BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 18.12.2025

NAME OF THE BUILDER		**SUNRAYS HEIGHTS PRIVATE LIMITED**
PROJECT NAME		**"63 Golf Drive"** **Situated at: Sector 63A, Gurugram, Haryana**
S. No.	**Case No.**	**Case title**
1.	**CR/1491/2024**	Deepti Gupta Vs. M/s Sunrays Heights Private Limited
2.	**CR/1492/2024**	Shreya Sahu and Sahil Gupta Vs. M/s Sunrays Heights Private Limited
3.	**CR/1494/2024**	Vinod Gupta Vs. M/s Sunrays Heights Private Limited
4.	**CR/1496/2024**	Radha Krishan Gupta Vs. M/s Sunrays Heights Private Limited

APPEARANCE:

Shri Varun Chugh (Advocate) **Complainants**
Shri Tushar Behmani (Advocate) **Respondent**

CORAM:

Shri Phool Singh Saini **Member**

ORDER

1. This order shall dispose of the aforesaid 4 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 and others.

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 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."
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**

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Due date of possession/ Offer of possession/ Date of Publication	Total sale consideration and Total amount paid by the complainant in RS.
1.	CR/1491/2024 Deepti Gupta Vs. M/s Sunray Heights Private Limited **DOF:** 12.04.2024 **RR:** 13.09.2024	F-88, Tower-F 356.18 sq. ft. (carpet area) 69.84 sq. ft. (balcony area) [Page no. 29 and 30 of complaint]	**AL:-** 26.10.2018 [Page 13 of complaint] **BBA** 16.10.2018 [As per stump paper at page 15 of complaint]	**Due date of possession:** 16.03.2021 **OOP:** Not Offered **Publication in newspaper:** 21.06.2024 (Page no. 14 of the application dated 18.07.2024 filed by the complainant)	**TSC:** **Rs.15,77,420/-** **AP:** **Rs.17,93,644/-** [As per applicant file dated 31.05.2024, at page no. 7 of the application dated 18.07.2024 filed by the complainant]
2.	CR/1492/2024 Shreya Sahu and Sahil Gupta Vs. M/s Sunray Heights Private Limited **DOF:** 12.04.2024 **RR:** 13.09.2024	J-111, Tower-J 356.18 sq. ft. (carpet area) 69.84 sq. ft. (balcony area) [Page 32 of complaint]	**AL:-** 29.11.2019 [Page 14 of complaint] **BBA** 29.11.2019 [As per stump paper at page 18 of complaint]	**Due date of possession:** 16.03.2021 **OOP:** Not Offered **Publication in newspaper:** 21.06.2024 (Page no. 17 of the application dated 18.07.2024 filed by the complainant)	**TSC:** **Rs.15,77,420/-** [As per applicant file dated 31.05.2024, at page no. 7 of the application dated 18.07.2024 filed by the complainant] **AP:** **Rs.19,13,011/-** (As per receipt information at page no. 55 of reply)

3.	CR/1494/2024 Vinod Gupta Vs. M/s Sunray Heights Private Limited **DOF:** 12.04.2024 **RR:** 13.09.2024	D-108, Tower-D 356.18 sq. ft. (carpet area) 69.84 sq. ft. (balcony area) [Page 28 of complaint]	**AL:-** 26.10.2018 [Page 13 of complaint] **BBA** 15.10.2018 [As per stump paper at page 15 of complaint]	**Due date:** 16.03.2021 **OOP:** Not Offered **Publication in newspaper:** 21.06.2024 (Page no. 11 of the application dated 18.07.2024 filed by the complainant)	**TSC:** **Rs.15,77,422/-** **AP:** **Rs.17,28,124/-** [As per applicant file dated 29.05.2024, at page no. 7 of the application dated 18.07.2024 filed by the complainant]
4.	CR/1496/2024 Radha Krishan Gupta Vs. M/s Sunray Heights Private Limited **DOF:** 12.04.2024 **RR:** 13.09.2024	J-23, Tower-J 644.55 sq. ft. (carpet area) 87.74 sq. ft. (balcony area) [Page 28 of complaint]	**AL:-** 05.11.2018 [Page 13 of complaint] **BBA** **15.10.2018** [As per stump paper at page 14 of complaint]	**Due date:** 16.03.2021 **OOP:** Not Offered **Publication in newspaper:** 21.06.2024 (Page no. 14 of the application dated 18.07.2024 filed by the complainant)	**TC:** **Rs.28,32,832/-** [As per applicant file dated 09.08.2024, at page no. 61 of reply] **AP:** **Rs.32,31,134/-** [As per receipt information at page no. 62 of reply]

