

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM.

Complaint No. 5491-2024

Date of Decision: 24.04.2026

1. Rajiv Nayyer S/o Late Shri Naveen Nayyer, 2. Chitrakshi Nayyer W/o Shri Rajiv Nayyer, Rs/o A-1556, Third Floor, Green Field Colony, Faridabad, Haryana- 121010.

..... Complainants

Versus

M/s Sunrays Heights Private Limited, Registered Office: 211, 2nd Floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, New Delhi- 110001.

..... Respondent

APPEARANCE

For Complainants:

Mr. Vijay Pratap Singh, Advocate.

For Respondent:

Mr. Kanish Bangia, Advocate.

ORDER

1. This is a complaint, filed by Mr. Rajiv Nayyer and Ms. Chitrakshi Nayyer Sunita Sharma (allottees), under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s Sunrays Heights Private Limited (promoter).

2. According to complainants, they are allottees in the respondent's project namely "Sixty-Three Gold Drive", Sector 63-A, Gurugram, Haryana, having successfully participated in the draw of lots

conducted by the DTCP Haryana in 2016 and were allotted a unit/flat in Tower F bearing flat no. F-112 in category 2 BHK. The provisional allotment letter specifying a tentative carpet area of 613.31 sq. ft. and a balcony area of 95.10 sq. ft. was issued to the complainants by the respondent.

3. That the builder buyer's agreement (BBA) was duly executed between the parties on 06.02.2016. As per 4.1 para of BBA the respondent was liable to handover the actual physical possession latest by 16.03.2021 (16.09.2020 plus 6 months grace period in lieu of covid-19).

4. That the complainant has availed home loan from ICICI Bank vide sanctioned letter dated 19.02.2016 and got Rs.22,50,260/- financed from said Bank and the Bank is obligated to make the payment to the respondent as and when demands were raised by the respondent. The respondent towards the sales consideration i.e. Rs.24,99,500/- has raised all the demand notices except the last demand and the complainants through their financier have paid Rs.22,76,731/- against the demands raised by the respondent.

5. That they (complainants) filed complaint to the Authority seeking delay possession compensation for delay of delivery of the possession and that complaint was allowed by the Authority vide order

dated 18.04.2024. The Authority in its order dated 18.04.2024 has categorically stated that such interest charged by the respondent are illegal and bad in law. Due to the default on part of the respondent the complainant had to continue residing in a rented premises paying huge rent to the landlord. The complainant has paid an amount of Rs.6,70,000/- w.e.f. 01.04.2021 till 31.10.2024.

6. Contending all this, complainants have prayed for following reliefs: -

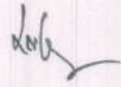
- i. To pay the amount of Rs.6,70,500/- as rent paid by the complainant plus future rent till possession of the unit no. F-112.
- ii. To pay the interest amount of Rs.5,22,991/- as paid to the financier for the period 01.04.2021 to 31.10.2024 plus future interest till the date of possession,
- iii. To pay Rs.5,00,000/- on account of compensation for causing mental tension, harassment and mental agony to the complainant,
- iv. To pay Rs.20000/- towards the travelling cost incurred on visits to respondent office and site for resolution,
- v. To grant any other reliefs as it may deem fit.

7. The respondent contested the complaint by filing a written reply. It is averred that the averments and contentions as stated in the complaint under reply may not be taken to be deemed to have been admitted by the respondent, save and except what are expressly and

specifically admitted and the rest may be read as travesty of fact. It is submitted that the complaint filed by the complainants is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the threshold.

8. 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 complainants. Since the complainants 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 complainants cannot be allowed to seek interest and/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.

9. That 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/or compensation beyond what was agreed.


AO

10. That the agreement for allotment was made by the complainants and, as such, the parties are bound by the terms and conditions mentioned therein. The complainants are not entitled to seek for relief as sought. The complainants have not approached this Hon'ble Authority with clean hands. The allegations in the present complaint cannot be decided summarily and hence instant complaint is out of the jurisdiction of this Hon'ble Regulatory Authority.

11. Contending all this, respondent has prayed for dismissal of complaint.

12. Both of the parties filed affidavits in support of their claims.

13. I have heard learned counsels appearing for both of parties and perused the record.

14. According to learned counsel for complainants, due date of possession was 16.03.2021 but respondent failed to deliver possession at agreed time, causing loss to his clients i.e. complainants. During deliberations, it is agreed by learned counsel for complainants that his clients approached the Authority seeking delay possession compensation for delay of delivery of the possession and that complaint has been allowed by the Authority vide order dated 18.04.2024, copy of which has been put on file. The respondent in that case has been directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.85%

per annum for every month of delay from the due date of possession i.e. 16.03.2021 till actual handing over of possession or valid offer of possession plus two months after obtaining occupation certificate from the competent Authority, whichever is earlier, apart from some other reliefs.

15. It is contended by learned counsel for the complainants that despite said order of the Authority, it is for the Adjudicating Officer to allow compensation for delay in handing over possession, in view of section 72 of Act of 2016. Learned counsel reminded that this Forum (AO) has jurisdiction to allow compensation in view of Sections 12, 14, 18 and 19 of said Act. Section 18 (3) prescribes for liability of promoter to pay compensation to the allottees, if same (promoter) fails to discharge any other obligation imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale. Learned counsel claims that respondent (promoter) failed to discharge its obligation of handing over possession, in agreed time as per terms and conditions of BBA and hence, liable to pay compensation.

16. As per Section 18 (1) of Act of 2016, if promoter fails to complete or unable to give possession of an apartment, plot or building, -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, (b)-----, he shall be liable on demand to the allottees, in case the allottee

wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf **including compensation, in the manner as provided under this Act.**

17. It is worth mentioning here that complainants did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of 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 handing over of possession, at such rate as may be prescribed. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

18. Upholding that the claim of compensation and interest can be allowed only in case the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **“Greater Noida Industrial Development Authority vs. Ranjan Misra” Appeal No. 70 of 2023 decided on 20.04.2023-----;**

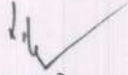
wb
AO

“13.9. If were closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project.”

19. When complainants have already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate compensation for same cause of action i.e. delay in delivering of possession. Complaint in hands is thus dismissed.

20. File be consigned to record room.

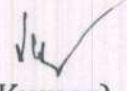
Announced in open court today i.e. on 24.04.2026.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory
Authority, Gurugram.

Present: Mr. Vijay Pratap Singh, Advocate for complainants.
Mr. Kanish Bangia, Advocate for respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
24.04.2026