

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

Date of decision: 05.08.2025

NAME OF THE BUILDER		SUNRAYS HEIGHTS PRIVATE LIMITED	
PROJECT NAME		"63 Golf Drive" at Sector 63A, Gurugram, Haryana	
Sr. No.	Case No.	Case title	Appearance
1.	CR/3116/2024	Arun Gupta Vs. Sunrays Heights Pvt. Ltd.	Shri B.K. Yadav, Advocate Shri Tushar Behmani, Advocate
2.	CR/3119/2024	Jyoti Jain Vs. Sunrays Heights Pvt. Ltd.	Shri Vijay Pratap Singh, Advocate Ms. Anita Tripathi & Sh. Naveen Sharma, Advocate

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

ORDER

1. This order shall dispose of both the complaints 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 core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees 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 agreements 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.
3. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given below:

Project Name and Location	"63 Golf Drive" at Sector - 63A, Gurugram, Haryana
Project area	9.7015625 acres
DTCP License No. and validity	82 of 2014 dated 08.08.2014 Valid up to 31.12.2023
RERA Registered or Not Registered	Registered Registration no. 249 of 2017 dated 26.09.2017 valid up to 25.09.2022
Date of approval of building plans	10.03.2015
Date of environment clearance	16.09.2016
Possession clause as per the buyer's agreement	4. Possession "4.1 The developer shall endeavour to handover possession of the said flat within a period of four years i.e., 48 months from the date of commencement of the project, subject to force majeure and timely payment by the allottee towards the sale consideration, in accordance with the terms stipulated in the present agreement."
Possession clause as per Affordable Housing Policy, 2013	As per clause 1(iv) of the 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



				<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 licenses shall not be renewed beyond the said 4 years period from the date of commencement of project."</i>	
Due date of possession				16.03.2021 (Calculated from the date of environment clearance being later including grace period of 6 months in lieu of Covid-19)	
Occupation certificate				31.12.2024	
Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Total Sale Consideration / Total Amount paid by the complainant	Offer of possession
1.	CR/3116/2024 Arun Gupta Vs. Sunrays Heights Pvt. Ltd. DOF: 08.07.2024 Reply: 17.07.2025	53, Tower C Carpet area- 605.10 sq. ft. Balcony area- 94.94 sq. ft.	2016 (Specific date not mentioned)	TSP-Rs. 30,87,734/- (Page 30 of reply) AP-Rs. 22,47,051/- (Page 31 of reply)	Not Offered Final Reminder: 19.06.2024 (Page 57 of complainant)
2.	CR/3119/2024 Jyoti Jain Vs. Sunrays Heights Pvt. Ltd. DOF: 08.07.2024 Reply: 17.07.2025	55, Tower D Carpet area- 381.89 sq. ft. Balcony area- 69.84 sq. ft.	2016 (Specific date not mentioned)	TSP-Rs. 16,01,954/- (Page 14 of reply) AP-Rs. 14,01,954/- (Page 15 of reply)	Not Offered
The complainant herein is seeking the following reliefs: 1. Direct the respondent to pay interest @ 8.65% p.a. at prevailing MCLR plus 2% on paid amount of Rs.22,46,610/- for delay period starting from 15.03.2021 till actual handover of physical possession or offer of possession plus two months after obtaining OC, whichever is earlier and wave of illegal and unreasonable interest etc. raised by respondent. 2. Direct the respondent to handover actual possession of the booked unit to the complainant. 3. Direct the respondent to get the copy of application for OC as such the respondent claims that they have applied for OC.					
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:					
Abbreviation	Full form				
DOF	Date of filing of complaint				
DPC	Delayed possession charges				
TSC	Total sale consideration				
AP	Amount paid by the allottee/s				

CD Conveyance deed

4. The facts of all the complaints filed by the complainant- allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/3116/2024 titled as "Arun Gupta Vs. Sunrays Heights Private Limited"** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Project and unit related details

5. 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:

