The respondent is directed to 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, 2016.

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

41. Complaint as well as applications, if any, stand disposed off accordingly.

42. Files be consigned to the registry.

(Phool Singh Saini)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.10.2025