The complainant herein is seeking the following reliefs:

1. Direct the respondent to handover the physical possession of the unit in question to the complainant, after obtaining occupancy certificate;
2. Direct the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of the Act, 2016 and the Rules, 2017 made thereunder;
3. Direct to the respondent to repay the input tax credit received and pass on the benefit of such reduced cost to the complainant along with interest @ 18% p.a., towards delay in passing on such benefit, on each payment (with higher tax) made by the complainant from the date of each such payment, till the date of actual payment by the respondent.
4. Direct the respondent to pay a sum of Rs.50,000/- to the complainant towards the cost of the litigation;

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
OOP	Offer of possession

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/1491/2024 titled as "Deepti 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/1491/2024 -"Deepti Gupta V/s. Sunrays Heights Private Limited"

S. No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 63A Gurugram
2.	Nature of the project	Affordable group housing
3.	RERA registered or not registered	249 of 2017 dated 26.09.2017 valid up to 25.09.2022
4.	DTCP license	82 of 2014 dated 08.08.2014 valid up to 31.12.2023
5.	Unit no.	F-88, in tower-F (Page no. 29 of complaint)
6.	Unit admeasuring	356.18 sq. ft. (carpet area) 69.84 sq. ft. (balcony area) (Page no. 30 of complaint)
7.	Allotment Letter	26.10.2018 (Page no. 13 of complaint)
8.	Date of execution of Buyers agreement	16.10.2018 (As per stump paper at page 15 of the complaint)
9.	Possession clause	**4.1** ***The Developer shall endeavor to handover possession of the said flat within a period of four years i.e. 48 months from the date of commencement of project, subject to force majeure & timely payments by the allottee towards***

		the sale consideration, in accordance with the terms as stipulated in the present agreement. *(Page 19 of complaint)*
		****Note-**: As per affordable housing policy 2013* *1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the **"date of commencement of project"** for the purpose of this policy. The licence shall not be renewed beyond the said 4 years from the date of commencement of project.*
10.	Date of building plan	10.03.2015 (Page no. 28 of reply)
11.	Date of environment clearance	16.09.2016 (Page no. 34 of reply)
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 price of the unit	Rs.14,59,640/- (As per annexure-A, at page no. 29 of the complaint)
14.	Total sale consideration	Rs.15,77,420/- (As applicant file dated 31.05.2024, at page 7 of the application dated 18.07.2024 filed by the complainant)
15.	Amount paid by the complainant	Rs.17,93,644/- (As applicant file dated 31.05.2024, at page 7 of the application dated 18.07.2024 filed by the complainant)
16.	Final reminder	14.05.2024 (Page no. 50 of reply)
17.	Newspaper publication	21.06.2024 (Page no. 14 of the application dated 18.07.2024 filed by the complainant)

18.	Occupation certificate	31.12.2024
19.	Offer of possession	Not on record
20.	Cancellation letter, if any	Not on record

B. Facts of the complaint

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

a) That, in the year 2016, the respondent company proposed to develop a residential project namely '63 Golf Drive' in land admeasuring approx. 5.90 acres situated at Sector-63 A, Village Ullahawas, Gurugram. The project was proposed to be developed under the Affordable Housing Policy 2013, issued by the Government of Haryana, vide Town and Country Planning Department Notification dated 19.08.2013. The respondent as per the provisions of the Affordable Housing Policy, 2013 undertook and was obligated to hand over the physical possession of the said affordable housing project in four year as per clause 1(iv) of the policy.

b) That, on such presentation of proposals/claims by the respondent, the complainant believing in the offer as genuine, coupled with the fact that it is under the affordable housing scheme' within the control of Government of Haryana, applied for a one BHK residential apartment ad-measuring 356.18 sq. ft. plus balcony area of 69.84 sq. ft., accompanied with a two-wheeler parking space vide application bearing no. SGD(G)0120 in September 2018, by submitting the prescribed 5% of the sale consideration. Thereafter, the complainant was allotted unit no. F-088, 1 BHK, Type-A in tower F, admeasuring 426.02 sq. ft. having a total cost of Rs.14,59,640/- excluding taxes.

