M/s. Sunrays Heights Private Limited through its Authorized Representative versus Ms. Kalpana Tyagi.

CR-3956-2025.

Present: Mr. Kanish Bangia, Advocate for complainant.
Mr. Vijay Pratap Singh, Advocate for respondent.

ORDER

This is a complaint filed under section 31 and 19 of The Real Estate (Regulation and Development) Act 2016 (Act of 2016) by M/s. Sunrays Heights Private Limited (promoter/developer) seeking compensation from respondent i.e. buyer.

2. Briefly stated, according to complainant, same is a company incorporated under The Companies Act. It is engaged in the business of developing and constructing an Affordable Group Housing Colony under the name and style of "**63, Golf Drive**", situated in the Revenue Estate of Village Ullahwas, Sector 63-A, Gurugram.

3. The respondent was allotted a unit/flat in Tower-B, Unit No. B16, Flat Category Type: 1 BHK. A Copy of application is **Annexure C-3.** Builder Buyer Agreement (BBA) was executed between the parties on 04.02.2016, copy of which is **Annexure C-5**. It (complainant) was required to complete the project within a span of four years from the date of issuance of environmental clearance (EC). There occurred delay in completion of the project, as about 90% of the allottees including respondent defaulted on their obligation to make timely payment.

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Contending that respondent failed to make timely payment, it suffered heavy losses, the complainant has prayed for compensation from the respondent as follows: -

a. Directing the respondent to pay the outstanding amount of Rs.2,64,016/- comprising principal and accrued interest upto 31st August 2024.

b. Directing the respondent to pay interest on the overdue amount as stipulated in the Affordable Housing Policy and the agreement, at a rate of 15% per annum, until full payment is made.

c. Directing the respondent to pay compensation as per the losses incurred by the complainant on account of default of the defaulting allottees in making timely payment as per payment schedule given as **Annexure C-11. Rs.1897.78 x 356.18 sq. ft = Rs. 6,86,787.60.**

d. Directing the respondent to pay/reimburse the complainant on actual amount of interest overcompensation which has been derived after calculation of compensation on the basis of losses apportioned/disturbed over per sq. ft area that has to be recovered proportionately from all the defaulted allottees after 31.05.2024 till the date of actual payment.

e. Directing the respondent to reimburse the complainant on actual rate of interest as charged/claimed against the complainant under SWAMIH Fund availed by the complainant, proportionately as per their allotted sq. ft area after 31.05.2024 till the actual payment.

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4. The respondent contested the claim. Apart from disputing the complaint on merits, respondent challenged very maintainability of present complaint. Following preliminary issue was framed in this case.

> *"Whether present complaint is not maintainable, the respondent having equally efficacious remedy provided under Builder Buyer Agreement."*

5. I heard learned counsels for both of the parties.

6. My finding on aforesaid issue is as under: -

7. It is not in dispute that after allotment of unit in question a Builder Buyer Agreement (BBA) was entered into between the parties delineating the terms and conditions of sale including as what will happen in case of default by any of the parties. It is pointed out that as per BBA, if allottee failed to make payment of any instalment within stipulated time, the developer/complainant was entitled to collect the amount, along with interest. Further, same was empowered to cancel the unit even, after serving a notice of 15 days.

8. It is submitted by learned counsel for complainant that even if there is provision in BBA about levy of interest and again for cancellation of unit, all this does not bar his client from approaching the Authority or Adjudicating Officer, for relief, by filing a complaint under section 31 of the Act of 2016. Section 31 (1) of the Act provides for filing a complaint with the Authority or the Adjudicating Officer by any

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aggrieved person, for violation or contravention of the provisions of this Act or the rules or regulations made thereunder, against any promoter, allottee or the real estate agent, as the case may be.

9. There is no denial of this legal provision but polemic question to be answered here is as to whether despite having remedy already provided under the agreement (BBA) can a party be allowed to approach the Authority or Adjudicating Officer, for redressal of same grievance.

10. Admittedly, BBA was executed between the parties by their sweat will. For the sake of arguments, even if it is presumed that the respondent (allottee) did not make timely payment, the remedy with the complainant (promoter) has already been provided in the BBA. Same can recover the amount from allottee (in case timely payment is not made) along with interest at rate of 15% per annum, from due date of payment till amount is recovered. The promoter has been empowered even to cancel the allotment, in circumstances, well mentioned in said agreement (BBA).

11. In case when complainant/promoter has remedy well agreed between both of parties, in the case when the allottee does not make timely payment, present complaint is not maintainable. Even if the complainant has suffered any loss, for not getting timely payment from

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the buyer i.e. respondent, provision of interest is to compensate the promoter. No further compensation is required to be paid to the complainant.

12. On the basis of aforesaid discussion, in my opinion, present complaint is not maintainable. This issue is, therefore, decided in favour of respondent and against the complainant. When complaint is not maintainable, same is dismissed.

13. Parties to bear their own costs.

14. File be consigned to record room.

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority, Gurugram. 03.11.2025