

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

Complaint no. : 6008 of 2024
First date of hearing: 20.03.2025
Date of decision : 12.08.2025

Deepika Agarwal

R/o: - HEWO Apartments, House No.14, Block-B, 2nd
Floor, Part-II, Gurugram-122001

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:

Sh. Garvita Gupta (Advocate)
Sh. Tushar Behmani (Advocate)

**Complainant
Respondent**

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:

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.	E-53 (page 28 of complaint)
6.	Unit admeasuring	613.31 sq.ft. (carpet area) 95.10 sq.ft. (balcony area)
7.	Provisional allotment letter	11.01.2016 (page 28 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.26,13,949/- (annexure R 14, page 175 of reply)
14.	Amount paid by the complainant	Rs.22,76,731/- (annexure R 14, page 175 of reply)
15.	Occupation certificate	31.12.2024
16.	Offer of possession	Not offered
17.	Final reminder	31.08.2024 (page 84 of reply)
18.	Publication	16.10.2024 (page 86 of reply)
19.	Pre-cancellation	27.11.2024 (page 89 of reply)

B. Facts of the complaint

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

- i. That the respondent offered for sale units in a Group Housing Project known as '63 Golf Drive' which claimed to comprise of multi-storied apartments, residential units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Sector 63A, Village

Ullahwas & Distt. Gurugram, Haryana. The respondent had also claimed that the DTCP, Haryana had granted license bearing no. 82 of 2014 dated 08.08.2014 in accordance with the provisions of Affordable Housing Policy, 2013 for development of Affordable Group Housing Colony.

- ii. That the complainant, induced by the assurances and representations made by the respondent, decided to book a residential unit in the project of the respondent. The complainant had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. The complainant visited the sales gallery and consulted with the marketing staff of the respondent. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in their project. The marketing staff of the respondent also assured timely delivery of the unit. It was further assured by the respondent to the complainant that the possession of the unit would be handed over strictly as per the provisions of the Affordable Housing Policy, 2013 i.e., within 4 years from the date of approval of building plan or environment clearance, whichever is later. The assertions of the respondent concerned with impeccable services and timely completion of the said project were believed by the complainant and complainant decided to make the booking in the month of June, 2015 vide their booking application form No. SGDC6743. The complainant accordingly at the time of booking paid a sum of Rs.1,25,000/- vide cheque no.338965 dated 04.06.2015

as acknowledged by the respondent vide the said booking application form.

- iii. That pursuant to the booking of a unit in the project of respondent by the complainant and after draw of lots conducted by the respondent on 06.01.2016, the respondent allotted a flat bearing no. E-53 admeasuring carpet area of 613.31 sq. ft. @ Rs.4,000/- per sq ft. and a balcony area of 95.10 sq ft. in the said project to the complainant vide its provisional allotment letter dated 11.01.2016. The respondent vide the said provisional allotment letter informed the complainant that the total sale consideration of the said allotted unit would be Rs.25,00,790/-. Furthermore, the respondent vide the said allotment letter dated 11.01.2016 demanded an amount of Rs.5,51,955/- from the complainant and the complainant without any delay or default remitted the said dues vide its cheque dated 21.01.2016.
- iv. That after a considerable delay, a copy of the apartment buyer's agreement was shared by the respondent with the complainant. The complainant made it clear to the respondent that the complainant required the unit in a time bound manner for her own use and occupation and of her family members. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the apartment would be positively handed over to the complainant within the agreed time frame as per the provisions of the Affordable Housing Policy, 2013. When the complainant perused the draft agreement shared with her, she was in complete shock and surprise to understand that the interpretation of the possession clause, as done by the respondent, was in complete contrast to the provisions of the Affordable Housing Policy, 2013. It

made it evident that the respondent had very conveniently tried to misinterpret the provisions of the Affordable Housing Policy, 2013. It is pertinent to mention herein that as per the provisions of the Affordable Housing Policy, 2013, the due date to handover the possession is 4 years from the date of approval of building plan or environment clearance, whichever is later. However, as per clause 4.1 of the agreement, the respondent stated that it would hand over the possession of the flat within a period of 4 years from the date of commencement of the project. The said clause was in complete contrast to the provisions of the Affordable Housing Policy, 2013

