

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

Complaint no.: 1170 of 2025
Complaint filed on: 24.03.2025
Date of first Hearing: 25.06.2025
Date of order: 16.12.2025

Ravinder Kumar

R/o- Village Jarola, P.O. Patli Station,
District Gurugram

Complainant

Versus

M/s Sunrays Heights Private Limited

Registered Office: 211, 2nd Floor,
Ansal Bhawan, 16 Kasturba Gandhi
Marg, New Delhi 110001.

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Sh. Vishal Suhag (Advocate)
Sh. Tushar Bahmani (Advocate)

**Complainant
Respondent**

**HARERA
GURUGRAM
ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.



A. Unit and Project related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

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.	Unit no. 43, Tower E (BBA at page 35 of complaint)
6.	Unit admeasuring	613.31 sq. ft. (carpet area) 95.10 sq. ft. (balcony area) (BBA at page 35 of complaint)
7.	Date of execution of Buyers agreement	09.01.2017 (As per stamp paper annexed to BBA at page 21 of complaint)
8.	Possession clause	<p>4. POSSESSION</p> <p><i>"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."</i></p> <p>(page 25 of complaint)</p> <p>*As per Affordable Housing Policy 2013</p> <p><i>1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of 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.</i></p>



9.	Date of building plan	10.03.2015 (Taken from another complaint pertaining to same project)
10.	Date of environment clearance	16.09.2016 (Taken from another complaint pertaining to same project)
11.	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)
12.	Total sale consideration	Rs. 25,00,790/- (BBA at page 35 of complaint)
13.	Amount paid by the complainant	Rs.22,80,850/- (SOA dated 19.04.2025 at page 163 of reply)
14.	Publication in newspaper	16.10.2024 (Page 90 of reply)
15.	Final Reminder to clear outstanding dues of Rs.21,12,665/-	31.08.2024 and 27.11.2024 (Page 57 and 59 of complaint, respectively)
16.	Cancellation Letter	08.02.2025 (page 62 of complaint)
17.	Occupation Certificate	31.12.2024 (Page no. 12-13 of Reply to application under section 36 filed by respondent on 23.04.2025 and page 94 of reply)
18.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

a) That the complainant submitted Application No. SGD(B)-6027 corresponding to Customer ID SGDC8583 in 2015 to the respondent for the allotment of Type 2A residential apartment having a tentative carpet area of 598 sq. ft. and tentative balcony area of 95 sq. ft. Towards his application, the complainant paid Rs. 1,20,000/- to the respondent through cheque bearing no. 035323 dated 17.04.2015 drawn on SBI Farukh Nagar branch on A/c No. SB 20031606302. Subsequently, the complainant was allotted a residential unit bearing No. E-43 carpet area



of 613.31 sq. ft. and priced @ Rs. 4,000/- per sq. ft. along with balcony area of 95.10 sq. ft. priced at Rs. 500/- per sq. ft. Thus, the total sale consideration for the residential unit was Rs.25,00,790/-. Pursuant to his application, the complainant was issued a provisional allotment letter dated 11.01.2016 by the respondent asking him to pay Rs. 1,25,039/- at the time of allotment of which, the complainant paid Rs. 1,20,000/- on 17.04.2015. The complainant was further supposed to pay a sum of Rs. 5,56,995/- within 15 days from the date of allotment, i.e., by 26.01.2016.

- b) That the complainant paid Rs. 5,56,995/- to the respondent by way of cheque bearing no. 000029 dated 09.02.2016 drawn on Andhra Bank Sector 46, Gurugram branch on A/c No. 187411100000593 held by Akash Carrier (the Proprietorship of Complainant) and signed by the complainant. He also paid Rs. 250/- separately.
- c) That the complainant received a demand letter dated 18.10.2016 from the respondent for an amount of Rs. 3,19,844/-. Towards the said demand, the complainant paid Rs. 3,19,845/-, inclusive of penal interest.
- d) That the total sale consideration for the residential unit was Rs. 25,00,790/-. In accordance with Section 13 of the Real Estate (Regulation and Development) Act, 2016, the respondent was entitled to receive only 10% of the total sale consideration without executing a written agreement. However, the respondent in flagrant violation of the same, continued to receive sums beyond 10% of the total sale consideration without executing a written agreement with the complainant. Prior to execution of the written agreement, the respondent had received Rs. 9,96,090/- which was approximately 40% of the total sale consideration.