c) That, adhering to the time payment schedule under the published policy, the complainant further paid to the respondent 20% of the total sale consideration and after remitting the total 25% i.e. (5% at the time of the

application + 20% after the selection in the draw) of the total sale consideration, the respondent herein issued an letter dated 26.10.2018 allotting the complainant above said residential apartment.

d) That, thereafter, in October 2018 itself, the complainant entered into a builder buyer's agreement with the respondent and as per the terms of the agreement, the respondent was liable to handover the possession of the unit within 48 months from the date of commencement of the project. It is pertinent to mention here that the date of obtaining environmental clearance for the project in question is 29.09.2016.

e) That, the complainant with a desire to aware herself w.r.t the stage of construction, visited the project site, and she was in utter shock as the construction of the said project was not up to the claimed stage. On witnessing the same, she reached out to the respondent hoping to get the genuine reason for such delay and the actual timeline for completion of the project, but no heed was paid to her concerns. However, it was assured by the respondent that the physical possession of the said project would be handed over to the allottee(s), within stipulated time as per terms of the policy.

f) That, believing upon the assurances of the respondent, the complainant kept on making the payments of instalments and upon instructions of the promoter made a substantial payment towards the cost of the property including taxes i.e. Rs.13,80,371/-. It is important to state here that the balance payment has not been paid by the complainant since the same has not been demanded by the respondent as no demand letter has been sent to or received by the complainant.

g) That, the respondent has breached the terms and provisions of the Affordable Housing Policy 2013, issued by Government of Haryana as well as

the fundamental term of the contract by inordinately delaying in delivery of the possession by 36 months i.e. 48 months from the date of obtaining environmental clearance which was obtained on 29.09.2016 plus 6 months grace period on account of covid-19 pandemic as per the government notification dated 09/3-2020. It is pertinent to mention here that the possession of the property in question has still not been offered to the complainant.

h) That, vide Notifications No. 3 to 8/2019-Central Tax (Rate) all dated 29.03.2019 and Notifications No. 3 to 8/2019-Integrated Tax (Rate) all dated 29th March, 2019, by the appropriate Govt. authority, the option of concessional GST rate of 1% in the affordable housing project has been allowed to Respondent, though the Respondent has not opted for the same. In fact, as per the option available in the said notification, the Respondent had in fact opted for the existing higher rate of the GST i.e. 8% and charged GST from the complainant @ 8%, so that the Respondent can claim ITC (input tax credit) on its input services and materials provided by its various suppliers. By the virtue of claiming the ITC, Respondent's actual cost against complaint's unit has been reduced substantially and the said input tax credit has not been refunded to the complainant.

i) That, the complainant has lost all faith in the respondent and has till date not received physical possession of the flat allotted to her. Neither, the respondent is willing to pay the delay possession interest. Therefore, after having no other remedy, the complainant herein has come before this authority to seek justice against the atrocity committed by the respondent.

j) That, the respondent had committed gross violation of the provisions of section 18(1) of the Act by not handing over the timely possession of the

property in question and not giving the interest and compensation to the buyers.

k) That, the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed. The respondent has resorted to misrepresentation. The complainant, therefore, seek direction to the respondent to handover the physical possession of the unit in question after obtaining the Occupancy certificate and pay interest @ 18% p.a. as payment, towards delay in handing over the property in question, from the due date of possession, till the date of actual handing over of possession of the property.

C. Relief sought by the complainant

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

i. Direct the respondent to handover the physical possession of the unit in question to the complainant, after obtaining occupancy certificate;

ii. Direct the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of the Act, 2016 and the Rules, 2017 made thereunder;

iii. Direct to the respondent to repay the input tax credit received and pass on the benefit of such reduced cost to the complainant along with interest @ 18% p.a., towards delay in passing on such benefit, on each payment (with higher tax) made by the complainant from the date of each such payment, till the date of actual payment by the respondent.

iv. Direct the respondent to pay a sum of Rs.50,000/- to the complainant towards the cost of the litigation.