- v. That the respondent was in a completely dominant position and wanted to deliberately exploit the same at the cost of the innocent purchasers including the complainant and the same is evident from a bare perusal of clause 3.7 of the said agreement. The respondent had given itself the liberty to charge interest from the complainant on account of delay in making the payments. However, no such clause is there in the agreement with respect to the delay on the part of the respondent in handing over of possession or complying with its obligations
- vi. The above stated provisions of the apartment buyer's agreement besides other similar one-sided provisions were on the face of it were highly illegal, absurd, unilateral, arbitrary, unconscionable and not valid. The legislature has promulgated the Act, 2016 to balance the bargaining power of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. A bare perusal of the above clauses highlights the one-sided arbitrary agreement and the abuse of dominant position is all pervasive in the terms and conditions

of the apartment buyer's agreement executed by the respondent vide various clauses imposing all the liabilities on the complainant, while conveniently relieving itself from all obligations on its part.

- vii. That the complainant made vocal her objections to the arbitrary and unilateral clauses of the builder buyer's agreement to the respondent. Prior to the signing of the builder buyer's agreement, complainant had made payment of a significant amount. The respondent categorically assured the complainant that she need not worry and that the respondent would strictly adhere to the timeline, terms of the allotment and the provisions laid down by law including Affordable Housing Policy, 2013 and the Act, 2016. Since the complainant had already parted with a considerable amount, she was left with no other option but to accept the lopsided and one-sided terms of the builder buyer's agreement. The complainant felt trapped and had no other option but to sign the dotted lines. Hence the builder buyer's agreement dated 19.04.2016 was executed.
- viii. That the complainant believing the assurances and representations of the Respondent continued to make the payments against the said allotted unit as and when demanded by the respondent and as per the payment plan annexed by the respondent along with the aforesaid builder buyer's agreement dated 19.04.2016. The complainant has made all the payments without any delay or defaults in making the said payments. The complainant continued to make the payments as and when demanded by the respondent.
- ix. That the respondent continued to send demand letters against the sale consideration. The complainant was throughout kept under an impression by the respondent that it would complete the construction

of the unit within the time period as mentioned in the Affordable Housing Policy, 2013 and thus the complainant continued to make the payments.

- x. That as already stated, as per clause 1 (iv) of the Affordable Housing Policy, 2013, the respondent is obligated to handover the possession of the said allotted unit within four years from the date of approval of building plans or receipt of environment clearance, whichever was later. It is a matter of record and is also mentioned at recital C of the builder buyer's agreement that the building plan of the project was approved on 10.03.2015 from DGTCP and environment clearance of the project was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of environment clearance, comes out to be 16.09.2020.
- xi. That, the respondent failed to intimate the complainant about the construction status of the tower in which the unit allotted to the complainant was located. The complainant was constrained to confront the respondent vide several telephonic reminders about the due date of handing over of possession. However, the genuine queries of the complainant went unheard and no proper reply was received nor any latest status of the construction was given to the complainant by the respondent. The complainant was left with no other option but to herself visit the construction site in the month of December, 2021 to check the status of the construction on site. Upon reaching the site, the complainant was shocked and appalled as she saw that no construction was going on in respect of the tower wherein the unit of the complainant was situated and thereby giving the impression that the

demands raised by the respondent were not corresponding with the actual construction at site.

- xii. That the fact that the respondent has been committing illegality is evident from a bare perusal of the payment demand letters dated 14.09.2018, 27.12.2018 and 06.12.2019. The respondent has been charging GST at the rate of 8% when the GST council in its 34th meeting held on 19.03.2019 took the decision vide a press release for a lower effective GST rate of 1% in case of Affordable Housing Scheme instead of the earlier rate of 8% effective from 01.04.2019.
- xiii. Despite being aware of the latest notification as well as the terms of the agreement, the respondent kept on demanding the GST at the old rates instead of the revised ones. Thus, it is clear that the complainant is entitled to the refund of the excess amount beyond 1% paid by her to the respondent towards the GST from 01.04.2019 onwards along with interest.
- xiv. That since the respondent had not even started with the construction of the tower in which the unit allotted to the complainant is located, the complainant requested the respondent telephonically, and by visiting the office of the respondent to update her about the date of handing over of the possession. The representatives of the respondent assured the complainant that the possession of the unit would be handed over to her shortly and thus the complainant based on the assurances of the respondent continued to make the payments as demanded by the respondent.
- xv. That the complainant vide several reminders through telephonic conversations and by visiting the office of the respondent reminded the respondent of intimating the complainant about the status of the

