

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

Complaint no. :	4123 of 2024
Date of order :	08.08.2025
Rectification application received on :	08.09.2025
Rectification application decided on :	10.10.2025

Pawan Kumar Gupta,
Both R/o:- Sector 63-A,
village Ullahwas, Gurugram.

Complainant

Versus

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

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Vijay Pratap Singh (Advocate)
Harsh Jain (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.	C-63 [Page 18 of complaint]
7.	Unit admeasuring	605.10 sq. ft. (Carpet area) 94.94 sq. ft. (Balcony area) [Page 18 of complaint]
8.	allotment letter	24.09.2016 [Page 18 of complaint]
9.	Date of Builder Buyers agreement	17.11.2016

		[As per resolution date on 1 st page of agreement on page 21 of complaint]
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 <p>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</p>
14.	Total Sale Consideration	Rs. 22,46,777/-

		[as per SOA dated 30.12.2023 at page 62 of reply]
15.	Amount paid by the complainant	Rs. 22,46,777/- [as per SOA dated 30.12.2023 at page 62 of reply]
16.	Death certificate	Date of death of original allottee 'Ravi Dutt Gupta on 10.09.2022' [as per death certificate annexed on page 55 of complaint]
17.	Will of the deceased Ravi Dutt Gupta	On page 56 of complaint.
18.	Reminder for payment	01.01.2024 referred to Mr. Pawan Kumar. [page 52 of reply]
19.	Statement of account	As on 30.12.2023 referred to Mr. Pawan Kumar. [on page 62 of reply]
20.	Occupation certificate	31.12.2024
21.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- i. That the original allottee late Shri Kanhiya Lal Gupta was interested in the project namely " 63 Golf Drive" located at 63 A Gurgaon Haryana because it was a housing project and the complainant needed own home for their family.
 - ii. 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 original allottee late shri ravi dutt gupta approached to the respondent for booking of a residential flat vide application bearing no SGD(B)4479 having carpet area of 605.10 sq ft and balcony area of 94.94 sq ft.

- iii. 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.
- iv. That the apartment buyers agreement got executed between the original allottee late Shri Ravi Dutt Gupta and the Respondent on dated 17/11/2016. That the total consideration of the flat was Rs.24,67,870/-. The complainant has paid Rs 22,46,777/- against demand of Rs 22,46,777/- from the builder till date of filing of case before Authority ,as and when the demand were raised by the respondent in time bound manner.
- v. That after the death of the original allottee Late Shri Ravi Dutt Gupta On Dated 10/09/2022, Shri Pawan Kumar Gupta The son of the original allottee and being the ultimate legal heir through the registered will left behind by the original allottee , wrote letter dated 25/05/2024 to the respondent for substitution of the name of the

original allottee to that of Shri Pawan Kumar Gupta , But the respondent so far has not yet substituted the allotted unit in the name Of Shri Pawan Kumar Gupta ,

- vi. As per the slow pace construction status and absence of basic amenities respondents are delayed heavily in giving possession. Therefore the complainant herein is not in breach of any of its terms of the agreement. But the respondent is deliberately and intentionally not raising the last demand as per the Haryana affordable policy 2013.
- vii. That respondent is by raising illegitimate demand and interest is threatening the complainant to cancel the unit despite the respondent protest the same has not yet been waived off by the respondent on plea that the same shall be reversed at the time of possession of the flat .This is totally illegal, arbitrary and unilateral.
- viii. 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.
- ix. That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainant in time has accrued huge losses on account of the career plans of their family member and themselves and the future of the complainant and their family are rendered dark as the planning with which the complainant invested her hard earned monies have resulted in subzero results and borne thorns instead of bearing fruits.