CR/3116/2024 titled as "Arun Gupta Vs. Sunrays Heights Private Limited"

Sr. 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.	C-53
6.	Unit admeasuring	605.10 sq.ft. (carpet area) 94.94 sq.ft. (balcony area)
7.	Provisional allotment letter	11.01.2016 (page 16 of complaint)
8.	Date of execution of Buyers agreement	2016
9.	Possession clause	4.Possession <i>The developer shall endeavour 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</i>

		with the terms as stipulated in the present agreement. 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 of the same project)
11.	Date of environment clearance	16.09.2016 (taken from another file of the same project)
12.	Due date of possession	16.03.2021 (16.09.2020 plus six months in lieu of covid-19) (calculated from the date of environment clearance)
13.	Total sale consideration	Rs.30,87,734/- (page 30 of reply)
14.	Amount paid by the complainant	Rs.22,47,051/- (page 31 of reply)
15.	Occupation certificate	31.12.2024
16.	Offer of possession	Not offered
17.	Final reminder	19.06.2024 (page 57 of complaint)

B. Facts of the complaint

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

- a) That the builder buyer's agreement got executed between the complainant and the respondent on dated 04.02.2016. The total consideration of the flat was Rs.24,67,870/- (exclusive of tax and other charges). As per the demand letter dated 18.09.2019 the outstanding amount towards the consideration of flat is Rs 3,33,166 /- and the same

outstanding was paid on dated 20/09/2019 vide receipt dated 18/10/2019 .The complainant has paid Rs 22,47,051/- (Exclusive of tax and other charges) against demand of Rs 22,47,051/- from the builder till date of filing of case Before the Authority ,as and when the demand were raised by the respondent in time bound manner.

- b) That the respondent is threatening and pressurising the complainant vide letter dated 19.06.2024, that he has to make the illegitimate payment of Rs 8,27,575/- despite the complainant has paid almost 90% of the sales consideration value, without even raising demand against the due amount and same is arbitrary and unjustified as the respondent is registered under the GST and as per the statutory provision of the GST the respondent has to legally raise a demand against the due amount , in other word the respondent is trying to pressurise the complainant to align the complainant in cancellation pool not even caring the hard fact that as per the BBA terms the project is already delayed by more than 3 and half Year from the date of promise of handing over the possession of flat.
- c) That as per the slow pace construction status and absence of basic amenities respondents are delayed heavily in giving possession. As per section 19 (6) the Act, 2016 complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainant herein is not in breach of any of its terms of the agreement. 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.

- d) 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 sub-zero results and borne thorns instead of bearing fruits.
- e) That the cause of action to file the instant complaint has occurred within the jurisdiction of the Authority as the apartment which is the subject matter of this complaint is situated in Sector 63A, Gurugram which is within the jurisdiction of the Authority.

C. Relief sought by the complainant

7. The complainant has sought the following relief(s):
- I. Direct the respondent to pay interest @ 8.65% p.a. at prevailing MCLR plus 2% on paid amount of Rs.22,47,051/- for delay period starting from 15.03.2021 till actual handover of physical possession or offer of possession plus two months after obtaining OC, whichever is earlier and wave of illegal and unreasonable interest etc. raised by respondent.
 - II. Direct the respondent to handover actual possession of the booked unit to the complainant.
 - III. Direct the respondent to get the copy of application for OC as such the respondent claims that they have applied for OC.
8. 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

9. The respondent has contested the complaint on the following grounds.
- a) That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
 - b) That the complainant has miserably and wilfully 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 respondent was provided with the timeline of forty-eight months to complete the project subject to timely payment. It has been categorically agreed between the parties 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.