construction of the project. However, the respondent miserably failed to do so. The respondent is duty bound to update the complainant as well as other allottees about the construction of the project under Sections 19(1), 19(2) and 19(3) of the RERA Act, 2016. The respondent had failed to issue any demand letter or final opportunity letter whatsoever with respect to the remaining due installment.

- xvi. That as per the demand letter dated 06.12.2019 and receipt dated 06.12.2019, it is evident that the complainant has paid a sum of Rs.22,76,731/- out of the total sale consideration of Rs.25,00,790/-. The respondent thereafter failed to issue any demand letters raising the further demands. The complainant has always been willing to make the further payments as per the payment plan and as per the Affordable Housing Policy, 2013. However, solely on account of the failure of respondent in raising the payment demands, the complainant could not make further payments
- xvii. That the respondent continuously misled the allottees including the complainant by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainant. The respondent had represented and warranted at the time of booking that it would deliver the dream home of the complainant to her in a timely manner. However, the failure of the respondent has resulted in serious consequences being borne by the complainant.
- xviii. Thereafter, the complainant tried to connect with respondent to inquire about the construction of the said project but to their surprise, the respondent just tried to dilly dally the matter and did not pay any heed to the genuine requests of the complainant. The complainant after running from post to pillars and believing the assurances and

representations of the respondent lost hope and realized that the assurances and promises of the respondent were also false and misleading and the respondent had no intention of delivering the possession of the said unit to the complainant.

- xix. That when the complainant confronted the respondent, it was assured by the respondent that additional benefits in the form of delayed interest as per the provisions laid down by RERA Act, 2016 would be given to the complainant on account of the number of days of delay of the respondent. However, yet again, the assurances of the respondent turned out to be false. The fear of the complainant turned out to be a reality wherein it now became evident that the respondent has throughout been trying to mislead the complainant by asserting false assurances and representations. The complainant is a victim of misrepresentation on the part of the respondent. Furthermore, it is pertinent to mention here that the respondent has now threatened the complainant that the respondent would be terminating the allotment of the complainant in case the complainant does not comply with its unlawful demands. Several other allottees have received the cancellation letter and the complainant fears that the respondent might cancel her allotment in the said project. Hence, on the basis of such apprehension, an interim relief under Section 36 of the RERA Act, 2016 may be passed that pending the adjudication of the present complaint, the respondent would not terminate the allotment of the unit in question.
- xx. That the complainant has been duped of her hard-earned money paid to the respondent regarding the commercial unit in question. The complainant requested the respondent to hand over the possession of

the allotted unit to them but the respondent has been dilly-dallying the matter. The complainant has been running from pillar to post and have been mentally and financially harassed by the conduct of the respondent.

- xxi. That the respondent has violated several provisions of RERA 2016 and Haryana RERA Rules 2017 and is liable for the same. As per Section 18 of RERA 2016 and Rules 15(1) and 15(3) of Haryana RERA Rules, 2017, the respondent/promoter is liable to pay interest for every month of delay till handing over of possession. The above-mentioned acts of the respondent are also in violation of Section 11(4)(a) of the Act, 2016. The complainant hereby make a submission before the Authority under Section 34(f) of RERA Act, 2016 to ensure compliance/obligations cast upon the promoter/ respondent as mentioned above.
- xxii. That the respondent is enjoying the valuable amount of consideration paid by the complainant out of her hard-earned money and the complainant realizing the same demanded delayed possession charges from the respondent/promoter. But a week ago, the respondent has in complete defiance of its obligations refused to hand over the possession to the complainant along with delayed possession charges leaving them with no other option but to file the present complaint. Since respondent miserably failed in its obligations, hence the complainant is entitled to delayed possession charges at the rate prescribed as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.
- xxiii. That it is submitted that the project is an ongoing project and hence falls under the first proviso to Section 3(1) of RERA 2016. The complainant believes that no occupation and completion certificate has

been issued for the project in question till date and hence this project falls clearly under the jurisdiction of the Authority. The respondent in utter disregard of its responsibilities has left the complainant in the lurch and the complainant has been forced to chase the respondent for seeking relief.