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 the complainant vide an application form applied to the respondent for allotment of a unit and was allotted a unit bearing no. F-088 in tower F, having carpet area of 356.18 sq. ft. and balcony area of 69.84 sq. ft. vide allotment letter dated 26.10.2018. 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.

b) Thereafter, a builder buyer agreement was executed between the parties in October 2018. The agreement was consciously and voluntarily executed between the parties and terms and conditions of the same are binding on the parties.

c) 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.

d) 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. This 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.

e) 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.

f) 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.

g) 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.

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 the 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 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 numbers of cases.

k) 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.

l) 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.

m) 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.

n) 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.

o) 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.

p) That the respondent company has sent Final reminder letter dated 14.05.2024 as per Affordable Group Housing Policy 2013 to the complainant even after waiting for long to clear his outstanding dues and repeated reminders and intimated him if the outstanding as demanded is not cleared then the allotment shall stands cancelled.

q) Despite all reminders failed to make payment against the installment. The respondent earnestly requested the complainant to make payment. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent company. All requests of the respondent to make payment fell on deaf ears of the complainant.

r) That this Authority has adjudicated similar issues of termination /cancellation and has upheld the same noting the default on part of the Complainant. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation is valid. That without prejudice, assuming though not admitting, relief of delayed possession charges, if any, cannot be paid without adjustment of outstanding instalment from due date of instalment along with interest @15% p.a.

s) That, moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, the unit of complainant can be retained only after payment of interest on delayed payments from the due date of instalment till the date of realization of amount. Further delayed interest if any must be calculated only on the amounts deposited by the complainant towards the sales consideration of the unit in question and not on any amount credited by the respondent, or any payment made by the complainant towards delayed payment charges or any taxes/statutory payments, etc.

t) 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 favour of the respondent.

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 handover the physical possession of the unit in question to the complainant, after obtaining occupancy certificate;

G.II Direct the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of the Act, 2016 and the Rules, 2017 made thereunder

18. The factual matrix of the case reveals that the complainant was allotted unit no. F-88, Tower- F admeasuring carpet area of 356.18 sq. ft. and a balcony area of 69.84 sq. ft., in the respondent's project at total sale price of Rs.15,77,420/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties in 16.10.2018. (as per stump paper generated date) The possession of the unit was to be offered by 16.03.2021 as delineated herein below. The complainant paid a sum of Rs.17,93,644/- towards the subject unit.

19. On the document available on record and submission made by both the parties, the Authority observes that a letter dated 14.05.2024 issued by the respondent as "final reminder". A final reminder letter dated 14.05.2024 was being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make a payment of Rs.4,39,451.38/- at the earliest as you have already made grave delay in clearing the outstanding payment. That due to the deliberate breach of the terms and conditions of the builder buyer's agreement and the Policy, 2013 by you, the undersigned company/promoter has a right to take further action in accordance with the terms of the builder buyer's agreement and the Policy of 2013. Thereafter, the respondent made a publication in the newspaper "AAJ SAMAJ" on 21.06.2024 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.

20. 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?"

21. 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."*

22. The Authority observes that the respondent issued "Final Reminder Letter" dated 14.05.2024, directing the complainant to clear the outstanding dues amounting to Rs.4,39,451.38/-. It is pertinent to mention here that the complainant had already paid an amount of Rs.17,93,644/- (i.e., morethan the sale consideration) against the total consideration of Rs.15,77,420/- to the respondent by 30.05.2024. Perusal of case file reveals that the demand raised by the respondent via letter dated 14.05.2024 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., 10.80% 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. 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.

23. Further, the Authority vide order dated 23.04.2024 in *M.A. No. 233/2024* in *CR/1244/2022* titled *"Sixty-Three Golf Drive Flat Buyers Association vs. Sunrays Heights Private Ltd."*, and also *in CR/1474/2024*, titled as *Avindra Kumar Singh Vs. Sunrays Heights Pvt. Ltd.* wherein a clear directive was issued restraining the respondent from cancelling the allotment of any unit in cases where more than 85% of the sale consideration had already been paid by the allottee, and without adhering to the due process stipulated under the Affordable Housing Policy.

24. The Authority further notes that the complainant has paid more than 100% 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.