- x. 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.
- xi. **Relief sought by the complainants: -**
4. The complainants have sought following relief(s):
- I. I request the Authority to direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2%, on paid amount of Rs 22,46,777/-for delay period starting from 15th March. 2021 till actual hand over of the physical possession or offer of possession plus 2 month after obtaining OC whichever is earlier, as per the provisions of the Act read with rule 15 of the rules by the Respondent to the Complainant and wave off the illegal interest etc. raised by the Respondent.
 - II. I request the Authority to direct the respondent to substitute the original allottee name with the legal heir Pawan Kumar Gupta As Per the registered will of the original allottee .
 - III. I request the Authority to direct the respondent to not create any third party interest in the said unit as such the respondent by raising all sorts of illegitimate demands is threatening to cancel the allotted unit.
 - IV. I request the Authority to direct the respondent to allow the complainant or her authorised person to visit site to inspect her allotted unit and project in totality on her behalf as such now the

Respondent is not allowing any allottee to enter the said project to assess the situation and the work in progress at the site.

- V. I request the Authority to direct the respondent to get the copy of application for Occupancy Certificate, as such the Respondent claims that they have applied for the OC.
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.
- C. 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) The complainant has sought reliefs under section 18 of the rera act but the said section is not applicable in the facts of the present case and as such the complaint deserves to be dismissed. It is submitted that the operation of section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the RERA Act came into force. In the present case also, the booking was executed much prior to the date when the RERA Act came into force and as such section 18 of the RERA Act cannot be made applicable to the present case.
- c) That the respondent's promise to complete the construction within the period given in the said clause was dependent upon timely payment of the instalments by the complainant. Since the complainant failed to make payment as per the agreed payment schedule the respondent

was under no obligation to complete the construction within the given period. As such the complainant cannot be allowed or compensation or to rescind the contract and seek refund of the amount on the ground that the construction was not completed within the given period. The respondent relies upon section 53 and section 54 of the Indian Contract Act 1872 in this regard.

- d) It is submitted without prejudice that the alleged delay in delivery of possession, even if assumed to have occurred, cannot entitle the complainant to any relief contrary to or inconsistent with the contractual terms agreed between the parties and the breach thereof cannot entitle the complainant to seek refund of the amount or to seek interest and compensation beyond what was agreed.
- e) That the complainant has no locus standi to file the present complaint. The complainant has failed to produce any registration certificate or memorandum of its objects. Thus, it is submitted that the complainant cannot be given a legal status in the absence of such documents and therefore is not entitled to file and prosecute the instant proceedings. The complaint is liable to be dismissed on this ground alone.
- f) That the complainant is estopped by its own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- g) That the respondent is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it. The projects implemented and executed by the respondent are considered to be architectural landmarks.
- h) That the intending allottees had approached the respondent for purchase of unit in the aforesaid project. It is pertinent to mention that

the intending allottees prior to approaching the respondent for purchasing unit had undertaken detailed and elaborate verification of the title of the project land as well as competence, capacity and capability of the respondent with regard to the execution of the project and availability of resources. It is pertinent to note that the intending allottees had completely familiarized themselves with the dimensions and other details of the unit intended to be purchased by them and this fact had been categorically recorded in the booking application form. The complainant alleging to be espousing the cause of its alleged members is indulging in deception and is stopped from alleging any discrepancy or deficiency in respect of the unit on the basis of frivolous contentions contained in the complaint. Furthermore, the unit in question have been sold on 'as is where is' basis. The complainant has withheld this fact from this Authority and therefore there is absolutely no equity in its favour.

- i) That the said Act i.e. The Real Estate (Regulation & Development) Act, 2016 is a complete code in itself and as per the provisions of the said Act, the legislature had categorically formed two separate bodies i.e. the Authority under Section 20 for Regulatory functions under the Act and the Adjudication officer under section 71 of the Act for adjudicatory function. Thus there is a clear distinction under the said Act including the regulatory and adjudicatory functions as provided under the said Act. Thus, based on this Principle this Hon'ble Regulatory Authority by accepting the present Complaint is exercising the adjudicatory function which is against the principle of law.
- j) It is submitted that since the Preliminary Objections are of a jurisdictional nature which go to the root of the matter, and as per

settled law, the same should be decided in the first instance. It is only after deciding the question relating to maintainability of the Complaint that the matter is to be proceeded with further. The preliminary and jurisdictional objections are being raised for dismissal of the Complaint. Without prejudice to the contentions that unless the question of maintainability is first decided, the Respondent ought not to be called upon to file the reply on merits to the Complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary, in case the Complaint is held to be maintainable.