- e) That upon protest by the complainant, the respondent executed an undated and unattested Builder Buyer Agreement for which it provided a separate, blank stamp paper of Rs. 100/- dated 09.01.2017.
- f) That seeing a complete standstill of development at the project site, the complainant withheld the payments to the respondent until he was assured of resumption of construction activities.
- g) That Haryana Govt. through Memo no. Misc-2307/8/26/2017-2TCP dated 09.07.2018 had amended the Affordable Housing Policy-2013 published vide notification dated 19th August 2013 under Section 9-A of Haryana Development and Regulation of Urban Areas Act, 1975 (Act No. 8 of 1975) to the effect:

"In clause no. 5(iii) b of the Affordable Housing Policy, 2013, the words "Any default in payment shall invite interest @15% per annum." shall be replaced by the following words, "Any default in payment will bear penal interest as provided in Rule 15 of the Haryana Real Estate Regulatory Authority, Rules, 2017."

According to the amendment, interest of 10.45% per annum (SBI MCLR for 3 years as on July 2018 + 2%) would have been applicable to the case of complainant for delayed payment of EMIs. However, the respondent continued to impose interest of 15% per annum upon the complainant.

- h) That the respondent was obligated to deliver the possession of the allotted flat within 4 years (48 months) from the date of commencement of project, subject to force majeure. The respondent obtained its Environmental Clearance on 16.09.2016 on account which the respondent was supposed to deliver the possession to the complainant on or before 16.09.2020. However, the same was extended by 6 months by virtue of HARERA Notification No. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020 on account of force majeure conditions due to outbreak of COVID-19 pandemic.



Accordingly, the date of delivery of possession was extended to 16.03.2021.

- i) That on 01.02.2023, the respondent issued a demand letter to the complainant raising a demand of Rs. 19,00,074/- comprising of Principal outstanding amount of Rs. 12,84,010/- and interest of Rs. 6,16,064/-. Upon resumption of the construction, the complainant duly paid Rs.12,84,010/- to the respondent on 07.02.2023.
- j) That the complainant refused to bear the interest component demanded by the respondent because the respondent had not applied for OC even at the time of receipt of this amount. It is pertinent to mention that the respondent applied for OC on 08.12.2023.
- k) That on 31.08.2024, the respondent issued a final reminder to the complainant making false and frivolous assertions against the complainant and raising an illegal demand of 75% of the total sale consideration equivalent to Rs. 21,12,665/- even though the complainant had paid a total amount of Rs. 22,80,100/- had been paid by the complainant which is 91 % of the Total Sale Consideration of Rs. 25,00,790/-. It is pertinent to mention that the respondent had not received OC for the project even by this date.
- l) That on 27.11.2024, the respondent reiterated its demand under final reminder dated 31.08.2024 despite being apprised about the payments made by the complainant. The respondent claims to have received the OC for the project on 31.12.2024.
- m) That the respondent sent another letter reiterating its unlawful demands vide letter dated 20.01.2025. The complainant responded to the said letter with his reply dated 01.02.2025.



- n) That the respondent responded to the complainant's reply vide letter dated 08.02.2025 intimating cancellation of his unit, asking him to return the original documents and to collect the refund cheque for his unit. It is submitted that the respondent deviously omitted any responses to the contentions raised by the complainant and reiterated its unlawful demands.
- o) That the cause of action to file present complaint firstly arose in the month of December, 2016 when the respondent accepted nearly 40% of the total sale consideration without executing a written agreement with the complainant in violation of Section 13 of the Real Estate (Regulation and Development) Act, 2016. Secondly, it arose on 16.03.2021 when the respondent failed to obtain the OC of the project and missed its deadline of 48 months within which to deliver the possession of the allotted unit despite extension being granted by this Authority. Further, it has also arose during every month since March 2021 since the respondent stopped the payment of the assured return to the complainant and finally on 08.02.2025 when the respondent cancelled the allotment.

