



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

Complaint no. : 5246 of 2023
Date of filling of complaint: 08.11.2023
Date of decision : 02.09.2025

Mr. Jagdish Kumar S/o Late Sh. Telu Ram
R/o- Village Goela Kalan, Tehsil Bapoli, District Panipat,
Haryana- 132104

Complainant

Versus

M/s Sunrays Heights Pvt. Ltd.
Registered Office: 211, 2nd floor, Ansal Bhawan, 16
Kasturba Gandhi Marg, New Delhi-110001

Respondent

CORAM:

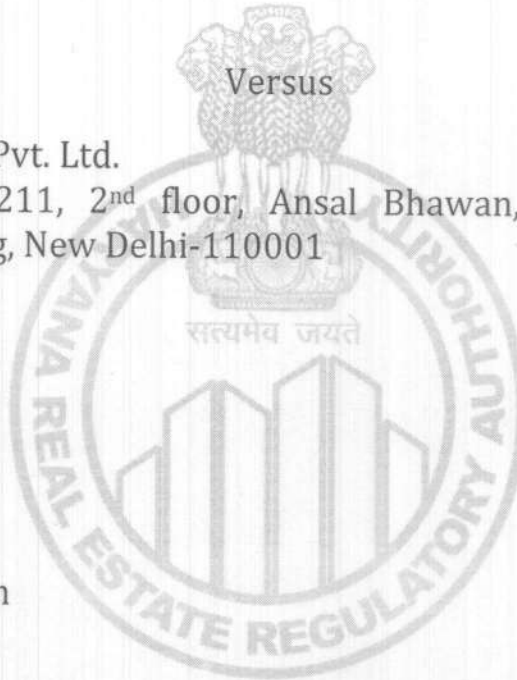
Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Complainant in person
Sh. Tushar Behmani

**Complainant
Respondent**



**HARERA
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.

2. The complainant in the above referred matter is allottee of the project, namely, "Sixty-Three Golf Drive" situated at Sector-63 A, Gurugram being developed by the same respondent/promoter i.e., "Sunrays Heights Private Limited." The terms and conditions of the allotment letter, buyer's agreement and the fulcrum of the issue involved in all these cases pertain to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.

A. Project and unit related details

3. 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.	32, Tower-E (page 15 of complaint)
6.	Unit admeasuring	613.31 sq. ft. (carpet area) 95.10 sq. ft. (balcony area) (page 15 of complaint)
7.	Allotment letter	11.01.2016 (page 15 of complaint)
8.	Date of execution of Buyers agreement	Placed unexecuted by respondent 04.02.2016



9.	Possession clause	4-Possession: 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 payment by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement. *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 license 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 file CR/3329/2023 of similar project)
11.	Date of environment clearance	16.09.2016 (taken from another file CR/3329/2023 of similar 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.	Total sale consideration	Rs.25,00,790/- (page 10 of complaint)
14.	Amount paid by the complainant	Rs.11,76,995/- (as per acknowledgment letter and cheques dated 12.05.2023 & 27.05.2016)

15.	Demand & Reminder letter	18.10.2016, 21.04.2017, 11.08.2017, 26.08.2017, 30.05.2018, 27.12.2018, 21.05.2019, 07.08.2019, 08.11.2019, 07.10.2021, 19.04.2024
16.	Cancellation Email by respondent	12.06.2023 (page 35 of complaint)
17.	Legal notice respondent to revoke cancellation	13.07.2023 (page 38 of complaint)
18.	Consent to surrender the allotment	19.03.2024 (annexure R7 of reply)
19.	Withdrawal of complaint letter	20.03.2024 (annexure R8, page 62 of reply)
20.	Publication in newspaper namely "The Statesman"	28.04.2023 (page 60 of reply)
21.	Occupation certificate	Not obtained
22.	Offer of possession	Not offered

B. Facts of the complaint

4. The complainant has made following submissions in the complaint:
 - i. That in the year 2015, marketing agents of the respondent had approach the complainant and placing trust in the respondent, the complainant vide application no. SGDA6085, booked a unit bearing no. E32, type 2C, measuring 613sq.ft. (approx) @ Rs.4,000/- per sq. ft. carpet area and 95.sq. ft. balcony area (approx) @ Rs.500/- per sq. ft. in the project "Sixty-Three Golf Drive" of the respondent by paying initial amount of Rs. 1,20,000/- on 20-04-2015.
 - ii. That vide allotment letter dated 11-01-2016 the unit no. E32, Type 2C measuring 613sq.ft. (approx) @ Rs.4,000/- per sq. ft. carpet area and 95.sq.ft. balcony area (approx) @ Rs.500/- per sq. ft. was allotted to the complainant in the project "Sixty Three Golf Drive".

