

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

**Date of decision: 11.07.2025**

Sandeep Kumar,  
**Both R/o:-** H.No. 48 - R, 2nd Floor,  
Back Side Of New Colony Gurudwara,  
New Colony, Gurugram, Haryana - 122001

**Complainant**

**Versus**

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

**Respondent**

**CORAM:**  
Arun Kumar

**Chairman**

**APPEARANCE:**  
Mukul Kumar Sanwariya (Advocate)  
Tushar Bahmani (Advocate)

Complainant  
Respondent

**ORDER**

1. This order shall dispose of the aforesaid complaint titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant in the above referred matters are allottees of the project,

namely, "Sixty-Three Golf Drive" situated at Sector-63 A, Gurugram being developed by the same respondent/promoter i.e., "Sunrays Heights Private Limited." The terms and conditions of the allotment letter, buyer's agreements and the fulcrum of the issue involved in all these cases pertain to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.

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

| 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/not registered        | Registered vide registration no. 249 of 2017 dated 26.09.2017<br>Valid till 25.09.2022 |
| 5.    | DTPC License no.                      | 82 of 2014 dated 08.08.2014  |
|       | Validity status                       | 31.12.2023   |
| 6.    | Allotment letter dated                | 31.01.2019<br>[Page 41 of complaint]   |
| 7.    | Unit no.                              | C-95, tower C<br>[Page 57 of complaint]  |
| 8.    | Unit admeasuring                      | 361.89 sq. ft. (carpet area)<br>69.84 sq. ft. (balcony area)<br>[Page 57 of complaint] |
| 9.    | Date of execution of Buyers agreement | Undated<br>(stamp vendor dated 25.01.2019)<br>[Page 44 of complaint]                   |

|     |                                   |  |
|-----|-----------------------------------|--|
| 10. | Possession clause                 | <i>*Note: As per affordable housing policy 2013<br/>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> |
| 11. | Date of approval of building plan | 10.03.2015 [page 42 of reply]  |
| 12. | Date of environment clearance     | 16.09.2016 [page 48 of reply]  |
| 13. | Due date of possession            | 16.03.2021<br>[Due date of possession is calculated from the date of environmental clearance i.e., 16.09.2016 being later + 6 months on account of COVID-19]   |
| 14. | Total sale consideration          | Rs.14,82,480/-<br>[Page 57 of the complaint]   |
| 15. | Amount paid by the complainant    | Rs.14,01,954/- i.e., 94.56% of TSC<br>[As per demand notice dated 18.10.2019 on page 61 of the complaint]  |
| 16. | Final reminder                    | 08.08.2024<br>[Page 60 of reply]   |
| 17. | Public notice through Newspaper   | 16.10.2024<br>[Page 62 of reply]   |
| 18. | Cancellation letter               | Not placed on record   |
| 19. | Occupation certificate            | 31.12.2024<br>[as per DTCP website]  |
| 20. | Offer of possession               | Not placed on record   |

**A. Facts of the complaint**

4. The complainant has made following submissions in the complaint:

- a) That the respondent is a private limited company and is the land owner and license holder fully responsible for the acts, conduct business and carry on day-to-day affairs through its respective Managing Director, Chairman or Directors or by them and is responsible for and caused the construction and development of the project.
- b) That the respondent is in the business of real estate development, thus, in its usual course of business, purchases the land, enters into joint ventures, enters into collaboration agreements, enters into marketing and development agreements etc. with various stakeholders including but not limited to land owners.
- c) That the respondent is developing an affordable group housing colony under the name and style of "63 Golf Drive" on all that piece and parcel of land admeasuring 5.90 acres situated in the revenue estate of village Ullahwas, Sector - 63 A, Gurgaon, Haryana.
- d) That the respondent was granted license no. 82 of 2014 dated 08.08.2014 by the Director General Town & Country Planning Haryana, Chandigarh for construction and Development of an affordable group housing colony, as per Affordable Housing Policy 2013 on the said land.
- e) That the respondent got the building plan approved on 10.03.2015. The respondent got the environmental clearance on 16.09.2016.
- f) That the complainant applied to book a 1bhk Type B residential flat bearing no. C 95, "63 Golf Drive" sector 63 A, Gurgaon, having an admeasuring carpet area 361.89 Sq. ft. along with balcony area of approx.69.84 sq. fts. for a total sale consideration of Rs. 14,82,480/- (excluding applicable taxes and other charges) and paid an amount of Rs. 74,150/- against the demand made by the respondent vide demand notice dated 21.12.2018

