

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

Date of decision: **12.09.2025**

NAME OF THE BUILDER		SUNRAYS HEIGHTS PRIVATE LIMITED	
PROJECT NAME		"63 Golf Drive" at Sector 63A, Gurugram, Haryana	
Sr. No.	Case No.	Case title	Appearance
1.	CR/6197/2024	Arijit Guha Vs. Sunrays Heights Pvt. Ltd.	Shri Vijay Pratap Singh, Advocate Shri Tushar Behmani, Advocate
2.	CR/5472/2024	Jyotsana Gupta Vs. Sunrays Heights Pvt. Ltd.	Shri Rajender Kumar, Advocate Shri Tushar Behmani, Advocate
3.	CR/6221/2024	Pankaj Kumar Vs. Sunrays Heights Pvt. Ltd.	Shri Vijay Pratap Singh, Advocate Shri Tushar Behmani, Advocate
4.	CR/6234/2024	Nikhil Kumar Vs. Sunrays Heights Pvt. Ltd.	Shri Vijay Pratap Singh, Advocate Shri Tushar Behmani, Advocate

CORAM:
Shri Arun Kumar

Chairman

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.
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	Particulars	CR/5472/2024	CR/6197/2024	CR/6221/2024	CR/6234/2024
1.	Complaint filed on	05.12.2024	24.12.2024	24.12.2024	24.12.2024
2.	Reply filed on	01.08.2025	27.06.2025	04.06.2025	27.06.2025
3.	Date of MOU / BBA	09.12.2016 (as per reply, page 36)	2016 (undated BBA — page 1 of agreement, complaint page 21)	2016 (undated BBA on page 24 of complaint)	27.01.2016 (as per BBA on page 21 of complaint)
4.	Unit No. & Size	D-32, Tower-D — 604.83 sq ft + 95.10 sq ft (on page 48 of reply)	A-77, Tower-A — 604.83 sq ft + 95.10 sq ft (complaint page 31)	D-64 — 361.89 sq ft + 68.84 sq ft (Page 37 of complaint)	G-17 — 613.31 sq ft + 95.10 sq ft (Page 34 of complaint)

	Due date of completion	16.03.2021	16.03.2021	16.03.2021	16.03.2021
5.	Total sale consideration	₹24,66,870/- (on page 48 of reply)	₹24,66,870/- (BBA on page 34 of complaint)	₹14,82,489/- TSP (Page 37 of complaint)	₹25,00,790/- (Page 34 of complaint)
8.	Total amount paid	₹31,60,870/- (SOA on page 176 of reply)	₹22,76,731/- (SOA on page 162 of reply)	₹13,50,064/- (SOA on page 174 of reply)	₹22,76,731/- (SOA on page 164 of reply)
9.	Occupation certificate	31.12.2024	31.12.2024 (reply page 96)	31.12.2024 (reply page 98)	31.12.2024
10.	Offer of possession	Not offered	Not offered	Not offered	Not offered
11.	Reliefs sought	<ul style="list-style-type: none"> • DPC • possession • Execute BBA • Restrain cancellation 	<ul style="list-style-type: none"> • DPC • possession • Copy of OC 	<ul style="list-style-type: none"> • DPC • possession • Copy of OC 	<ul style="list-style-type: none"> • DPC • possession • Restrain cancellation

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/6197/2024 titled as "Arijit Guha 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/6197/2024 - "Arijit Guha Vs. Sunrays Heights Private Limited"

S. N.	Particulars	Details
1.	Name of the project	63 Golf Drive, Sector-63-A, Gurugram, Haryana
2.	Project area	5.90 acres
3.	Nature of the project	Affordable group housing
4.	RERA registered or not registered	Registered vide registration no. 249 of 2017 dated 26.09.2017

	Validity status	25.09.2022
5.	DTPC License no.	82 of 2014 dated 08.08.2014
	Validity status	31.12.2023
6.	Unit no.	A-77, tower -A [Page 34 of complaint]
7.	Unit admeasuring	604.83 sq. ft. (Carpet area) 95.10 sq. ft. (Balcony area) [Page 34 of complaint]
8.	Provisional allotment letter	11.01.2016 [Page 18 of complaint]
9.	Allotment letter	10.08.2017 [on page 20 of complaint]
10.	Date of Builder Buyers agreement	2016 [As per resolution date on 1 st page of agreement as the BBA is undated on page 21 of complaint]
11.	Possession clause	<p>4. POSSESSION</p> <p><i>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 payment by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.</i></p> <p><i>[Page 24 of complaint]</i></p> <p>*Note: 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 license shall not</i></p>