C. Relief sought by the complainant

- 4. The complainant has sought following relief(s):
 - I. To set aside the cancellation dated 08.02.2025 by the respondent for the unit allotted by it to the complainant which is a residential flat bearing no. E-43 carpet area of 613.31 sq. ft. along with balcony area of 95.10 sq. ft.
 - II. To direct the respondent to pay an interest of 11% per annum upon the paid amount of Rs.22,80,100/- for delay in delivery of possession w.e.f. promised date of possession i.e., 16.03.2021 till date of realization of payment.
 - III. Direct the respondent to properly compute the outstanding dues and raise a valid demand before the complainant after preparing a fresh SOA.

IV. To direct the respondent to deliver the possession of the allotted residential flat bearing no. E-43 carpet area of 613.31 sq. ft. and priced @ Rs.4,000/- per sq. ft. along with balcony area of 95.10 sq. ft. priced at Rs.500/- per sq. ft.

5. 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

6. The respondent has contested the complaint on the following grounds.

- That the complainant vide an application form SGDB-5381 applied to the respondent for allotment of a unit and was allotted a unit bearing no. E-43 in tower E, having carpet area of 613.31 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.
- Thereafter, an agreement to sell dated 09.01.2017 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.
- 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. 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.

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 26.7.2019 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 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.
- j) 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.

- k) 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.
- l) 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.
- m) 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.

- n) That the respondent sent a final reminder dated 31.08.2024 to clear the outstanding dues as per the relevant clauses of the Affordable Housing Policy, 2013 wherein if the instalments are not paid timely, the respondent shall cancel the unit allotted to the complainant.
- o) That in complete default the complainant failed to make payment, the respondent also made publication in local newspaper on 06.04.2024 and again requested him to clear the outstanding dues within 15 days from the date of said publication else, the allotment would be cancelled as per the policy.
- p) That hundreds of allottees of the project in dispute have filed a claim petition 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 that the allottees in this claim petition have admitted the date of default i.e., the due date of possession as 31.03.2023.
- q) That the stand of the allottees is contradictory with respect to the due date of possession in two different competent authorities i.e., before HARERA, Gurugram they are claiming delayed interest from September 2020 whereas before NCLT admitted due date of possession is 31.03.2023.
- r) That this Hon'ble 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.
- s) 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 along with interest @15% p.a.

- t) 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.
- u) 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.

7. 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.

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district.

Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

Section 11(4)(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.

11. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I To set aside the cancellation dated 08.02.2025 by the respondent for the unit allotted by it to the complainant which is a residential flat bearing no. E-43 carpet area of 613.31 sq. ft. along with balcony area of 95.10 sq. ft.

F.II To direct the respondent to pay an interest of 11% per annum upon the paid amount of Rs.22,80,100/- for delay in delivery of possession w.e.f. promised date of possession i.e., 16.03.2021 till date of realization of payment.

F.III Direct the respondent to properly compute the outstanding dues and raise a valid demand before the complainant after preparing a fresh SOA.

12. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

13. The factual matrix of the case reveals that complainant was allotted unit no. E-43, 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 Rs.25,00,790/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties on 09.01.2017. The possession of the unit was to be offered within 4 years from approval of building plans (10.03.2015) or from the date of environment clearance (16.09.2016), whichever is later, which comes out to be 16.09.2020 calculated from the date of environment clearance being later. Further, as per ***HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 06.09.2020 i.e., after 25.03.2020.*** Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over possession comes out to be 16.03.2021. The complainant paid a sum of Rs.22,80,100/- towards the subject unit and is ready and willing to retain the allotted unit in question.

14. The respondent submitted that the complainant has instituted proceedings before the Hon'ble National Company Law Tribunal (NCLT), Delhi Bench in Case No. IB-48 of 2025, seeking a refund along with interest at the rate of 24% per annum. It was further submitted that in the said NCLT

proceedings, the date of default has been stated as 31.03.2023, whereas in the present complaint before this Authority, the complainant has asserted the due date as 16.03.2021 and have sought relief in the form of delayed possession charges and delivery of possession.