- g) That the complainant again made a payment of Rs. 11, 27, 668/- and Rs. 10, 00, 000/-.
- h) That the respondent issued allotment letter dated 31.01.2019 to the complainant and also executed the builder buyer agreement with regard to the unit 1 bhk Type B residential flat bearing no. C 95, "63 Golf Drive" sector 63 A, Gurgaon admeasuring carpet area 361.89 Sq. ft. along with balcony area of approx. 69.84 sq. fts.
- i) That pursuant to such approval by the parties, thus all the terms and conditions as mentioned in the Agreement to sell are applicable to the instant complainant and respondent as well. That as demanded by the respondent vide demand notice the complainant made the payment of Rs. 2,00,136/-
- j) That the respondent failed to hand over the possession on due date of possession of the unit. That the complainant already paid a total sum of Rs. 14,01,954 the entire sale consideration.
- k) That respondent showed a rosy picture about the project. The complainant relied upon the advertisements and visited the project site. The respondent representative's made promise and commitments at the time of site visit and solicit the complainant to invest their hard earned in Respondent's project.
- l) That without even adhering to the terms of the agreement to without completing the project and providing habitable unit the respondent even after taking the entire sale consideration from the complainant.
- m) That the complainant had booked the property in aforesaid project to own a house for a standard living matching to his standard and taste but he has been cheated by the Respondent as they have failed to fulfill their promise of giving the possession of the property on time.

- n) That the respondent had taken the consideration amount from the complainant on the basis of its impressive pictures and false promises due to which complainant have drained out from his hard earned savings and by this way the addresses above cheated the complainant.
- o) That the respondent after indulging in unfair trade practice had intentionally grabbed the hard earned money of the complainant and by this way also committed the offence of "Criminal Breach of Trust".

**B. Relief sought by the complainant**

5. The complainant has sought the following relief(s):
  - I. To direct the respondent to complete the project and handover the actual physical possession to the complainants till or before July 2024.
  - II. To direct the respondents to raise demands after giving the exact amount payable or receivable by the complainants from the respondents as per RERA Act and Rules applicable.
  - III. Respondent be also directed to pay directly to the complaint's counsel litigation charges of Rs. 2,50,000/- .
6. 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**

7. The respondent has contested the complaint on the following grounds.
  - a) That the complainant approached the respondent and expressed interest in booking an apartment in the affordable housing developed group housing developed by the respondent known as "63 Golf Drive" situated in Sector 63, Gurugram. Before the booking, the complainant conducted extensive and independent inquiries regarding 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.

- b) That the complainant is well versed with the provisions of the Affordable Housing Policy, 2013 as per which the above allotment was made and has filed an affidavit accepting all the terms and conditions envisaged in the said policy with regards to timely payment of the installment and consequences in case the payments are not made as per the said policy.
- c) That thereafter the complainant, vide application form applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. C-95, admeasuring carpet area of 36.89 sq. ft. and balcony area of 69.84 sq. ft. was provisionally allotted to the complainant. 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.
- d) Thereafter, an agreement to sell was executed 04.02.2016 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.
- e) That 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 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.

- f) That, the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance of the Project was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of EC, comes out to be 21.08.2021. That it is pertinent to mentioned herein that the Authority vide notification no.9/3-2020 dated 26.05.2020 had allowed an extension of 6 months for the completion of the project the due of which expired on or after 25th March 2020, on account of unprecedented conditions due to the outbreak of Covid-19. Hence, the proposed due date of possession comes out to be 16.03.2021.
- g) That, however, the offer of possession was also subject to the incidence of force majeure circumstances. That the construction and development of the project was deeply affected by such circumstances which are beyond the control of the respondent.
- h) The respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities 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.

- i) 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, 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.
- j) Therefore, it is safely concluded that the said delay of 422 days in the seamless execution of the Project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. Thus, from the facts indicated above and the documents appended, it is comprehensively established that a period of 422 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of aforesaid orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure in terms with the agreement.
- k) It is further submitted that despite there being several defaulters in the project, the respondent had to infuse funds into the project and have

diligently developed the project in question. That it must be noted by the Authority that despite the default caused, as a gesture of goodwill, with good intent the respondent got a sanctioned loan from SWAMIH fund of Rs. 44.30 Crores to complete the project and has already invested Rs. 35 Crores from the said loan amount towards the project. That further the respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for the water connection, and the electrical inspection report.