		<i>be renewed beyond the said 4 years from the date of commencement of project.</i>
12.	Date of building plan	10.03.2015 [Page 45 of reply]
13.	Date of environment clearance	16.09.2016 [Page 51 of reply]
14.	Due date of possession	16.03.2021 Note: The due date is calculated from the date of environment clearance dated 16.09.2016 being later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020
15.	Total Sale Consideration	Rs. 24,66,870/- (TSP as per BBA on page 34)
16.	Amount paid by the complainant	Rs. 22,45,862/- (as per SOA on page 162 of reply)
17.	Reminder for payment	12.07.2024 [page 90 of reply]
	Final reminder	27.11.2024 [Page 93 of reply]
	Public notice through Newspaper	16.10.2024 [Page 92 of reply]
18.	Occupation certificate	31.12.2024 [as per 96 of reply]
19.	Offer of possession	Not offered

B. Facts of the complaint

6. The complainant has made following submissions in the complaint:
 - a) The respondent made advertisement in the newspaper Hindustan Times' with regard to the location, specification and amenities and time of completion of the project under the name affordable group housing colony commonly known as 63 GOLF DRIVE floated under Haryana Government's Affordable Housing Policy, located at sector 63A, Gurgaon, Haryana. That the complainant approached to the respondent for

booking of a 2-BHK Apartment, having carpet area of 604.83 sq ft and balcony area of 95.10 sq ft.

- b) The draw of the said project was held, wherein the complainant was allotted flat no A-77 at Tower A. That the respondent to dupe the complainant in their nefarious net even executed a one-sided builder buyer agreement signed between complainant and respondent through their authorised representative in year 2016, just to create a false belief that the project shall be completed in time bound manner, and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant. The apartment buyer's agreement was executed between the complainant and the authorised representative of the respondent. The basic selling price of the flat was Rs 24,66,870/- along with other taxes and charges payable. The complainant paid Rs22,45,862 to the builder till date of filing the case before Authority as and when the demand were raised by the respondent in time bound manner, as per the BBA clause no 4.1 the respondent was supposed to hand over the actual physical possession of the flat to the complainant latest by 16/09/2020.
- c) The complainant further submits that the BBA drafted is unilateral and biased as such it is not as per the approved model format as approved by the affordable housing policy 2013 and also by DTCP. The clause relating to raising demand periodically is well mentioned in the model agreement to sale as approved by the DTCP & AHP 2013, the model format of builder buyer agreement duly approved by affordable housing policy.
- d) The builder has raised 6 demand letter out of 7 demand as per the payment plan against the sales consideration to the buyers, and the complainant has paid the demand as and when raised thereafter after

2021 the respondent remain silent on the said subject and suddenly in year 2024 the respondent with all its malafide intention and also in order to extort huge amount of money from buyers came with a self-imaginary story under presumption that the buyer was supposed to make the payment themselves and the respondent was not obligated to raise any demand letters. It is also categorically stated that whenever the complainant asked for the last demand letter the respondent stated that the last demand letter shall be raised at the time of handing over possession, this shows that the respondent wants to encash the appreciation in price of the flats, but forgets that as on date the buyers has more than 90% stake on the said project and the whole structure being made from the capital paid by the buyers. The syphoning of money and diverting the said project money to other project is not hidden by the any one.

- e) The apartment buyer's agreement was executed between the complainant and the authorised representative of the respondent. That the total consideration of the flat was Rs 24,67,870/-and applicable taxes payable.
- f) That the complainant paid the demands notices raised by the respondent against the total flat consideration amount in time bound manner.
- g) That as per clause 4.1 of the BBA the respondent was liable to hand over the possession of a said unit before 16 September, 2020 considering the project commencement date from the date of Environment Clearance date 16/09/2016.
- h) As per the slow pace construction status and absence of basic amenities respondents are delayed heavily in giving possession. That complainant has fulfilled his responsibility in regard to making the necessary

payments in the manner and within the time specified in the said agreement. Therefore the complainant herein is not in breach of any of its terms of the Agreement.