- xxiv. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to hand over the possession and compensation for delay on its part and finally about a week ago when the respondent refused to compensate the complainant with the delayed possession interest amount and compensation. The complainant reserve her right to approach the appropriate Forum to seek compensation.

C. Relief sought by the complainant

5. The complainant has sought the following relief(s):

- I. Direct the respondent to pay interest for every month of delay at Prevailing rate of interest from the due date of possession i.e., 16.09.2020 till actual handing over of the possession as per the provisions of the RERA Act, 2016 and Haryana RERA Rules, 2017
- II. Direct the respondent to refund the excess amount taken from the Complainant under the garb of the previous GST rates along with interest.
- III. Direct the respondent to handover actual physical possession of the booked unit in a habitable condition after the receipt of the Occupation certificate.
- IV. Direct the respondent to execute Conveyance deed of the unit in favour of the Complainant
- V. Direct the respondent to provide information pertaining to the construction and approvals of the project as per Section 19 of the RERA Act, 2016

- VI. Direct the respondent not to demand more than the total sale consideration of the unit or any amount other than that mentioned in the builder buyer's agreement
- VII. Imposing penalty on the builder on account of various defaults under RERA Act, 2016 and the same be ordered to be paid to the Complainant
- 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 complainant vide an application applied to the respondent for allotment of a unit and was allotted a unit bearing no. **E-53** in tower E, having carpet area of 613.13 sq. ft. and balcony area of 95.10 sq. ft. vide allotment letter dated 11.06.2016. The complainant represented to the respondent that they should remit every instalment 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.
 - ii. Thereafter, an Agreement to sell (builder buyer agreement) stamp paper dated 19.04.2016 was executed between the parties. The agreement was consciously and voluntarily executed between the parties and terms and conditions of the same are binding on the parties.
 - iii. 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. That being a contractual relationship, reciprocal promises are bound to be maintained. 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, whichever is

later. The possession clause of the agreement is on par with clause 1(iv) of the Affordable Housing Policy, 2013.

- iv. That the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance 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. 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 25.03.2020, 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.
- v. That the offer of possession was also subject to the incidence of force majeure circumstances under clause 16 of the agreement. That additionally, even before normalcy could resume, the world was hit by the Covid-19 pandemic. 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 the COVID-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By 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 the Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That 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.

- vi. 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, 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.
- vii. That 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 the 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.

- viii. That in a similar case where such orders were brought before the Ld. Authority was in 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 Hon'ble 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.
- ix. 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 the effect of COVID also.
- x. 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.
- xi. 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. Moreover, this Ld. Authority had in similar matters of the had allowed the benefit of covid grace period of 6 months in a no. of cases.
- xii. That despite there being several defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in

question. Despite the default caused, 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. The respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for water connection and electrical inspection report.

- xiii. That the respondent has applied for occupation certificate on 08.12.2023. Once an application for grant of occupation certificate is submitted for approval in the office of the statutory authority concerned, 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. Therefore, the time utilized by the statutory authority to grant occupation certificate to the respondent is required to be excluded from computation of the time utilized for implementation and development of the project.
- xiv. 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 instalments 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 clause 3 of the BBA.
- xv. 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.

