

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

Complaint no. : 812 of 2024
Date of complaint : 03.05.2024
Date of order : 10.10.2025

Sonnal Sud through legal heir
Sudhir Ahuja,
Both R/o:- 191-H, MG Green Flats,
Rajouri Garden, New Delhi- 110027

Complainant

Versus

Sunrays Heights Pvt Ltd.
Regd. Office at: 211 Ansal bhawan,
16 K.G. Marg, New Delhi.

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Raj Kr. Hans (Advocate)
Gagan Sharma (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details

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

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.	D-112 [Page 20 of complaint]
7.	Unit admeasuring	604.83 sq. ft. (Carpet area) 95.10 sq. ft. (Balcony area) [Page 19 of complaint]
8.	Provisional Allotment letter	11.01.2016

		[Page 20 of complaint]
9.	Date of Builder Buyers agreement	2016 [As per page 23 of complaint. The BBA is undated]
10.	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>[Page 21 of complaint]</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 be renewed beyond the said 4 years from the date of commencement of project.</i></p>

11.	Date of building plan	10.03.2015 [Page 40 of reply]
12.	Date of environment clearance	16.09.2016 [Page 46 of reply]
13.	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
14.	Total Sale Consideration	Rs. 24,66,870/- [As per complaint on page 20]
15.	Amount paid by the complainant	Rs. 22,91,927/- [as per demand letter on page 39 and transactional detail on page 40 of complaint]
16.	Death certificate of allottee	01.12.2020 [on page 43 of complaint : - the same mentions the name of husband as Sudhir Ahuja]

17.	Surviving member certificate	15.04.2021 [on page 44 of complaint]
18.	Cancellation of unit	09.02.2024 [email communication on page 30 of reply]
19.	Occupation certificate	31.12.2024
20.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- i. That the complainant Sonnal Sud now deceased, through its legal heir Sudhir Ahuja is a resident of house no.-191-H, MIG Green Flats, Rajouri Garden, New Delhi-110027.
 - ii. That as per section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainant and its legal heir falls under the category of "Allottee".
 - iii. That the respondent M/s Sunrays Heights Pvt. Ltd. is a company incorporated under the companies act, 1956 having registered office at: 211, Ansal Bhawan 16, Kasturba Gandhi Marg, New Delhi - 110001 and corporate office at 41, District Centre, Sector 56, Gurgaon-122011.
 - iv. That as per sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of "promoter" and

is bound by the duties and obligations mentioned in the said act and is under the territorial jurisdiction of this Authority.

- v. That the respondent obtained license no. 82 of 2014 from DTCP HARYANA, to develop an affordable housing project as per the guidelines mentioned under Affordable Housing Policy 2013, issued by Government of Haryana, vide Town and Country Planning Department's Notification dated 19 August 2013.
- vi. That the project in question is known as "Sixty Three Golf Drive" at Sector 63-A, Gurugram, Haryana which is a project under Affordable Housing Policy 2013, issued by Government of Haryana.
- vii. That in 2015, complainant got information about an advertisement in a local newspaper about affordable housing project "Sixty Three Golf Drive" at Sector 63-A, Gurugram, Haryana. When he called on the phone number provided in the newspaper, the marketing staff of the respondent showed a rosy picture of the project and allure with proposed specifications and invited for site visit. the complainant visited the project site and met with local staff of respondent who gave an application form and assured that possession will be delivered within 36 months as they were told that it is a govt. project having fixed payment instalment in every 6 months and on the last instalment, the possession will be delivered.
- viii. That the unit in question is D112 in Tower D , admeasuring 604.83 sq. ft. and 95.10 Sq. ft. balcony area, in "Sixty Three Golf Drive" at Sector 63-A, Gurugram, Haryana.