- i) That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of BBA which consists of very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature. As every clause of the agreement is drafted in a one sided way, even a single breach of unilateral terms of builder buyer agreement by complainant, will cost him forfeiting of earnest money and about delay payment charges 15%. The respondent has not prepared the builder buyer agreement as per the terms and conditions mentioned under the Haryana Affordable Policy 2013 and also the builder buyer agreement not drafted as per the RERA act 2016.
- j) That keeping in view the snail-paced work at the construction site and half-hearted promises of the Respondent, the inconsistent and lethargic manner, in which the Respondent conducted its business and their lack of commitment in completing the Project on time, has caused the Complainant great financial and emotional loss.
- k) It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Authority as the apartment which is the subject matter of this complaint is situated in Sector 63A, Gurugram which is within the jurisdiction of this Authority.

C. Relief sought by the complainant

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

- I. To direct the respondent to pay interest at 8.65% per annum as per the prevailing rate of MCLR plus 2%, on paid up amount of Rs. 22,45,862/-

- for delay period starting from 16th Sept. 2020 till actual handover of possession by the respondent to the complainant.
- II. To direct the respondent to handover the actual; possession of the unit in habitable condition and amenities.
 - III. To direct the respondent not to create 3rd party rights and to maintain status quo of the said unit.
 - IV. To pay litigation expenses of Rs. 50,000/-.
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 approached the Respondent and expressed interest in booking an apartment in the affordable housing developed group housing developed by the Respondent known as "63 Golf Drive" situated in Sector 63, Gurugram Haryana. Before the booking, the complainant conducted extensive and independent inquiries regarding the project and only after being fully satisfied, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.
 - b. That thereafter the complainant, vide application form applied to the respondent for allotment of the unit. pursuant thereto residential flat bearing no. A-77, admeasuring carpet area of 604.83 sq. ft. and a 95.10 sq. ft. balcony was provisionally allotted on 11.01.2016. The respondent had no reason to suspect the *bonafide* of the complainant and proceeded to allot the unit in question in their favor.

- c. Thereafter, an agreement to sell was executed between the complainant and the respondent 2016. It is pertinent to mention that the Agreement was consciously and voluntarily executed between the Parties and the terms and conditions of the same are binding on the Parties.
- d. That the complainant duly executed the annexure - i mentioned in the allotment application which states that the entire project is governed by Affordable Housing Policy, 2013 and that the development and handing over of the possession is strictly dealt with as per the provisions envisaged under the said Annexure -I by way of an affidavit. This clearly shows that the complainant, from day one at the time of applying the allotment, knew about the terms and conditions of the Affordable Housing Policy, 2013, and chose to accept the same as it is.
- e. 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. That it is respectfully submitted that the rights and obligations of allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect. That as per clause 4.1 of the agreement 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. That it is also pertinent to note that the possession clause of the Agreement is with par with the clause 1(iv) of the Affordable Housing Policy 2013.
- f. That, the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance of the project 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. That it is pertinent to mentioned herein that the 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 25th March 2020, on account of unprecedented conditions due to the outbreak of covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.

- g. That, however, the offer of possession was also subject to the incidence of force majeure circumstances under clause 16 of the agreement. That the construction and development of the project was deeply affected by such circumstances which are beyond the control of the respondent.
- h. The respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities on account of the environmental conditions, restrictions on usage of water, etc. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 years that the scarcity as detailed aforesaid continued, despite which, all efforts were made and materials were procured at 3-4 times the rate and the construction of the project continued without shifting any extra burden to the customer. It is to be noted that the development and

implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts.

- i. That additionally, even before normalcy could resume, the world was hit by the covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the project with no available laborers, contractors, etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I (A) recognized that India was threatened with the spread of 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, 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.

- j. It is importance to mention herein that as per license condition developer are required to complete these projects within a span of 4 years from the date of issuance of environmental clearance since they fall in the category of special time bound project under section 7B of The Haryana Development and Regulation of Urban Area Act 1975, it is needless to mention that for a normal group housing project there is no such condition applied hence it is required that 4 years prescribed period for completion of construction of project shall be hindrance free and if any 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. It is important to mention herein that section 7(2)(i) of the act itself recognizes the relaxation for renewal of license in case the delay in execution of development work was the reason beyond control of the colonizer, here also colonizers were estopped because of force majeure.
- k. Further it is pertinent to mention here that the construction work at the project site of the mentioned project in the present complaint was also delayed for 150 days due to the implementation of GRAP notifications which were time and again issued between 17.10.2017 till date from Central Pollution Control Board to curb the rising various environmental pollution in NCR. This is another genuine reason for the respondent not to complete the construction work within timelines as the mentioned reason for delay was beyond the control of the respondent.