- xvi. 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.
- xvii. That the Respondent company sent a final reminder letter dt. 31.08.2024 to clear the outstanding dues of Rs. 9,94,075/- mentioning the relevant Clauses of the Affordable Housing Policy 2013, wherein if the installments are not paid timely, the Respondent can cancel the Unit allotted to the Complainant.
- xviii. That the complainant despite the issuance of final reminder dt. 31.08.2024, evaded the matter, and chose not to clear his outstanding dues as requested by the Respondent company. Thereafter, the Respondent company after giving sufficient opportunity to the Complainant to clear the outstanding dues, proceeded further as per the terms and conditions of the Affordable Housing Policy, 2013, and published the complainant's details in the local newspaper dt. 16.10.2024 and again requested him to clear the outstanding dues in 15 days from the date of the said publication else, the allotment will be canceled purely as per the said policy.
- xix. That the Respondent company has duly received FIRE NOC from the competent authority on 22.12.2023.
- xx. That after much requests and regular reminders sent as per the terms and conditions of the AHP, 2013 and BBA, the Complainant evaded the matter and miserably failed to clear the outstanding amount which stood due to the

Respondent. It is pertinent to mention here that, despite being given 15 days to clear the outstanding amount in the aforementioned publication dated, 16.10.2024, the Complainant did not do the needful and showing the generosity offered one last opportunity to the Complainant to clear the outstanding amounts and sent a pre-cancellation letter dt. 27.11.2024 to the Complainant.

- xxi. Thus, it is pertinent to mention here that since the Respondent has duly complied with the statutory requisites the project is nearly completed and the Occupation Certificate has already been applied, there is no unwarranted delay in completion of the project.
- xxii. That the Respondent has duly received its Occupation Certificate (OC) from the Director, Town and Country Planning, Chandigarh on 31.12.2024. Since the OC has been received, the Complainant is legally bound to settle all outstanding payments and come forward to take possession of the Unit, subject to clearing outstanding dues, following the offer of possession of the Unit.
- xxiii. That to add to the misery of the Respondent, the hundreds of allottees of the project in dispute have filed a Claim Petition having No. IB/48(ND)/2025 under section 7 of the IBC,2016, and have claimed Rs. 26 Crores interest of 24% and declared the Respondent insolvent as per the provisions of the IBC,2016. It is pertinent to mention here that the allottees in this claim petition have admitted the date of default, i.e., the due date of handing over the possession, as 31.03.2023.
- xxiv. That it is submitted that the above-mentioned Claim Petition No. IB/48/(ND)/2025 is listed on 24.04.2025 before the Hon'ble NCLT, New Delhi.

- xxv. That the stand to the allottees are contradictory with respect to the due date of possession in two different competent authorities i.e. before HARERA, Gurugram, they are claiming interest on delayed possession from September 2020, whereas before Ld. NCLT they admitted Due Date of Possession as 31.03.2023. Hence, there is huge descepcency in admitted the due date of possession and therefore, due date of possession in the present case which is alleged as 16.09.2020 is false and wrong.
- xxvi. That the Complainant has hopelessly delayed in making the payment of the balance installment to the Respondent and hence the unit of the Complainant is liable to be canceled in terms of Clause 5(iii) i affordable housing policy and the clause 3.7 of the BBA.
- xxvii. That it is clearly evident that the Complainant despite all the reminders failed to make payment against the instalment. That the Respondent earnestly requested the Complainant to make payment. However, the Complainants did not pay any heed to the legitimate, just and fair requests of the Respondent. All requests of the Respondent to make payment fell on deaf ears of the Complainant. The Respondent has yet not cancelled the Unit in dispute till date and the Complainant should clear all his outstanding dues as per the BBA and take the possession of the Unit.
- xxviii. The above-mentioned provisions note the mandatory obligation of the Complainant to make the due payments against the Unit, which under no circumstance whatsoever, can be escaped.
- xxix. 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 of installments. The Complainant is responsible for all the consequences of breach of the Buyer's Agreement and violation of RERA