- k) It is submitted that the respondent sent two copies of the buyer agreement to the complainant however, for the reasons best known to the complainant even after repeated reminders and follow ups being sent to the complainant, the complainant did not acted further and executed the buyer's agreement.
- l) It is submitted that as per the application for allotment which is binding between the complainant and the respondent, both have agreed upon their respective liabilities and consequences in case of breach of any of the conditions specified therein. In view of the above, the captioned complaint is not maintainable in law and is liable to be dismissed in limine. It is a well settled proposition of law that the Courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the responsibility of the court is to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract.

- m) That the complainant is chronic defaulters in making payment on time contrary to the agreed terms. It is submitted that on many occasions repeated demand letters and reminders were issued to the complainant for payment and consequently the allotment made in favour of the complainants was cancelled by the respondent. Even after repeated demands complainant were not ready to make the payment. Hence, complainants are not entitled to get any reliefs from this Authority.
- n) It is submitted that the Application for Allotment and the Agreement to be executed in furtherance thereof delineates the respective obligations, covenants and liabilities of the complainants as well as the respondent in case of breach of any of the conditions specified therein. In this view of the matter, the complaint is not maintainable in law and is liable to be dismissed in limine.
- o) That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.
- p) That the complainant is estopped by their acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
- q) That the complainant have not come before this Authority with clean hands and have suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply.
- r) That the complainant approached the respondent and expressed interest in booking of an apartment in the affordable housing developed group housing developed by respondent known as "Sixty Three Golf Drive" situated in Sector 63, Gurugram Haryana. Prior to the

booking, the complainant conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

- s) That thereafter the complainant, vide application form applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. 107, Tower D, admeasuring carpet area of 598 sq. ft. and balcony area of 95 sq. ft. was allotted vide provisional allotment letter dated 11.01.2016. The complainant represented to the respondent that they shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in their favor.
- t) Thereafter, an agreement to sell was executed between the complainant and the respondent. 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.
- u) 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.

- v) 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 outbreak of Covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.
- w) 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.
- x) 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.

- y) 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.

- z) 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.
- aa) It is further submitted that despite there being a number of 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 Hon'ble Authority that despite the default caused, as a gesture of goodwill, with good intent the Respondent got sanctioned loan from SWAMIH fund of Rs. 44.30 Crores to complete the project and has already invested Rs. 35 Crores from the said loan amount towards the project. That further the Respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for water connection and electrical inspection report.
- bb) That the Respondent has applied for occupation certificate on 08.12.2023. it is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the statutory authority concerned, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the statutory authority concerned 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 concerned statutory authority 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 time period utilized by the statutory authority to grant occupation certificate to the Respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.

- cc) That the complainant has failed to make any payment of the installment at "within 36 months from the due date of allotment" due on april 2019 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.
- dd) 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.
- ee) That in compliance of the above-mentioned provision the respondent issued a various reminder letters requesting the complainant to make the outstanding payment. That in complete default the Complainant failed to make payment within 15 days.

- ff) That the respondent after obtaining all the mode to communicate with the complainant but didn't received any response from the complainant regarding the payment of the due amount and at the same time complainant miserably fail to compliance with the terms and condition of the BBA signed by the complainant the respondent on 06.04.2024 through publication announce a general reminder to the complainant for the compliance of the due payment but still didn't received any revert from the complainant regarding the same.
- gg) Thus, the unit of the complainant is liable to be canceled in terms of the Clause 5(iii) i affordable housing policy and the clause 3.7 of the BBA.
- hh) That it is clearly evident that the complainant despite all the reminders failed to make payment against the instalment. That the respondent earnestly requested the complainant to make payment. however, the complainants did not pay any heed to the legitimate, just and fair requests of the respondent. All requests of the Respondent to make payment fell on deaf ears of the Complainant.
- ii) 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.
- jj) That the complainant has intentionally distorted the real and true facts in order to generate an impression that the respondent has reneged from its commitments. No cause of action has arisen or subsists in favor of the complainant to institute or prosecute the instant complaint. The complainant has preferred the instant complaint on absolutely false

and extraneous grounds in order to needlessly victimize and harass the respondent.