- ix. That in the year 2015 the complainant vide application form no. SGDA4127 applied for a 2 BHK residential unit in the upcoming project of respondent namely " Sixty Three Golf Drive " at Sector 63-A, Gurugram, Haryana and further remitted Rs.1,25,578/- on 12.01.2015. The complainant got the unit in the draw of lots.
- x. That on date 11.01.2016, after the draw of lot the respondent issued an provisional allotment letter cum demand letter against the allotted unit no. D-112 , admeasuring 604.83 sq. ft. and 95.10 Sq. ft. balcony area, in "Sixty Three Golf Drive" at Sector 63-A, Gurugram, Haryana. The unit was purchased under the time link payment plan as per the mandate under Affordable Housing Policy 2013.
- xi. That a pre-printed one sided, arbitrary and unilateral flat buyer agreement for allotted unit no. was executed between respondent and complainant. That Total sale consideration of the unit arrived at Rs. 24,66,870/-.
- xii. That as per clause 4.1, the respondent had to complete the construction of flat and handover the possession within 4 years from date of commencement of project.
- xiii. That as per Rule 1.(iv) under the Affordable Housing Policy 2013, Notified by DTCP, Govt. of Haryana on date 19/08/2013 in the Haryana Government Gazette, The possession is necessarily to be given in 4 years from the approval of building plans or grant of environmental clearance, whichever is later.
- xiv. It is pertinent to mention here that building plans were approved on 10.03.2015 and the environmental clearance was granted on

29.09.2016. Therefore, the due date of possession becomes on or before 29.09.2020.

- xv. That Till date the complainant had paid Rs.22,91,927/- i.e. 100% of money called, but when complainant observed that there is very slow progress in the construction of subject flat for a long time, he raised their grievance to the respondent.
- xvi. That the complainant has always tried to pay the instalment on time and the last instalment was paid on 23.03.2020 and it is expected to take around 1-2 years more from the current date for the completion of the project. That there is slow progress in the construction of flats.
- xvii. That on the date 16.11.2020, the complainant Sonnal Sud expired. The death certificate could only be obtained on 01.12.2020. That legal heir of the deceased complainant notified the same to the respondent vide email dated 01.12.2020 and also requested for the copy of builder buyer agreement as the original was destroyed by termites.
- xviii. The complainant paid the last demanded payment on 23.03.2020, following a demand made on 03.03.2020. Subsequently, the respondent discontinued the practice of sending demand notices along with the account statement, which was previously customary.
- xix. The legal heir of the complainant attempted to reach out to the respondent between 2020 to 2024 regarding the transfer of the unit to the legal heirs names. however, the respondent neglected their duty and never initiated the transfer process for the said unit.
- xx. On 01.02.2024, when the legal heir of the complainant again requested an update, the respondent finally emailed indicating that they had

initiated the cancellation process due to non-payment and also stated that the unit cannot be transferred due to the special dispensation clause of the affordable policy. However, it's worth noting that since 2020, the respondent has not issued any demand letters to the complainant.

- xxi. That in an email dated 02.02.2024, the legal heir of complainant replied to the respondent email dated 01.02.2024 and further notified the respondent that they had inquired with the department, which indicated that affordable housing does not handle cases related to deaths. Consequently, such matters fall under the jurisdiction of the revenue department's policy. Additionally, the complainant expressed their belief that payments should be made upon receipt of a demand letter from the builder, as previously practiced by the respondent. They also asserted their willingness to pay any delay interest if discrepancies arise from their end.
- xxii. That despite numerous requests from the legal heir of complainant for the demand letter and a valid reason for the cancellation of the unit, the respondent has repeatedly failed to address the grievances. This failure, driven by their malicious intent and improper conduct, has subjected the complainant to harassment.
- xxiii. That the main grievance of the legal heir of complainant in this complaint is that despite having paid 100% of the called-up amount and approximately 90% of the actual flat amounts on time, the respondent has unilaterally and illegally cancelled the unit without providing a proper legal explanation. Due to the respondent's failure

to deliver possession of the flat on time, the complaint is left at a disadvantage.