- l. Therefore, it is safely concluded that the said delay of 422 days in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. Thus, from the facts indicated above and 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.
- m. That it is pertinent to mention herein that in a similar case where such orders were brought before the Authority was in the complaint no. 3890 of 2021 titled "Shuchi Sur and Anr. vs. M/s. Venetian LDF Projects LLP" which was decided on 17.05.2022, wherein the Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the respondent builder.
- n. It is further submitted 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. That it must be noted by the Authority that despite the default caused, as a gesture of goodwill, with good intent the respondent got a 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. That further the respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for the water connection, and the electrical inspection report.
- o. That the respondent has applied for an occupation certificate on 08.12.2023. It is pertinent to note that once an application for the grant of an occupation certificate is submitted for approval in the office of the

statutory authority concerned, the 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. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the statutory authority concerned for obtaining of the Occupation Certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the period utilized by the statutory authority to grant an occupation certificate to the respondent is necessarily required to be excluded from the computation of the period utilized for the implementation and development of the project.

- p. That the complainant has been allotted unit under the Affordable Housing Policy, 2013 which clearly stipulated the payment of consideration of the unit in six equal installments. The complainant is liable to make the payment of the installments as per the Government Policy under which the unit is allotted. That at the time of application the complainant was aware about the duty to make timely payment of the installments.
- q. That not only as per the Policy, the complainant was also under the obligation to make timely payments of installments as agreed as per the agreement.
- r. That the complainant has failed to make any payment of the installment due at "within 36 months from the due date of allotment" along with partial payments towards previous installments. That in accordance with the same, it is submitted that the complainant, cannot rightly contend under law that the alleged period of delay continued even after the non-payment and delay in making the payments as stated above. That the

non-payment by the complainant severally 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. That the respondent reserves its right for claim of damages before the appropriate forum.

- s. That it is the obligation of the complainant under the Affordable Housing Policy, 2013 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.
- t. That the respondent company sent a final reminder letter dt. 12.07.2024 to clear the outstanding dues, mentioning the relevant clauses of the Affordable Housing Policy 2013, wherein if the installments are not paid timely, the respondent can cancel the unit allotted to the complainant.
- u. That the complainant, despite the issuance of the both above mentioned final reminders, the complainant intentionally and willfully evaded the matter, and chose not to clear his outstanding dues as requested by the respondent company. Thereafter, the respondent company, after giving sufficient opportunity to the complainant to clear the outstanding dues, proceeded further as per the terms and conditions of the Affordable Housing Policy, 2013, and published the complainant's details in the local newspaper dt. 16.10.2025 and again requested him to clear the outstanding dues in 15 days from the date of the said publication else, the allotment will be canceled purely as per the said policy.
- v. That the respondent sent another letter dated 27.11.2024, after allowing clearing the outstanding via above mentioned publication dt. 16.10.2024 showing the generosity to the complainant and asked him to clear the outstanding dues, failing which the respondent will finally enlist his

allotment in the list of defaulters and that the allotment shall be cancelled as per the terms and conditions of the Affordable Housing Policy, 2013.

- w. Thus, it is pertinent to mention here that since the respondent has duly complied with the statutory requisites, the project is nearly completed and the Occupation Certificate has already been applied, there is no unwarranted delay in completion of the project. The complainant is legally bound to settle all outstanding payments and come forward to take possession of the unit, subject to clearing outstanding dues, following the offer of possession of the unit.
- x. That the complainant has hopelessly delayed in making the payment of the balance installment to the respondent, and hence the unit of the complainant is liable to be canceled in terms of clause 5(iii)(i) affordable housing policy and the clause 3.7 of the BBA
- y. That it is clearly evident that the complainant despite all the reminders failed to make payment against the instalment. That the respondent earnestly requested the complainant to make payment. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent. All requests of the respondent to make payment fell on deaf ears of the complainant. The respondent has yet not cancelled the unit in dispute till date and the complainant should clear all his outstanding dues as per the BBA and take the possession of the unit.
- z. The above-mentioned provisions note the mandatory obligation of the complainant to make the due payments against the unit, which under no circumstance whatsoever, can be escaped.
- aa. That this Authority has adjudicated similar issues of termination/cancellation and has upheld the same noting the default on part of the complainant. For instance, this Authority in *Rahul Sharma Vs*



Roshni Builders Private Limited MANU/RR/0975/2022 noted that the respondent had issued reminders, pre-cancellation letter and the last and final opportunity letter to the complainant. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation is valid.