- kk) That in light of the bona fide conduct of the respondent, the fact that no delay has been caused to the complainant. The non-existence of cause of action this complaint is bound to be dismissed with costs in favour of the respondent.
- ll) 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%.
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.

D. 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.

E. Findings on the relief sought by the complainants.

F.I I request the Authority to direct the respondent to pay interest @ 8.65% per annum as per the prevailing MCLR plus 2%, on paid amount of Rs 22,46,777/-for delay period starting from 15th March. 2021 till actual hand over of the physical possession or offer of possession plus 2 month after obtaining OC whichever is earlier, as per the provisions of the Act read with rule 15 of the rules by the Respondent to the Complainant and wave off the illegal interest etc. raised by the Respondent.

F.II I request the Authority to direct the respondent to substitute the original allottee name with the legal heir Pawan Kumar Gupta As Per the registered will of the original allottee .

F.III I request the Authority to direct the respondent to not create any third party interest in the said unit as such the respondent by raising all sorts of illegitimate demands is threatening to cancel the allotted unit.

F.IV I request the Authority to direct the respondent to allow the complainant or her authorised person to visit site to inspect her allotted unit and project in totality on her behalf as such now the Respondent is not allowing any allottee to enter the said project to assess the situation and the work in progress at the site.

F.V I request the Authority to direct the respondent to get the copy of application for Occupancy Certificate, as such the Respondent claims that they have applied for the OC.

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 present complaint was filed on 28.08.2024 and the reply on behalf of respondent has been filed on 13.02.2025.
13. The respondent has filed an application U/s 39 for rectification of order dated 08.08.2025

Grounds of rectification

1. That the alleged Complainant does not hold any legal rights over the unit allotted to the Allottee in the present case, as the Builder Buyer's Agreement is not executed in his favor.
 2. That the alleged Complainant has never approached the Applicant/Respondent with any written request through the required application along with the required documents for Transfer of Ownership in his favour of the Unit in dispute in the present case to date.
14. That the present complaint has been adjudicated, considering the facts and circumstances of the dispute, which are not true and legal, The alleged Complainant is already in Civil Court and has filed a Suit for Declaration In view of the registered Will dated 08.10.2021 placed on record the necessary directions have already been issued.

Accordingly, the process stands complete in terms of legal compliance, and the unit in question is now liable to be handed over to the as the legal heir, in accordance with the relevant provisions of law.

15. The factual matrix of the case reveals that the subject unit bearing no. C-63, admeasuring 605.10 sq. ft. carpet area along with a balcony area of 94.94 sq. ft., forms part of the respondent's project namely "63 Golf Drive", Sector-63-A, Gurugram, which is an Affordable Group Housing Project registered with this Authority vide registration no. 249 of 2017 dated 26.09.2017. The allotment letter in respect of the said unit was issued on 24.09.2016, followed by execution of the Builder Buyer Agreement on 17.11.2016.
16. It is an admitted and undisputed position that the entire sale consideration amounting to ₹22,46,777/- has been paid by the allottee, as reflected in the Statement of Account dated 30.12.2023. It is further on record that the respondent has obtained the Occupation Certificate for the project on 31.12.2024, however, no offer of possession has been made till date.
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., 08.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.
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., 10.90% 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., @10.90% p.a. w.e.f. 16.03.2021 till the offer of possession plus 2 months or actual handing over

- of possession, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
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 Authority further notes that the original allottee, Sh. Ravi Dutt Gupta, expired on 10.09.2022. A Will executed by the deceased allottee has been placed on record, and the complainant claims entitlement to the subject unit on the basis thereof. No rival claim or objection from any other legal heir or third party has been brought to the notice of this Authority during the pendency of the present proceedings.

31. 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.

F. Directions of the authority

32. 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 respondent is directed to pay interest on the amount paid by the complainant at the prescribed rate of 10.90% p.a. for every month of delay from the due date of possession [Note - The rate of delayed possession charges has inadvertently mentioned as @11.10% in the proceeding dated 08.08.2025] i.e., 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier.
- II. 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.
- III. 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*.
- IV. 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.
- 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.
33. The complaints stand disposed of.
34. Files be consigned to the registry.



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.10.2025