- xxiv. That the complainant had purchased the flat with intention that after purchase, her family will use the flat for their personal use. That it was promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat as shown in newspaper at the time of sale, would be handed over to the complainant on and after the payment of last instalment, it is pertinent to mention here that these instalment becomes accrue on every 6 months after the commencement of construction work, and the respondent was under obligation to deliver the project complete in all respect as and when the respondent takes the last instalment or by maximum till 29.09.2020.
- xxv. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such they are liable to be punished and compensate the complainant .
- xxvi. That due to above acts of the respondent and of the terms and conditions of the builder buyer agreement, and of Affordable Housing Policy 2013, the complainant have been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to provide interest on capital to the complainant on account of the aforesaid act of unfair trade practice.
- xxvii. It is also pertinent to mention here that the DTCP, Haryana is also liable to for their negligence to monitor the progress of the project as in the case of affordable housing, Government / DTCP Department plays an

active role and when the respondent has miserably failed to complete the structure as per the schedule specified in builder buyer agreement and as per the Haryana Affordable Housing Policy by Town and Country Planning Department. It has been more than 1 year since the DTCP have failed to take any action against the Respondent regarding their failure to handover the possession to allottees.

- xxviii. That as per section 18 of the RERA Act. 2016, the promoter is liable to refund the amount and pay interest at the prescribed rate of interest and compensation to the allottees of an apartment building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.
- xxix. That for the first time cause of action for the present complaint arose on 12.01.2015 , when the complainant paid Rs.1,25,578/- as booking amount and further on 16.01.2016 when the provisional allotment letter cum demand letter was issued by the respondent and further when a one sided, arbitrary and unilateral flat buyer agreement was executed between the parties in 2016 and on 23.03.2020 when the complainant paid the last instalment and further the cause of action arose on 29.09.2020, when the respondent party failed to hand over the possession of the flat as per the buyer agreement. Further the cause of action again arose on 01.02.2024 when the complaint came to know that the respondent had unilaterally and illegally cancelled the unit and further on various occasions between 2020-2024 when the respondent was not able to resolve the grievances of the legal heirs of complainant due to death of the latter and also when the protests were lodged with the respondent about its failure to deliver the project .

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):

- I. Declaration to the effect that the act of cancellation of the unit of the complainant is null and void, being arbitrary and illegal;
- II. Pass an appropriate award directing the respondent party to revoke the unilateral, illegal cancellation of the unit.
- III. Pass an appropriate award directing the Respondent party to pay interest @ Prescribed rate on delayed Possession since due date of possession till date of actual possession. on paid amount i.e Rs.22,91,927/-. As respondent fails to handover the possession as on 29.09.2020 as mentioned in the builder buyer agreement and failure to adhere the guidelines laid in Haryana Affordable Housing Policy, 2013 Pass an appropriate order directing the respondent builder to transfer the unit from the original allottee's name to its legal heir Sudhir Ahuja.
- IV. Respondent party may kindly be directed to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. before handing over the physical possession of the flats at the earliest.

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

- a) That at the outset, respondent humbly submits that each and every averment and contention, as made in the complaint, unless specifically

admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.

- b) That the complaint filed by the complainant before this authority, besides being misconceived and erroneous, is untenable in the eyes of law.
- c) That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- d) That the reliefs sought by the complainant appears to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof.
- e) That apparently, the complaint filed by the complainant is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
- f) That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the builder buyer's agreement. It is submitted that the complainant has frustrated the terms and conditions of the builder buyer's agreement, which were the essence of the arrangement between the parties and therefore, the complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. It is further submitted that timely payment was the essence to ensure timely completion of construction & handover of the apartments as per the terms of the policy. The 'pith & substance' of the affordable housing policy is clearly captured in its essence, wherein the 'intended

beneficiaries' were given Thirty-Six months to pay the entire cost of the apartment, against which the developer was provided with the timeline of forty-eight months to complete the project subject to timely payment.

- g) It has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the developer contemplates to complete construction of the project within a period of 48 months from the date of commencement of project subject to force majeure and timely payment by the allottee toward the sale consideration.
- 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 in NCR on account of the environmental conditions, restrictions on usage of water, etc. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 years that the scarcity as detailed aforesaid continued, despite which, all efforts were made and materials were procured at 3-4 times the rate and the construction of

the project continued without shifting any extra burden to the customer. It is to be noted that the development and implementation of the said project have been hindered on account of several orders passed by various courts.