- c) That 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. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts. They have been delineated herein below:

S. No.	Date of Order	Directions	Period Of Restriction	Days Affected	Comments
1.	07.11.2017	Environment Pollution (Prevention and Control Authority) had directed the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect		90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of



		from 07.11.2017 till further notice.			crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21.12.2019 and 30.01.2020.
2.	Notification HSPC B/MS/2018/2 939-52 dated 29.10.2018	Haryana State Pollution Control Board	01.11.2018 to 10.11.2018	11 days	All construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material is used) to remain closed in Delhi and other NCR Districts from November 01.10.2018
3.	Notification DPCC/PA to	DELHI POLLUTION CONTROL COMMITTEE	24-12-2018 to 26-12-2018	3 days	Construction activities in Delhi,

	MS/2018/791 9-7954 dated 24-12-2018				Faridabad, Gurugram, Ghaziabad and Noida to remain closed till December 26 2018
4.	Direction dated 01.11.2019 bearing no. EPCAR/2019/ L-53	Environment Pollution (Prevention and Control) Authority for National Capital Region	01.11.2019 to 05.11.2019	6 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida to remain closed till morning of November 5, 2019 (current ban on construction was only 6 PM to 6 AM and this is new extended to be complete banned till Monday, November 5, 2019, morning)
5.	01.11.2019	Environmental Pollution (Prevention and Control) Authority, NCR vide its notification bearing no. R/2019/L-53 dated 01.11.2019 converted the partial ban of 12 hours to a complete ban	01.11.2019 to 05.11.2019	4 days	This was in addition to the partial ban on construction by the EPCA vide its notification bearing no. EPCA- R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to by
6.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction	04.11.2019 14.02.2020	103 days	These bans forced the migrant labourers to return to their native towns/states/vill ages creating an acute shortage of labourers in the

		activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.			NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court
7.	11.10.2019	Commissioner of Municipal Corporation Gurugram issued direction to issue Challan for Construction Activities and lodging of FIR from 11 th October to 31 st December, 2019 as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019.	11.10.2019 to 31.12.2019	to 81 days	
			Total days	298 days	

- d) That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. The covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I (A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after

above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. 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. 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.

- e) 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 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 prohibitor order is passed by competent authority like National Green Tribunal Or Hon'ble Supreme Court then the same period shall be excluded from the 4 years period or moratorium shall be given in respect of that period also. Section 7(2)(i) of the act itself recognizes the relaxation for renewal of license in case the delay in execution of development work was the reason beyond control of the colonizer, here also colonizers were estopped because of force majeure.

- f) 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.
- g) 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.
- h) 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.
- i) 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 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.

- j) 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 Hon'ble Authority. The complainant is chronic defaulter in timely payment of the installments as per the payment plan annexed with the builder buyer agreement. Respondent sent many reminders letter to clear dues. It is submitted that for non-payment of installments demand letter as per the payment plan to the allottee.
- k) That 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, OC has obtained it; even whilst facing the disruption in supply chain, migration of labourers due to Covid, 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 company then the company shall be automatically entitled to the extension of time for delivery of possession.
- l) That, thus the application under reply is not maintainable in law and facts as the same is false, frivolous, vexatious, uncalled for, unwarranted, without any cause and justification and has been presented with sole intention to mislead the Hon'ble court only.

10. 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

11. 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

12. 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

13. 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.

14. 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.

15. 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.
16. 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"

17. 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% p.a. at prevailing MCLR plus 2% on paid amount of Rs.22,47,051/- for delay period starting from 15.03.2021 till actual handover of physical possession or offer of possession plus two months after obtaining OC, whichever is earlier and wave of illegal and unreasonable interest etc. raised by respondent.

18. The factual matrix of the case reveals that the complainant was allotted unit no. C-53, Tower C admeasuring carpet area of 605.10 sq. ft. and a balcony area of 94.94 sq. ft., in the respondent's project at sale price of 30,87,734/- 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 22,47,051/- towards the subject unit.