- l) That the respondent has applied for an occupation certificate on 08.12.2023. It is pertinent to note that once an application for the grant of an occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the 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 period utilized by the statutory authority to grant an occupation certificate to the respondent is necessarily required to be excluded from the computation of the period utilized for the implementation and development of the project.
- m) That the complainant has been allotted unit under the Affordable Housing Policy, 2013 which clearly stipulated the payment of consideration of the unit in six equal installments. The complainant is liable to make the payment of the installments as per the government policy under which the unit is allotted. That at the time of application the

complainant was aware about the duty to make timely payment of the installments.

- n) That not only as per the Policy, the complainant was also under the obligation to make timely payments of installments as agreed as per the BBA.
- o) 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.
- p) That the respondent company sent a final reminder letter dt. 08.08.2024 to clear the outstanding dues Rs. 3,62,381/- mentioning the relevant clauses of the Affordable Housing Policy 2013, wherein if the installments are not paid timely, the respondent can cancel the unit allotted to the complainant.
- q) That in compliance with the provisions of the Affordable Housing Policy 2013 since no payment was paid despite the issuance of a final reminder letter to make the outstanding payment, the allotted unit of the complainant has already been canceled but showing the good gesture, a final opportunity to clear the outstanding dues to given to the complainant through a requisite public notice published in the Hindi Newspaper on 16.08.2024. That the respondent company has duly received FIRE NOC from the competent authority on 22.12.2023.
- r) Thus, it is pertinent to mention here that since the respondent has duly complied with the statutory requisites the project is nearly completed and the occupation certificate has already been applied, there is no unwarranted delay in completion of the project.

- s) That the complainant has hopelessly delayed in making the payment of the balance installment to the respondent and hence the unit of the complainant is liable to be canceled.
- t) 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.
- u) The above-mentioned provisions note the mandatory obligation of the complainant to make the due payments against the unit, which under no circumstance whatsoever, can be escaped.
- v) 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.
- w) 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.
- x) 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.

- y) 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%.
  - z) That moreover, without accepting the contents of the complaint in any manner whatsoever, and without prejudice to the rights of the Respondent, the unit of complainant can be retained only after payment of interest on delayed payments from the due date of installment till the date of realization of amount. Further delayed interest if any has to be calculated only on the amounts deposited by the complainants towards the sales consideration of the unit in question and not on any amount credited by the respondent, or any payment made by the complainants towards delayed payment charges or any statutory payments, etc.
  - aa) That in light of the bona fide conduct of the respondent and no delay for development of project as the respondent was severely affected by the force majeure circumstances and no cause of action to file the present complaint this complaint is bound to be dismissed in favor of the respondent.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**D. Jurisdiction of the authority**

9. 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**

10. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has a complete territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

11. 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.*

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

**E. Findings on the objections raised by the respondent.**

**E.I Objection regarding delay due to force majeure circumstances.**

13. It is contended on behalf of respondent that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in delays such as various orders passed by NGT and Hon'ble Supreme Court, lockdown due to outbreak of Covid-19 pandemic.
14. The Authority, after careful consideration, finds that in the present case, the project falls under the Affordable Housing Policy, 2013, which contains specific stipulations regarding the completion of the project. As per Clause 1(iv) of the said Policy:
- "All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the 'date of commencement of project' for the purpose of this policy. The licenses shall not be renewed beyond the said 4-year period from the date of commencement of project"*
15. The respondent/promoter, having applied for the license under the Affordable Housing Policy, was fully aware of these terms and is bound by them. The Authority notes that the construction ban cited by the respondent, was of a short duration and is a recurring annual event, usually implemented by the National Green Tribunal (NGT) in November. These are known occurring events, and the respondent being a promoter, should have accounted for it during project planning. Similarly, the various orders passed by other Authorities cannot be taken as an excuse for delay as it is a well-settled principle that a person cannot take benefit of his own wrong.