- iii. That on 04-02-2016, a buyer's agreement was executed between the complainant and the respondent for the said plot as per which the total price for the above mentioned unit no. E32, Type 2C measuring 613sq.ft. (approx) @ Rs. 4,000/- per sq. ft. carpet area and 95.sq.ft. balcony area (approx) @ Rs.500/- per sq. ft. i.e. Rs. 25,00,790/-.
- iv. That along with other terms and conditions of the buyer's agreement, as per clause no. 4.1 the respondent had specifically mentioned that the construction of said building shall be completed within 48 months from the date of the commencement of project, which makes the due date of possession as 10.03.2019.
- v. That the respondent demanded the complainant to pay the purchase price instalments and the complainant kept paying the same on time despite the fact that the project was lagging behind the schedule promised by respondent according to project prospectus and the said builder buyer agreement.
- vi. That after sometime from signing the builder buyer agreement in 2016, the respondent stopped raising any demands. When the complainant enquired on the status of construction of the project, it came to his knowledge that the project is way behind its construction schedule and the respondent may not be able to deliver the possession on time as per builder buyer agreement.
- vii. That thereafter the respondent out of the blue in a blatant manner issued the "final remainder notice for due installment cum pre-intimation of cancellation of allotment" letter dated 14.02.2023 which was received by brother of the complainant on 10.05.2023 on whatsapp from one of the respondent's employee. When the brother of the complainant being residing

at Gurgaon went to respondent's office for update on the status of the project, Mr. Arun (respondent's employee) suggested the complainant to make the payment as soon as possible to avoid the cancellation of the said unit.

- viii. That the complainant on getting knowledge of the said demand notice, immediately arrange the funds and transferred Rs.5,00,000/- on 12.05.2023 to respondent and assured to pay the remaining demanded amount.
- ix. That the complainant confirmed the details of the payment made by him through e-mail on 16.05.2023. However instead of acknowledging the payment and continuing the booking, the respondent in complete defiance of law, in their reply through e-mail intimated the complainant that his unit has been cancelled and the agreement has been terminated due to non-payment of demanded amount. Despite the fact the respondent has not been able to complete the said project on time i.e., even after delay of 4 years.
- x. That further, the complainant has approached the respondent multiple times to revoke the illegal termination and accept the remaining payment after adjustment of compensation for delayed possession as per RERA. However, the respondent acted in a high-handed manner and has disregarded the requests of the complainant and continues to act in an illegal manner.
- xi. That on 13.07.2023 the complainant through his advocate sent a legal notice to the respondent appraising it about the payment made by the complainant and requesting the respondent to revoke the illegal termination and handover the peaceful possession of his property after adjusting the delayed possession compensation. The said legal notice was delivered to the respondent on 17.07./023. However, till date the respondent has not replied to the said legal notice nor has it refunded any amount to the complainant.

C. Relief sought by the complainant

5. The complainant has sought the following relief(s):
- i. To set aside the unilateral termination letter dated 14.02.2023 as the same is against the provisions of the act and no refund is initiated by the respondent and there is no acceptance of the cancellation by the complainant;
 - ii. To direct the respondent to provide the complainant with prescribed rate of interest on delay in handing over of possession of the apartment on the amount paid by the complainant from the due date of possession as per the agreement till the actual date of possession of the apartment;
 - iii. That the respondent be directed to pay compensation of Rs.2,00,000/- for mental agony, harassment and loss of opportunity and litigation expenses.
6. 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

7. The respondent has contested the complaint on the following grounds.
- i. That the allottee 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 allottee, vide application form applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. E-32, Block-E admeasuring carpet area of 613.31 sq. ft. (approx.) and balcony area

of 95.10 sq. ft. (approx.) 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 complainant and proceeded to allot the unit in question in their favor.

- iii. Thereafter, a builder buyer agreement dated 04.02.2016 was executed between the complainant and the respondent. It is pertinent to mention that the agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- iv. That as per clause 4.1 of the agreement, the due date of possession was subject to the allottee having complied with all the terms and conditions of the Agreement. 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 years from the date of obtainment of all government sanctions and permissions including environment clearance (hereinafter referred to as the "Commencement of Project"), whichever is later.
- 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. That it is pertinent to mentioned herein that the Ld. Authority vide notification no.9/3-2020 dated 26.05.2020 had allowed an extension of 6 months for the completion of the project the

due of which expired on or after 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 however, the offer of possession was also subject to the incidence of *force majeure* circumstances under clause 16 of the agreement. The construction and development of the project was deeply affected by such circumstances which are beyond the control of the respondent.
- vii. 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 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.
- viii. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. That 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. Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. 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.

- ix. 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. It is important to mention herein that 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.

- x. 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.
- xi. That it is pertinent to mention herein 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.

- xii. 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.
- xiii. 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.
- xiv. That it is pertinent to note 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.
- xv. That 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 the respondent got sanctioned loan from SWAMIH fund of Rs. 44.30 Crores to complete the project and has already invested Rs. 35 Crores from the said loan amount towards the project. That further the respondent has already

received the FIRE NOC, LIFT NOC, the sanction letter for water connection and electrical inspection report.