- i) That additionally, even before the 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 labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated march 24, 2020 bearing no. 40-3/2020-dm-i (a) recognized that india was threatened with the spread of covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. 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 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) Therefore, it is safely concluded that the said delay of 422 days in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. thus, from the facts indicated above and documents appended, it is comprehensively established that a period of 422 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of aforesaid orders by

the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure in terms with the agreement.

- l) 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.
- m) That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.70.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.17.2019 to 74.02.2020. The Authority was also pleased to consider and provided benefit of 6 months to the developer on account of effect of COVID also.
- n) That the UP REAT at Lucknow while deciding appeal No. 541 of 2011 in the matter of Arun Chauhan Versus Gaur sons Hi- Tech Infrastructure Pvt Ltd vide order dated 02.11.2021 has also granted the extension of 116 days to the Developer on account of delay in completion of construction on account of restriction imposed by the Environment Pollution Authority as well vide order of Hon'ble Supreme Court Dated 14.11.2019.
- o) That the present complaint is liable to be dismissed on the sole ground that the complainant has concealed the true and necessary facts from the Authority. It is submitted that the complainant is chronic defaulter

in timely payment of the instalments as per the payment plan annexed with the builder buyer agreement. It is pertinent to mention here that respondent sent many reminder letter to clear dues. It is submitted that for non-payment of instalments demand letter as per the payment plan to the allottee sent final reminder notice through e-mail on dated - 09/02/2024 ANX-R/2 cancellation of unit. Thereafter the complainant never approached the respondent to made payment.

- p) It is pertinent mention here that if the complainant was aware about the respondent bank is blocked so he can come forward in respondent office but Thereafter the complainant never approached the respondent to restore the allotment and made payment.
- q) It is further imperative to note that despite many undulations such as Covid, GRAP Restrictions and most importantly non-compliance on the part of the 'Intended Beneficiaries' i.e. non-payment, the respondent has still fulfilled our obligations in terms of completing the construction, and has already applied for the OC and obtained it; even whilst facing the disruption in supply chain, migration of labourers due to covid, and without seeking any escalation linked to escalated cost of construction due to inflation. further, it had been also agreed and accepted that in case the delay is due to the reasons beyond the control of the company then the company shall be automatically entitled to the extension of time for delivery of possession.
- r) That it is pertinent to mention here that as per law of Affordable housing policy whom can apply this scheme only who have no house their name and his spouse but in this case applicant are trying to put the curtain on this fact. Because complainant has grab a shelter of a needy person due to field the Affordable housing scheme because

- complainant has his own house and enjoying his life in a highly expensive society of Delhi
- s) That it is crystal and clear case of payment defaulter and complainant want to ruin and wipe out the images of respondent in society, and want to put the curtain her illegal act and conduct.
 - t) That, moreover the applicant somehow wants to harass the answering respondent as the plea of the applicant is mere a pretense through the real intentions are otherwise and such a calculative and cunning act of the applicant has conveyed not only a wrong message to mislead this Hon'ble but also posed a threat in mind of answering respondent so as to succumb to the illegal, illogical and unjustified demand of the applicant.
 - u) It is pertinent to mention here that when complainant apply the mortgage permission there is clear written that if the complainant find the non- payment defaulter respondent can cancel the unit.
 - v) That it is pertinent to mention here that if the allottee found the doing violation of as per Affordable housing scheme respondent can cancel the unit as per housing policy 2013.
 - w) That it is crystal and clear case of payment defaulter and complainant want to ruin and wipe out the images of respondent in society, and want to put the curtain her illegal act and conduct.
 - x) That, thus the application under reply is not maintainable in law and facts as the same is false, frivolous, vexatious, uncalled for, unwarranted, without any cause and justification and has been presented with sole intention to mislead the court only.
6. 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 complainants.

E. Jurisdiction of the authority

7. 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

8. 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

9. 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.

10. 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.

F. Findings on the relief sought by the complainants.

F.I Pass an appropriate award directing the respondent party to revoke the unilateral, illegal cancellation of the unit.