**F. Findings on the relief sought by the complainant**

**F.I To direct the respondent to complete the project and handover the actual physical possession to the complainants till or before July 2024.**

**F.II To direct the respondents to raise demands after giving the exact amount payable or receivable by the complainants from the respondents as per RERA Act and Rules applicable.**

**F.III Respondent be also directed to pay directly to the complaint's counsel litigation charges of Rs. 2,50,000/-.**

16. The factual matrix of the case reveals that the complainant was allotted unit no. C-95 admeasuring carpet area of 361.89sq. ft. and a balcony area of 69.84sq. ft., in the respondent's project at basic sale price of ₹14,82,480/- under the Affordable Group Housing Policy 2013. An allotment letter dated 31.01.2019 was issued. The possession of the unit was to be offered by 16.03.2021. The complainant paid a sum of ₹14,01,954/- towards the subject unit.
17. The respondent submitted that the complainant has instituted proceedings before the Hon'ble National Company Law Tribunal (NCLT), Delhi Bench in Case No. IB-48 of 2025, seeking a refund along with interest at the rate of 24% per annum. It was further submitted that in the said NCLT proceedings, the date of default has been stated as 31.03.2023, whereas in the present complaint before this Authority, the complainants have asserted the due date as 16.03.2021 and have sought relief in the form of delayed possession charges and delivery of possession. In response, learned counsel for the complainant submitted that the matter before the Hon'ble NCLT is at the admission stage and that no order has been passed therein as of yet.
18. Upon considering the submissions made by both parties, the Authority is of the considered view that the complaint filed before this Authority is with respect to the statutory provisions under the Real Estate (Regulation and Development) Act, 2016 which is a special Act to regulate and promote the real estate sector and to ensure sale of plot, apartment or building, as the case may be in an efficient and transparent matter and to protect the interest of consumers in the real estate sector. It is noted that the objective and scope of the Insolvency and Bankruptcy Code, 2016 (IBC) are distinct and serve a different legal purpose. It is further observed that the matter before the Hon'ble NCLT is presently at the stage of admission and no order initiating

Corporate Insolvency Resolution Process (CIRP) against the respondent has been passed as on date. Therefore, at this juncture, there exists no bar under any law that prevents this Authority from proceeding to adjudicate the present complaint(s) on merits.

19. The complainant is seeking a direction to quash the letter dated 15.03.2024 issued by the respondent as "final reminder". A final reminder letter dated 08.08.2024 was being sent to the complainant wherein it was specified that in case the complainant/allottee fails to make payment of ₹3,62,381/- within a period of 15 days of the said reminder, it shall result in automatic cancellation of the allotment without any further notice of communication by the respondent. Thereafter, the respondent made a publication in the newspaper "AAJ SAMAJ" on 16.10.2024 as required under Affordable Group Housing Policy, 2013. The said publication also stated that failure to make payment within the stipulated period would lead to automatic cancellation of the allotment, without any further notice or communication by the respondent.
20. The foremost question which arises before the authority for the purpose of adjudication is that "whether the said publication would tantamount to a valid cancellation in the eyes of law or not?"
21. Clause 5(iii) (i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:-

*"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a **reminder** may be issued to him for depositing the due instalments within a **period of 15 days** from the date of issue of such notice. If the allottee still defaults in making the payment, the **list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State** for payment of due amount **within 15 days** from the date of publication of such notice, **failing which allotment may be cancelled**. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant.*

*Such flats may be considered by the committee for offer to those applicants falling in the waiting list."*

22. The Authority observes that the respondent issued "Final Reminder Letter" dated 15.03.2024, directing the complainant to clear the outstanding dues amounting to ₹3,62,381/-. It is pertinent to mention here that the complainant had already paid an amount of ₹14,01,954/-(i.e., 94%) against the total consideration of ₹14,82,480/- to the respondent by 08.09.2019. Perusal of case file reveals that the demand raised by the respondent via letter dated 08.08.2024 was towards the payment of last instalment accompanied with interest on delay payments. Therefore, the rate of interest chargeable from the allottee by the promoter, in case of default, if any shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act. Also, the respondent is obligated to raise last demand only in accordance with the builder buyer agreement and as per Affordable Housing Policy, 2013 and shall not charge anything from the complainant which is not the part of the builder buyer agreement and under the Affordable Housing Policy, 2013.
23. The Authority takes serious note of the conduct of the respondent in wilfully violating the directions issued to it vide order **dated 23.04.2024 in M.A. No. 233/2024 in CR/1244/2022** titled "Sixty-Three Golf Drive Flat Buyers Association vs. Sunrays Heights Private Ltd.", wherein a clear directive was issued restraining the respondent from cancelling the allotment of any unit in cases where more than 85% of the sale consideration had already been paid by the allottee, and without adhering to the due process stipulated under the Affordable Housing Policy. It has been observed that the