- xxx. That the Complainant has intentionally distorted the real and true facts in order to generate an impression that the Respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the Complainant to institute or prosecute the instant complaint. The Complainant has preferred the instant complaint on absolutely false and extraneous grounds in order to needlessly victimize and harass the Respondent
- xxxi. That in light of the *bona fide* conduct of the Respondent, the fact that no delay has been caused to the Complainant. The non-existence of cause of action this Complaint is bound to be dismissed with costs in favour of the Respondent
- xxxii. Without prejudice, assuming though not admitting, relief of delayed possession charges, if any, cannot be paid without adjustment of the outstanding installment from the due date of installment along with the interest at the rate of 15%.
- xxxiii. 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 installment till the date of realization of amount. Further delayed interest if any has to be calculated only on the amounts deposited by the Allottees/Complainants towards the sales consideration of the Unit in question and not on any amount credited by the Respondent, or any Payment made by the Allottees/Complainants towards Delayed Payment Charges (DPC) or any Taxes/Statutory payments, etc.**
- xxxiv. That in light of the *bona fide* conduct of the Respondent and no delay for development of Project as the Respondent was severely affected by the force

majeure circumstances and no cause of action to file the present complaint this Complaint is bound be dismissed in favor of the Respondent.

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.1 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 Direct the respondent to pay interest Interest for every month of delay at Prevailing rate of interest from the due date of possession i.e., 16.09.2020 till actual handing over of the possession as per the provisions of the RERA Act, 2016 and Haryana RERA Rules, 2017

16. The factual matrix of the case reveals that the complainant was allotted unit no. E-53, 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 ₹22,76,731/- towards the subject unit.
17. The Authority notes that a final reminder letter dated 16.0.2024 was being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make a payment of ₹9,94,075/- within a period of 15 days of the said reminder, it shall result in automatic cancellation of the allotment without any further notice of communication by the respondent. Thereafter, the respondent made a publication in the newspaper "AAJ SAMAJ" on 16.10.2024 as required under Affordable Group Housing Policy, 2013. The said publication also stated that failure to make payment within the stipulated period would lead to automatic cancellation of the allotment, without any further notice or communication by the respondent. Thereafter a letter dated 27.11.2024 was sent by the respondent giving an opportunity to the complainant to clear the outstanding dues and upon non-payment of the same.

18. The foremost question which arises before the authority for the purpose of adjudication is that "whether the said publication would tantamount to a valid cancellation in the eyes of law or not?"

19. Clause 5(iii) (i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:-

*"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a **reminder** may be issued to him for depositing the due instalments within a **period of 15 days** from the date of issue of such notice. If the allottee still defaults in making the payment, the **list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State** for payment of due amount **within 15 days** from the date of publication of such notice, **failing which allotment may be cancelled**. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list."*

20. The Authority observes that the respondent issued "Final Reminder Letter" dated 31.08.2024, directing the complainant to clear the outstanding dues amounting to ₹9,94,075/-. It is pertinent to mention here that the complainant had already paid an amount of ₹22,76,731/- (i.e., 87.09%) against the total consideration of ₹26,13,949/- to the respondent. Perusal of case file reveals that the demand raised by the respondent via letter dated 31.08.2024 was towards the payment of last instalment accompanied with interest on delay payments. Therefore, the rate of interest chargeable from the allottee by the promoter, in case of default, if any shall be charged at the prescribed rate i.e., 10.90% 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) of the Act. Also, the respondent is obligated to raise last demand only in accordance with the builder buyer agreement and as per Affordable Housing Policy, 2013

- and shall not charge anything from the complainant which is not the part of the builder buyer agreement and under the Affordable Housing Policy, 2013.
21. The Authority further notes that the complainant has paid approximately 87% of the sale consideration, and 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. Thereafter, 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. Despite this, the respondent chose to cancel the unit on grounds of non-payment, while neglecting its own obligations. Such actions by the respondent displays bad faith, as it failed to adjust the delay period interest.
22. 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)

23. 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.
24. 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.
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:** 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)

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., 12.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.

31. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) The rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.90 % by the respondent which is the same as is being granted to them in case of delayed possession charges.
33. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement.
34. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at the prescribed rate of interest i.e., @ 10.90% 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.II Direct the respondent to handover actual physical possession of the booked unit and execution of conveyance deed.

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 complainant.
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.

H. Directions of the authority

39. 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 being bad in the eyes of law. 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 10.90% 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., 10.90% 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.

40. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

41. Files be consigned to the registry.



(Ashlok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2025

HARERA
GURUGRAM