15. The Authority is of the considered view that the complaint filed before this Authority is with respect to the statutory provisions under the Real Estate (Regulation and Development) Act, 2016 which is a special Act to regulate and promote the real estate sector and to ensure sale of plot, apartment or building, as the case may be in an efficient and transparent matter and to protect the interest of consumers in the real estate sector. It is noted that the objective and scope of the Insolvency and Bankruptcy Code, 2016 (IBC) are distinct and serve a different legal purpose. It is further observed that the matter before the Hon'ble NCLT is presently at the stage of admission and no order initiating Corporate Insolvency Resolution Process (CIRP) against the respondent has been passed as on date. Therefore, at this juncture, there exists no bar under any law that prevents this Authority from proceeding to adjudicate the present complaint(s) on merits.

16. The complainant is seeking a direction to quash the cancellation letter dated 08.02.2025 issued by the respondent. A final reminder letter dated 31.08.2024 was being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make a payment of ₹21,12,665/- 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 on 16.10.2024 as required under Affordable Group Housing Policy, 2013. 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, the respondent issued a letter dated 08.02.2025 confirming cancellation and requesting the complainant allottee to collect cheque of refunded amount.

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

19. The Authority observes that the respondent issued "Final Reminder Letter" dated 31.08.2024, directing the complainant to clear the outstanding dues amounting to ₹21,12,665/- . It is pertinent to mention here that the complainant had already paid an amount of ₹22,80,100/- (i.e., 91.1%) against the total consideration of ₹25,00,790/- to the respondent by 07.02.2023. 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., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed

possession charges as per Section 2(za) of the Act. 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.

20. The Authority takes serious note of the conduct of the respondent in wilfully violating the directions issued to it 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.***", 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. It has been observed that the notwithstanding this express direction, the respondent proceeded to cancel the allotments of various allottees in a blatant disregard of the said order. Such conduct not only amounts to a deliberate and conscious defiance of the Authority's directions but also reflects a lack of bona fide on the part of the respondent in its dealings with the allottees.
21. The Authority further notes that the complainant has paid approximately 91% 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., 16.12.2025

is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

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., 10.85 % 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., @ 10.85% 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*.

F.IV To direct the respondent to deliver the possession of the allotted residential flat bearing no. E-43 carpet area of 613.31 sq. ft. and priced @ Rs.4,000/- per sq. ft. along with balcony area of 95.10 sq. ft. priced at Rs.500/- per sq. ft.

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 on 31.12.2024.

38. Further, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation



certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

G. 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 obligation cast upon the promoter as per the function entrusted to the authority under Section 34(f) of the act of 2016:

- I. The cancellation is hereby set aside being bad in the eyes of law. The respondent is directed to reinstate the subject unit of the complainant. Further, the respondent is directed to pay interest on the amount paid by the complainant at the prescribed rate of 10.85% 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.



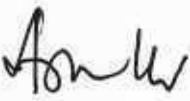
- III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- V. The respondent is directed to handover 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. Complaint stands disposed of.

41. File be consigned to registry.



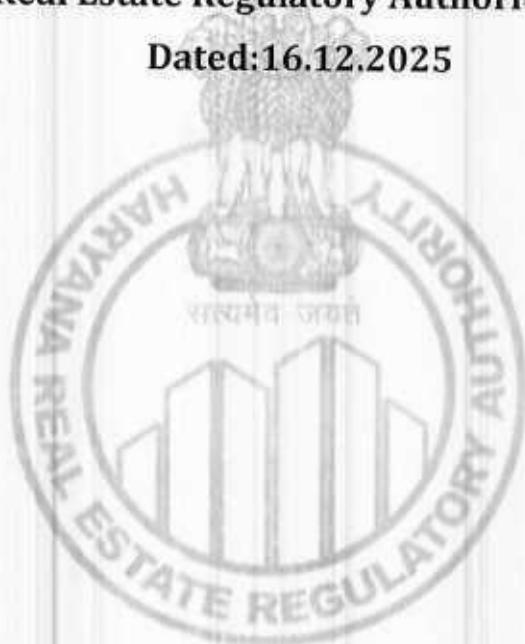
(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.12.2025



HARERA
GURUGRAM