

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

Complaint no.: 3603 of 2024
Date of complaint: 09.08.2024
Date of first hearing: 30.10.2024
Order pronounced on: 01.10.2025

Prerna Choudhary

R/o: Flat no. 1706, Yucca Paramount
Symphony, Crossing Republic, Ghaziabad,
UP- 201016

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 Ashok Sangwan

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 provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, 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 63-A, Gurugram"
2.	Project area	5.9 acres
3.	Nature of the project	Affordable Group Housing Project
4.	DTPC License no. and validity	82 of 2014 dated 08.08.2014 Valid up-to 07.08.2019
5.	Name of licensee	Sunrays Heights Pvt. Ltd., Smt. Kiran W/o Dharam
6.	RERA registration details	Registered 249 of 2017 dated 26.09.2017
7.	Allotment letter	04.08.2017 (page 20 of complaint)
8.	Date of execution of buyer's agreement	2016 (Specific date not mentioned at page 22 of complaint)
9.	Unit no.	A-112 (Page 34 of complaint)
10.	Unit area admeasuring	Carpet Area- 605.10 sq. ft Balcony Area- 94.94 sq. ft. (Page 34 of complaint)
11.	Possession clause	4-Possession <i>The developer shall endeavor to handover possession of the said flat within a period of 4 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 stipulated in the present agreement.</i> *Note: As per affordable housing policy 2013 <i>1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of</i>

		<i>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.</i>
8.	Environmental Clearance	16.09.2016 (taken from another file CR/2814/2021 decided on 30.11.2023 of same project)
9.	Building plan approval	10.03.2015 (taken from another file CR/2814/2021 decided on 30.11.2023 of same project)
10.	Due date of possession	16.03.2021 (calculated from the date of environmental clearance being later with additional grace period of 6 months in lieu of covid-19)
11.	Total sale consideration	Rs.24,67,870/- (page 34 of complaint)
12.	Amount paid by the complainant	Rs.22,46,777/- (SOA dated 05.02.2021 at page 52 of the complaint)
13.	Final reminder	e-mail dated 15.07.2024 (page 54 of complaint)
14.	Occupation certificate	31.12.2024 (Applied for grant of OC on 08.12.2023) (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)
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- a) That the respondent made advertisement in the newspaper 'Hindustan Times' with regard to the location, specification and amenities and time of completion of the project under the name affordable group housing colony commonly known as "63 Golf- Drive" floated under Haryana Government's Affordable Housing Policy, located at Sector 63A, Gurgaon, Haryana. The complainant approached to the respondent for booking of a unit vide application bearing no SGD(A)2984, in accordance with the

affordable housing policy 2013 issued by the Govt. of Haryana , having carpet area of 605.10 sq. ft. and balcony area of 94.94 sq. ft .

- b) That the draw of the said project was held wherein the complainant was allotted unit no. A-112 at tower A.
- c) That the respondent to dupe the complainant in their nefarious net even executed a one-sided builder buyer agreement signed between complainant and respondent through their authorised 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.
- d) 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.
- e) 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. 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 .

- f) The buyer's agreement was executed between the complainant and the authorised representative of the respondent. That the total consideration of the unit was Rs.24,67,870/-and applicable taxes payable. The complainant has paid Rs.22,46,777/- against demand of Rs.22,46,777/- till date of filing of case, as and when the demand were raised by the respondent in time bound manner.
- g) That as per clause 4.1 of the BBA the respondent was liable to hand over the possession of a said unit before 16.09.2020 considering the project commencement date from the date of environment clearance date 16.09.2016.
- h) That keeping in view the snail-paced work at the construction site and half-hearted promises of the respondent, the inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss.
- i) That the cause of action to file the instant complaint has occurred within the jurisdiction of this Authority as the unit 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 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 22,46,777/- for delay

period starting from 16th Sept. 2020 till actual hand over of the physical possession by the Respondent to the Complainant with penal interest, given that 16th Sep 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. To set aside demand notice dated 15.07.2024 thereby demanding Rs.7,93,093/- by threatening to cancel the unit.
 - III. Direct the respondent to ensure the project is in habitable condition with all amenities mentioned in brochure after Getting Occupancy Certificate.
 - IV. Direct the respondent to pay litigation expenses of Rs.50,000/-.
5. The present complaint was filed on 09.08.2024 in the Authority. The respondent was granted several opportunities to put in appearance and file reply. However, despite specific directions and providing an opportunity of being heard, no written reply has been filed by the respondent. In view of the same, the defence of the respondent was struck off and matter was proceeded ex-parte against the respondent vide order dated 10.09.2025.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

D. Jurisdiction of the authority

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

D.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose 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 complete territorial jurisdiction to deal with the present complaint.

D.II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.... (4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings on the relief sought by the complainant.

- E.I Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2%, on paid amount of Rs 22,46,777/- for delay period starting from 16th Sept. 2020 till actual hand over of the physical possession by the respondent to the complainant with penal interest, given that 16th Sep 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.
- E.II To set aside demand notice dated 15.07.2024 thereby demanding Rs.7,93,093/- by threatening to cancel the unit.

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

11. 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.
12. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso 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."

13. Clause 4 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"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 payments by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement."

14. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and

against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

15. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builders and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the rights of the buyer/allottees in case of delay in possession of the unit.

16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges till delivery of possession. 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."

17. 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 so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
18. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 01.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
19. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
- Explanation. —For the purpose of this clause—***
- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

21. 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. By virtue of clause 4 of the buyer's agreement, the possession of the subject apartment was to 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*). 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 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. As such the due date for handing over of possession comes out to be 16.03.2021.

22. 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 rate of the prescribed interest @ 10.85% p.a. w.e.f. 16.03.2021 till the actual handing over of possession or valid offer of possession plus 2 months, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

23. 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.
24. 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.
25. Further, the respondent 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 allottee is 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 90 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, failing which the complainant may approach the adjudicating officer for execution of order.

E.III Direct the respondent to pay litigation cost of Rs.1,00,000/-

26. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357* 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.

F. Directions of the Authority

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

- I. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay from the due date of possession 16.03.2021 till valid offer of possession plus two months after obtaining occupation certificate from the competent Authority as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid.*
- II. The arrears of such interest accrued from due date of possession till the date of this order by the authority shall be paid by the promoter to the allottee within a period of 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to complainant 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, which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is 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 possession of the allotted unit within a period of 30 days from the date of this order, since occupation certificate has already been obtained by the respondent-promoter on 31.12.2024.
- VI. The respondent shall execute the conveyance deed of the allotted unit within a period of 90 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, 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 under the Affordable Housing Policy, 2013.

28. Complaints stand disposed of.

29. Files be consigned to registry.

Dated: 01.10.2025



Ashok Sangwan
Member
Haryana Real Estate
Regulatory Authority,
Gurugram