F.II Pass an appropriate award directing the Respondent party to pay interest @ Prescribed rate on delayed Possession since due date of possession till date of actual possession. on paid amount i.e Rs.22,91,927/-. As respondent fails to handover the possession as on 29.09.2020 as mentioned in the builder buyer agreement and failure to adhere the guidelines laid in Haryana Affordable Housing Policy, 2013

F.III Pass an appropriate order directing the respondent builder to transfer the unit from the original allottee's name to its legal heir Sudhir Ahuja.

F.IV Respondent party may kindly be directed to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. before handing over the physical possession of the flats at the earliest.

11. The above-mentioned reliefs sought by the complainant are being taken together, as the findings in one relief will necessarily affect the outcome of the others and the same being interconnected.
12. The factual matrix of the case reveals that the complainant was allotted unit no. D-112, 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 ₹ 22,91,927/- towards the subject unit.

13. The grievance raised in the present complaint pertains to the cancellation of the allotted unit by the respondent-promoter, which according to the complainant has been affected in violation of the procedure prescribed under the Affordable Group Housing Policy, 2013.
14. The Authority notes that the Affordable Group Housing Policy, 2013 specifically prescribes a mandatory procedure for cancellation of an allotted unit under Clause 5(iii) (i), which inter alia includes issuance of reminders/notices to the allottee, followed by public notice or publication. The said procedure is not merely directory in nature but is intended to ensure fairness, transparency and protection allottees under a welfare scheme. 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."*

15. In the present case, the respondent has failed to place on record any material to show compliance with the aforesaid mandatory procedure. There is no evidence of issuance of the requisite reminders nor of any public notice having been made prior to cancellation. The unilateral issuance of the cancellation letter, therefore, is found to be arbitrary and contrary to the governing Affordable Housing Policy.
16. In view of the above, the cancellation of the allotted unit by the respondent-promoter is held to be bad in the eyes of law and is accordingly set aside.

17. 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.**"*

18. 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)

19. 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.

20. 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."

21. 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.

22. 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., 10.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

23. The definition of term 'interest' as defined under Section 2(z) 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;"

24. 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.

25. 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.

26. 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*.
27. Another issue that requires consideration is the effect of the death of the original allottee and the consequential entitlement of the surviving family members to seek relief under the Act.
28. The Authority observes that the death of an allottee does not extinguish the allotment or the rights flowing therefrom. A conjoint reading of Sections 18(1) and 19 of the Act indicates that the statute confers substantive rights upon an allottee in the event of delay or failure on the part of the promoter, including entitlement to possession, refund and interest. The Act does not qualify such rights by reference to the lifetime or personal capacity of the allottee, nor does it provide for their extinguishment upon death. The rights arising out of an allotment under the Act are civil and proprietary in nature and, in absence of any express statutory bar, are heritable and survive in favour of the legal heirs or beneficiaries of the deceased allottee.
29. Proceedings before this Authority are summary and welfare oriented. The Authority is not required to adjudicate questions of title or succession, which fall within the domain of the competent civil court. The limited

exercise before the Authority is to ascertain, on a prima facie basis, the lawful claimants entitled to step into the shoes of the deceased allottee for the purpose of grant of possession and allied statutory reliefs.

30. The project being an affordable housing project, and in absence of any dispute amongst the legal heirs, the Authority adopts a pragmatic and facilitative approach to ensure that the object of the Act is not defeated by technicalities unrelated to delivery of possession. Accordingly, the Authority holds that the rights and entitlements arising out of the allotment survive in favour of the legal heirs or beneficiaries of the deceased allottee, in accordance with the applicable legal provisions.

G. Directions of the authority

31. 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 handover the possession of the allotted unit, complete in all aspects as per specifications of buyer's agreement within one month from date of this order to the legal heir in accordance with the relevant provisions of law, as the occupation certificate in respect of the project has already been obtained by it from the competent authority.
- V. 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.
32. The complaints stand disposed of.
33. Files be consigned to the registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.10.2025