- xvi. That the respondent has applied for occupation certificate on 08.12.2023. It is pertinent to note that 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.
- xvii. That the complainant has been allotted unit under the Affordable Housing Policy, 2013 which under clause 5(iii)(b), clearly stipulated the payment of consideration of the unit in six equal installments. The complainant is liable to make the payment of the installments as per the government policy under which the unit is allotted. At the time of application, the complainant was aware of the duty to make timely payment of the installments. Not only as per the Policy, but the complainant was also under the obligation to make timely payment of installments as agreed as per the BBA.
- xviii. That the complainant has failed to make any payment of installment at "within 36 months from the due date of Allotment" along with partial payment towards previous instalments. The complainant cannot rightly

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

- xix. That it is the obligation of the complainant under the Affordable Housing Policy, 2013 (as on the date of Allotment) and the Act to make timely payments for the unit. In case of default by the complainant the unit is liable to be cancelled as per the terms of Affordable Housing Policy, 2013.
- xx. That the respondent issued a final reminder letter dated 05.08.2024 via email requesting the complainant to pay the outstanding dues. In complete default, the complainant failed to make the payment in 15 days. Thus, the unit of the complainant is liable to be cancelled in terms of clause 5(iii)(i) of the policy and clause 3.7 of the buyer's agreement.
- xxi. 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 for installments. The unit has been cancelled, and this complaint is bound be dismissed in favor of the respondent.
- xxii. That without prejudice, assuming though not admitting, relief of delayed possession charges, if any, cannot be paid without adjustment of outstanding instalment from due date of instalment along with interest @15% p.a. That, moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, the unit of complainant can be retained only after payment of interest on delayed

payments from the due date of instalment till the date of realization of amount. Further delayed interest if any must be calculated only on the amounts deposited by the complainant towards the sales consideration of the unit in question and not on any amount credited by the respondent, or any payment made by the complainant towards delayed payment charges or any taxes/statutory payments, etc

xxiii. It is pertinent to note that complaint case no. 1902 of 2024 and complaint case no. 1918 of 2024 mentioned above were filed on 13.05.2024 in the Authority. Further, the respondent was granted opportunity to put in appearance and file a reply in both the complaint cases. However, despite giving specific multiple directions and providing an opportunity of being heard, no written reply has been filed by the respondent. In view of the same, the matter was proceeded ex-parte against the respondent vide order dated 02.04.2025 in both these complaints.

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 Directed to set aside the unilateral termination letter dated 14.02.2023 as the same is against the provisions of the act and no refund is initiated by the respondent and there is no acceptance of the cancellation by the complainant.
- G.II Direct the respondent to provide the complainant with prescribed rate of interest on delay in handing over of possession of the apartment on the amount paid by the complainant from the due date of possession as per the agreement till the actual date of possession of the apartment.

16. The factual matrix of the case reveals that the complainant was allotted unit no. E-33, Tower-E admeasuring carpet area of 613.31 sq. ft. and a balcony area of 95.10 sq. ft., in the respondent's project at basic sale price of ₹25,00,790/- 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 ₹11,76,995/- towards the subject unit.

17. The complainant is seeking a direction to set-aside the letter dated 14.02.2023 issued by the respondent as "final reminder". A final reminder letter dated 14.02.2023 was being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make a payment of ₹8,28,710/- 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 "The Statesman" on 28.04.2023 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 14.02.2023, directing the complainant to clear the outstanding dues amounting to ₹8,28,710/- (i.e., @15% per annum). It is pertinent to note here that the complainant had already paid an amount of ₹11,76,995/- against the total consideration of ₹25,00,790/- to the respondent. Further, in terms of Section 2 (za)(i) of the Act, 2016, 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. Also, the respondent is obligated to raise 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. The Authority further notes that the respondent published public notice only in an English-language newspaper i.e., 'The Statesman', in violation of the mandate under the Affordable Housing Policy, 2013, which requires such publication to be made in a regional Hindi newspaper with 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. This act constitutes a breach of procedural safeguards intended to ensure transparency and adequate public notice to affected allottees.
22. The Authority notes that 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 even on the date

of filing of the complaint i.e., 08.11.2023. The respondent has now 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. Moreover, the respondent made publication in English newspaper namely "The Statesman" which is not as per the provisions of Affordable Housing Policy, 2013. Such actions by the respondent display bad faith, as it failed to adjust the delay period interest.

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 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.

25. 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.
26. 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."***

27. **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)

28. 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**.

29. 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."

30. 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.
31. 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., 02.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
32. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
- Explanation.*** —For the purpose of this clause—
- (i) *The rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
33. 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.

34. 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.
35. 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*.

G.III Direct the respondent to pay compensation of Rs. 2,00,000/- for mental agony, harassment and loss of opportunity and litigation expenses.

36. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & 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 & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

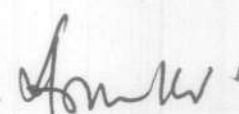
H. Directions of the authority

37. 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. 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 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.
- 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., 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(z a) of the Act.
- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

- V. The respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects as per specifications of buyer's agreement within one month from date of this order, as the occupation certificate in respect of the project has already been obtained by it from the competent authority.
- VI. The respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.
- VII. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement and the provisions of the Affordable Housing Policy, 2013.
38. The complaint stand disposed of.
39. Files be consigned to the registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.09.2025