- bb. That the complainant has not only in breach of the buyer's agreement but also in breach of the Affordable Housing Policy and the RERA Act, by failing to make the due payments of installments. The complainant is responsible for all the consequences of breach of the buyer's agreement and violation of RERA.
- cc. Without prejudice, assuming though not admitting, relief of delayed possession charges, if any, cannot be paid without adjustment of the outstanding installment from the due date of installment along with the interest at the rate of 15%.
- dd. That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the respondent, the unit of complainant can be retained only after payment of interest on delayed payments from the due date of installment till the date of realization of amount. Further delayed interest if any has to be calculated only on the amounts deposited by the complainants towards the sales consideration of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any taxes/statutory payments, etc.
- ee. That in light of the bona fide conduct of the respondent and no delay for development of the 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 to be dismissed in favor 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.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2% on the paid amount of Rs.22,45,862/- for delay period starting from 16th sept 2020 till the actual handover of physical possession or offer of possession plus 2 months after obtaining OC, whichever is earlier, as per the provisions of the Act of 2016.

18. The factual matrix of the case reveals that the complainant was allotted unit no. A-77, Tower-A admeasuring carpet area of 604.83 sq. ft. and a balcony area of 95.10 sq. ft., in the respondent's project at basic sale price of ₹24,66,870/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties in 2016. The possession of the unit was to be offered by 16.03.2021 as delineated hereinbelow. The complainant paid a sum of ₹22,45,862/- towards the subject unit.
19. The complainant is seeking a direction to quash the letter dated 15.03.2024 issued by the respondent as "final reminder". A reminder letter dated 12.07.2024 was being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make a payment of ₹9,35,210/-. Thereafter, the respondent made a publication in the newspaper "AAJ SAMAJ" on 16.10.2024 as required under Affordable Group Housing Policy, 2013. The said publication also stated that failure to make payment within the stipulated period would lead to automatic cancellation of the allotment, without any further notice or communication by the respondent. Thereafter a letter dated 27.11.2024 was sent by the respondent giving an opportunity to the complainant to clear the outstanding.

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 “Reminder Letter” dated 12.07.2024, directing the complainant to clear the outstanding dues amounting to ₹9,35,210/-. It is pertinent to mention here that the complainant had already paid an amount of ₹22,45,862/- (i.e., 91.08%) against the total consideration of ₹24,66,870/- to the respondent. Perusal of case file reveals that the demand raised by the respondent via letter dated 12.07.2024 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.

23. Further, 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.
24. 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 in complaints bearing no's. CR/6234/2024 and CR/5472/2023, 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.
25. The Authority further notes that the complainant has paid approximately 91.08% 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.

26. 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)

27. 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.
28. 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.
29. 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.**"

30. 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)

31. 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**.

32. 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."

33. 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.

34. 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., 08.04.2025

is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

35. 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;"*

36. 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.

37. 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.

38. 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*.

G.II Direct the respondent to handover actual physical possession of the booked unit.

G.III Direct the respondent to not to create third party interest and maintain status quo of the said unit as such the respondent is forcefully with all its malafide intentions is making publications in the newspaper of various allottees for cancellation by raising illegitimate demands.

39. The reliefs sought by the complainant above are considered together as the findings in one relief will definitely affect the results of the other relief and the same being interconnected.

40. 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.

41. 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.

42. 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.

43. 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.IV Direct the respondent to pay litigation expenses of Rs. 50,000/-

44. The complainants are seeking the above mentioned relief with respect to compensation. The 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 is hereby set aside being bad in the eyes of law. The respondent is directed to reinstate the subject unit. Further, the respondent is directed to pay interest on the amount paid by the complainant at the prescribed rate of 10.85% 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 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.

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

48. Files be consigned to the registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2025