19. During the course of proceedings dated 05.08.2025, learned counsel for the respondent submitted that the complainant has instituted proceedings before the Hon'ble National Company Law Tribunal (NCLT), Delhi Bench in Case No. IB-48 of 2025, seeking a refund along with interest at the rate of 24% per annum. It was further submitted that in the said NCLT proceedings, the date of default has been stated as 31.03.2023, whereas in the present complaint(s) before this Authority, the complainants have asserted the due date as 16.03.2021 and have sought relief in the form of delayed possession charges and delivery of possession. In response, learned counsel for the complainant submitted that the matter before the Hon'ble NCLT is at the admission stage and that no order has been passed therein as of yet.

20. Upon considering the submissions made by both parties, the Authority is of the considered view that the complaint filed before this Authority is with respect to the statutory provisions under the Real Estate (Regulation and Development) Act, 2016 which is a special Act to regulate and promote the real estate sector and to ensure sale of plot, apartment or building, as the case may be in an efficient and transparent matter and to protect the interest of consumers in the real estate sector. It is noted that the objective and scope of the Insolvency and Bankruptcy Code, 2016 (IBC) are distinct and serve a different legal purpose. It is further observed that the matter before the Hon'ble NCLT is presently at the stage of admission and no order initiating Corporate Insolvency Resolution Process (CIRP) against the respondent has been passed as on date. Therefore, at this juncture, there exists no bar under any law that prevents this Authority from proceeding to adjudicate the present complaint(s) on merits.
21. It is pertinent to note that a final reminder letter dated 19.06.2024 was being sent to the complainant-allottee to make a payment of ₹8,27,575/-, thereby affording him an opportunity to clear the outstanding dues.
22. The Authority notes that the complainant had already paid an amount of 22,47,051/- (i.e., 72.77%) against the sale consideration of ₹30,87,734/- to the respondent. 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., 05.08.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

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., 11.10 % 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., @ 11.10% p.a. w.e.f. 05.08.2025 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.II Direct the respondent to handover actual possession of the booked to the complainant.

35. In the present complaint, the grievance of the complainant is that the physical possession has not been handed over by the respondent to the complainants.
36. The authority observes that the respondent-promoter has obtained Occupation Certificate of the said project from the competent authority on 31.12.2024. Further, Section 17(1) of the Act of 2016 obligates the respondent-promoter to handover the physical possession of the subject unit to the complainant complete in all respect as per specifications mentioned in BBA and thereafter, the complainant-allottee is obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act, 2016.
37. In view of the above, the respondent is directed to handover the possession of allotted unit to the complainant complete in all respect as per specifications of buyer's agreement within a period of one month from date of this order after payment of outstanding dues, if any, as the occupation certificate for the project has already been obtained by it from the competent authority.
38. Further, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed

of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

G.III Direct the respondent to get the copy of OC as such the respondent claims that they have applied for OC.

39. As per the submissions made by the counsel for the respondent, the Authority finds that the respondent has obtained the occupation certificate for the said project on 31.12.2024.

40. As per Section 11(4)(b) of Act of 2016, the respondent is under an obligation to supply a copy of the occupation certificate/completion certificate or both to the complainant-allottee. The relevant part of section 11 of the Act of 2016 is reproduced as hereunder: -

"11(4)....

(b) The promoter shall be responsible to *obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be.*"

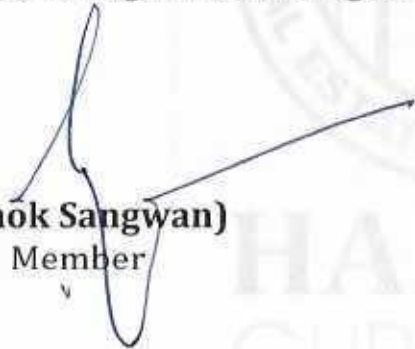
41. Even otherwise, it being a public document, the allottee can have access to the it from the website of DTCP, Haryana.

H. Directions of the authority

42. 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 on the amount paid by the complainant at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier.
- II. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules, *ibid*.
- III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- V. The respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects as per specifications of buyer's agreement within 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.
43. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
44. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
45. Files be consigned to the registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.08.2025