notwithstanding this express direction, the respondent proceeded to cancel the allotments of various allottees in a blatant disregard of the said order. Such conduct not only amounts to a deliberate and conscious defiance of the Authority's directions but also reflects a lack of bona fide on the part of the respondent in its dealings with the allottees.

24. The Authority further notes that the complainant has paid approximately 94% of the sale consideration, and the respondent was required to hand over the project by 16.09.2020 under the Affordable Housing Policy, 2013, excluding the COVID-19 grace period. Even with a six-month grace period in lieu of Covid-19 pandemic, the possession was to be handed over by 16.03.2021, however, the respondent has failed to complete the project. Thereafter, the respondent has obtained the occupation certificate from the competent authority on 31.12.2024. The interest accrued during the delay period significantly reduces the amount payable by the complainant. Upon adjustment of this interest, the respondent would, in fact, be liable to pay the complainant. Despite this, the respondent chose to cancel the unit on grounds of non-payment, while neglecting its own obligations. Such actions by the respondent displays bad faith, as it failed to adjust the delay period interest.

25. Additionally, as per Clause 9.2 of the Agreement for Sale, annexed as Annexure A to the Rules, 2017, the allottee has the right to stop making further payments if the promoter defaults on its obligations. The relevant portion is reproduced below:

***9.2 In case of Default by Promoter under the conditions listed above, Allottee is entitled to the following:***

*(ii) Stop making further payments to Promoter as demanded by the Promoter. If the Allottee stops making payments, the Promoter shall correct the situation by completing the construction/*

*development milestones and only thereafter the Allottee be required to make the next payment without any interest for the period of such delay; or...*

**(Emphasis Supplied)**

26. In the present case, the respondent-promoter was obligated to complete the construction by 16.03.2021, including a six-month extension due to the Covid-19 pandemic. However, the respondent-promoter failed to complete the project within this timeline. Thus, in accordance with Clause 9.2, the allottee was fully justified in stopping further payments.
27. Considering the above findings, the cancellation of the allotment is deemed invalid and is hereby quashed as issued in bad faith. Thus, the respondent is directed to reinstate the unit allotted to the complainant.
28. 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.**"*

29. **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)*

30. 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**.

**31. 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."*

32. 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.
33. 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., 11.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
34. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***

***Explanation.*** —*For the purpose of this clause—*

- (i) The rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.***

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

35. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent which is the same as is being granted to them in case of delayed possession charges.
36. 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.
37. 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., @ 11.10% 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*.
38. In the present complaint, the grievance of the complainant is that the physical possession has not been handed over by the respondent to the complainant.
39. The authority observes that the respondent-promoter has obtained occupation certificate of the said project from the competent authority on 31.12.2024. Further, Section 17(1) of the Act of 2016 obligates the respondent-promoter to handover the physical possession of the subject unit

to the complainant complete in all respect as per specifications mentioned in BBA and thereafter, the complainant-allottee is obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act, 2016.

40. In view of the above, the respondent is directed to handover the possession of allotted unit to the complainant complete in all respect as per specifications of buyer's agreement within a period of one month from date of this order after payment of outstanding dues, if any, as the occupation certificate for the project has already been obtained by it from the competent authority.
41. Further, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.
42. The complainant is seeking above mentioned relief w.r.t. compensation on loss of rent and litigation charges. Hon'ble Supreme Court of India in case titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357** held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and

the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaint in respect of compensation & legal expenses.


**G. Directions of the authority**

43. 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 11.10% 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., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as

per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

- V. The respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects as per specifications of buyer's agreement within one month from date of this order, as the occupation certificate in respect of the project has already been obtained by it from the competent authority.
- VI. The respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.
- VII. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement and the provisions of the Affordable Housing Policy, 2013.
44. The complaint stand disposed of.
45. Files be consigned to the registry.



**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.07.2025