25. 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)***

26. 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.

27. 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.

28. 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."*

29. **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)***

30. 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**.

31. **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."*

32. 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.

33. 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., 18.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

34. 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;"

35. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent which is the same as is being granted to them in case of delayed possession charges.

36. On 18.07.2024, the complainant filed an application, w.r.t. direct the respondent to refund the excess amount of Rs.2,16,224/- arbitrarily charged from the complainant under the guise of delay interest. The details of the sale consideration and amount paid by the allottee in each case are provided herein below:-

S. No.	Complaint no.	Total sale consideration	Amount paid by the complainant
1.	CR/1491/2024	Rs.15,77,420/-	Rs.17,93,644/-
2.	CR/1492/2024	Rs.15,77,420/-	Rs.19,13,011/-
3.	CR/1494/2024	Rs.15,77,422/-	Rs.17,28,124/-
4.	CR/1496/2024	Rs.28,32,832/-	Rs.32,31,134/-

37. As per clause 1.8 and 1.9 of the buyer's agreement the sale consideration shall mean the total payment to be made by the allottee to the developer. It shall be the sum of total price and any other amount/charges, including but not limited to, taxes, E.D.C./I.D.C., or any other amount, taxes or charges as levied by the developer/Government authorities. The relevant clause 1.8 of the BBA is reproduce herein below:-

***1.8. "Sale Consideration"** shall mean the total payment to be made by the allottee to the developer. It shall be the sum of total price and any other amount/charges, including but not limited to, taxes, E.D.C./I.D.C., or any other amount, taxes or charges as levied by the developer /Government authorities.*

"SALE CONSIDERATION = TOTAL PRICE + APPLICABLE TAXES & OTHER CHARGES"

1.9 "Total Price" *shall mean the sum of the cost of carpet area and balcony area and shall be computed by using the following formula*

"TOTAL PRICE = CARPET AREA (IN SQ. FT.) X RS.4000/- + BALCONY AREA (IN SQ. FT.) X 500/-"

38. In view of the above clause, the Authority observes that the sale consideration is exclusive of GST, Service Tax, VAT, and other levies, duty if applicable and the respondent is well within right to claim such amount as agreed between the parties and the same shall be payable by the allottee over and above the sale consideration. However, the respondent is directed to furnish the details of payment of such taxes paid to the concerned Authority. If the respondent /promoter failed to provide the details of taxes as well as applicable charges as per the law of land then the respondent shall refund the excess amount.

39. 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. 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., @ 10.80% 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.

Further, the grievance of the complainant is that the physical possession has not been handed over by the respondent to the complainant.

40. 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.

41. 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.

42. 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 to the respondent to repay the input tax credit received and pass on the benefit of such reduced cost to the complainant along with interest @ 18% p.a., towards delay in passing on such benefit, on each payment (with higher tax) made by the complainant from the date of each such payment, till the date of actual payment by the respondent.

43. The Authority observes that the possession of the subject unit was required to be delivered by 16.03.2021 and the incidence of GST came into operation

thereafter on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees where the same was leviable, at the applicable rate, the respondent-builder has to pass on the benefit of input tax credit to allottees as per applicable GST rules subject to furnishing of such proof of payments and relevant details. However, pertaining to the share of the complainant-allottee, if any amount has been charged over and above the applicable rate mentioned in input tax credit, the complainant-allottee can approach the competent forum for refund of the same.

G.IV. Direct the respondent to pay a sum of Rs.50,000/- to the complainant towards the cost of the litigation.

44. The complainant is also seeking relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.*** (supra) has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the authority

45. 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 if any is hereby set aside being bad in the eyes of law. The respondent is directed to reinstate the subject unit within a period of 30 days from the date of this order. Further, the respondent is directed to pay

interest on the amount paid by the complainant at the prescribed rate of 10.80% 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 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, ibid.

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., 10.80% 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. Further, no interest shall be payable by both the parties for delay, if any between 6 months Covid period from 25.03.2020 to 24.09.2020.

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.

46. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of amount paid along with due date have been specified.

47. Complaint as well as applications, if any, stand disposed off accordingly.

48. Files be consigned to the registry.

Dated: 18.12.2025

(Phool Singh Saini)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram