BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**1525 of 2025**
First date of hearing:		**30.07.2025**
Date of decision	**:**	**29.09.2026**

Nidhi Arya
R/o – 31-S, Sector 7, Jasola, New Delhi **Complainant**

Versus

M/s Sunrays Heights Pvt. Ltd.
Registered Office: 211, 2nd floor, Ansal Bhawan, 16 Kasturba Gandhi Marg, New Delhi-110001 **Respondent**

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:
Sh. Vijay Pratap Singh (Advocate) **Complainant**
Ms. Riya (Advocate) **Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. 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. No.	Particulars	Details
1.	Name of the project	"Sixty-Three Golf Drive", Sector 63A Gurugram
2.	Nature of the project	Affordable group housing
3.	RERA registered or not registered	249 of 2017 dated 26.09.2017 valid up to 25.09.2022
4.	DTCP license	82 of 2014 dated 08.08.2014 valid up to 31.12.2023
5.	Unit no.	101, in tower-A (Page no. 17 of complaint)
6.	Unit admeasuring	356.180 sq. ft. (carpet area) 69.84 sq. ft. (balcony area) (Page no. 17 of complaint)
7.	Allotment Letter	13.06.2017 (Page no. 17 of complaint)
8.	Date of execution of Buyers agreement	07.11.2016 (As per stump paper at page 19 of the complaint)
9.	Possession clause	**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 payments by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.*** *(Page no. 26 of complaint)*
		****Note*-: *As per affordable housing policy 2013 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 licence shall not be renewed beyond the said 4 years from the date of commencement of project.*

10.	Date of building plan	10.03.2015 (Page no. 21 of complaint)
11.	Date of environment clearance	16.09.2016 (taken from another file of the same project)
12.	Due date of possession	16.03.2021 (16.09.2020 plus six months in lieu of covid-19) (calculated from the date of environment clearance)
13.	Total price of the unit	Rs.14,35,000/- (As per annexure-A, at page no. 33 of the complaint)
14.	Amount paid by the complainant	Rs.13,29,280/- (as per SOA, page 164 of reply)
15.	Occupation certificate	31.12.2024
16.	Final reminder	22.07.2024, 07.08.2024
17.	Publication	16.10.2024 (page 93 of reply)
18.	Offer of possession	Not on record
19.	Cancellation letter, if any	Not on record

B. Facts of the complaint

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

a) That 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. The complainant approached to the respondent for booking of a unit vide application bearing no SGD(B)4360 having carpet area of 356.18 sq ft and balcony area of 69.84 sq ft.

b) That the apartment buyer's agreement got executed between the complainant and the respondent on dated 07.11.2016. The total consideration of the flat was Rs.14,59,640/-(exclusive of tax and other charges). The complainant has paid Rs13,29,280/-(inclusive of tax and

other charges) against demand of Rs13,29,280/- from the builder till date of filing of case before the Authority, as and when the demand was raised by the respondent in time bound manner.

c) That the respondent is hereby threatening and pressurising the complainant telephonically that she has to make the payment as per the affordable housing policy as per agreed terms of BBA, the respondent is trying to pressurise the complainant align the complainant in cancellation pool without even caring the hard fact that as per the BBA terms the project is already delayed by more than 3 year from the date of promise. The respondent has called telephonically at their site office and forcefully saying to get the affidavit signed.

d) That as per the slow pace construction status and absence of basic amenities respondents are delayed heavily in giving possession. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the Complainant herein is not in breach of any of its terms of the Agreement. But the Respondent is deliberately and intentionally not raising the last demand as per the amended construction linked plan of the Haryana affordable policy 2013.

e) 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.

f) That the cause of action to file the instant complaint has occurred within the jurisdiction of the Authority as the apartment which is the subject matter of this complaint is situated in Sector 63A, Gurugram which is within the jurisdiction of the Authority.

C. Relief sought by the complainant.

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

i. Direct the respondent to pay interest @11.10% per annum as per the prevailing MCLR plus 2%, on paid amount of Rs 13,29,280/-for delay period starting from 16th March. 2021 till actual hand over of the physical possession or offer of possession plus 2 months 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. Direct the respondent to get the copy of Occupancy Certificate, as such the Respondent claims that they have received the OC.

D. Reply by the respondent.

i. 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 instalment and consequences in case the payments are not made as per the said policy.

ii. That thereafter the complainant, vide application form applied to the respondent for allotment of the unit. Pursuant thereto residential flat bearing no. A-101, admeasuring carpet area of 356.18 sq. ft. (approx.) and balcony area of 69.84 sq. ft. (approx.) was provisionally allotted to the complainant on 11.01.2016. The respondent had no reason to

suspect the *bonafide* of the complainant and proceeded to allot the unit in question in their favor. Thereafter, an agreement to sell was executed on 07.11.2016 between the complainant and the respondent. The agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.

iii. 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. Being a contractual relationship, reciprocal promises are bound to be maintained. 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. As per clause 4.1 of the agreement the respondent **endeavoured** to offer possession within a period of 4 years from the date of obtainment of all government sanctions and permissions including environment clearance (hereinafter referred to as the **"Commencement of Project"**), whichever is later. The possession clause of the agreement is with par with the clause 1(iv) of the Affordable Housing Policy 2013.

iv. 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.

v. That 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/ directions passed by various authorities/ forums/ courts.

vi. That additionally, even before normalcy could resume, the world was hit by the Covid-19 pandemic. That the COVID-19 pandemic resulted in serious challenges to the Project with no available laborers, contractors, etc. for the construction of the Project. The Ministry of

Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I (A) recognized that India was threatened with the spread of the COVID-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana, have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of the Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021 **(103 days)**, each and every activity including the construction activity was banned in the State. It is also to be noted that on the same principle, the Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing Projects vide Order/Direction dated 26th of May, 2020 on account of 1st wave of COVID-19 Pandemic. The said lockdown was imposed in March 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.

vii. 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 prohabitary 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. 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.

viii. That the construction work at the project site of the mentioned project in the present complaint was also delayed for 150 days due to the implementation of GRAP notifications which were time and again issued between 17.10.2017 till date from Central Pollution Control Board to curb the rising various environmental pollution in Delhi/NCR. This is another genuine reason for the respondent not to complete the construction work within timelines as the mentioned reason for delay was beyond the control of the respondent. 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.

ix. That in a similar case where such orders were brought before the Authority was in the ***Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr. vs. M/s. Venetian LDF Projects LLP" which was decided on 17.05.2022,*** wherein the Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the respondent builder.

x. That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.70.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.17.2019 to 74.02.2020. The Authority was also pleased to consider and provide a benefit of 6 months to the developer on account of the effect of COVID.

xi. 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.

xii. That the respondent has applied for an Occupation Certificate on 08.12.2023. 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.

xiii. 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.

xiv. That the complainant has failed to make any payment of the installment due at *"within 36 months from the due date of Allotment"* along with partial payments towards previous installments. In

accordance with the same, 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.

xv. That the respondent sent a final reminder letter dt. 22.07.2024 to clear the outstanding dues, mentioning the relevant clauses of the Affordable Housing Policy 2013, wherein if the installments are not paid timely, the respondent can cancel the unit allotted to the complainant.

xvi. That the respondent further, sent a final reminder letter dated 07.08.2024, when the complainant failed to respond to the previous reminder 1 letter dated 22.07.2024 and asked the complainant to clear the outstanding dues of Rs. 4,75,95/-. Despite the issuance of the both above mentioned final reminders, the complainant intentionally and willfully evaded the matter, and chose not to clear his outstanding dues as requested by the respondent. Thereafter, the respondent, after giving sufficient opportunity to the complainant to clear the outstanding dues proceeded further as per the terms and conditions of the Affordable Housing Policy 2013 and published the complainant's details in the local newspaper dated 16.10.2025 and again requested him to clear the outstanding dues in 15 days from the

date of the said publication else, the allotment will be cancelled purely as per the said policy.

xvii. That the respondent sent another letter dated 27.11.2024, after allowing clearing the outstanding via above mentioned publication dated 16.10.2024 showing the generosity to the complainant and asked him to clear the outstanding dues, failing which the respondent will finally enlist his allotment in the list of defaulters and that the allotment shall be cancelled as per the terms and conditions of the Affordable Housing Policy 2013.

xviii. That the respondent has duly received FIRE NOC from the competent authority on 22.12.2023.

xix. That since the respondent has duly complied with the statutory requisites, the project is nearly completed and the OC has already been applied, there is no unwarranted delay in completion of the project.

xx. That the respondent has duly received its Occupation Certificate (OC) from the Director, Town and Country Planning, Chandigarh on 31.12.2024. Since the OC has been received, the Complainant is legally bound to settle all outstanding payments and come forward to take possession of the unit, subject to clearing outstanding dues, following the offer of possession of the unit.

xxi. That to add to the misery of the respondent, the hundreds of allottees of the project in dispute have filed a claim petition having no. IB/48(ND)/2025 under section 7 of the IBC,2016, and have claimed Rs. 26 Crores interest of 24% and declared the respondent insolvent as per the provisions of the IBC,2016. In this claim petition, and has admitted the date of default, i.e., the due date of handing over the

possession, as 31.03.2023. The present complainant through this present RERA complaint has sought possession and interest on delayed possession, whereas through the claim petition having no. IB/48(ND)/2025 under section 7 of the IBC,2016, the complainant has sought insolvency of the respondent under the IBC,2016.

xxii. 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 cancelled in terms of Clause 5(iii)i affordable housing policy and the clause 3.7 of the BBA.

xxiii. That the complainant despite all the reminders failed to make payment against the instalment. The respondent earnestly requested the complainant to make payment. However, the complainant did not pay any heed to the legitimate, just and fair requests of the respondent. All requests of the respondent to make payment fell on deaf ears of the complainant.

xxiv. 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.

xxv. That 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%. 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 allottee/ complainant towards the sales consideration of the unit in question and not on any amount credited by the respondent, or any payment made by the allottee/complainant towards delayed payment charges or any taxes/statutory payments, etc.

xxvi. 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 be dismissed in favor of the respondent.

5. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

6. 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

7. 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

8. 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.*

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

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to pay interest @11.10% per annum as per the prevailing MCLR plus 2%, on paid amount of Rs 13,29,280/-for delay period starting from 16th March. 2021 till actual hand over of the physical possession or offer of possession plus 2 months 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 Direct the respondent to get the copy of Occupancy Certificate, as such the Respondent claims that they have received the OC.

10. The factual matrix of the case reveals that the complainant was allotted unit no. A-101, Tower-A admeasuring carpet area of 356.18 sq. ft. and a balcony

area of 69.84 sq. ft., in the respondent's project at basic sale price of ₹14,35,000/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed between the parties in 2016. The complainant paid a sum of ₹13,29,280/- towards the subject unit.

11. 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.

12. 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?"

13. 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."*

14. The Authority observes that the respondent made a publication in the newspaper on 16.10.2024, directing the complainant to clear the outstanding dues within 15 days. It is pertinent to mention here that the complainant had already paid an amount of ₹13,29,280/-(i.e., 92.63 %) against the total consideration of ₹14,35,000/- to the respondent. Perusal of case file reveals that the demand raised by the respondent via publication

dated 16.10.2024 was towards the payment of last instalment accompanied with interest on delay payments. Therefore, the rate of interest chargeable from the allottee by the promoter, in case of default, if any shall be charged at the prescribed rate i.e., 10.80% 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.

15. Further, the Authority takes serious note of the conduct of the respondent in wilfully violating the directions issued to it vide order dated 23.04.2024 in M.A. No. 233/2024 in CR/1244/2022 titled *"Sixty-Three Golf Drive Flat Buyers Association vs. Sunrays Heights Private Ltd."*, wherein a clear directive was issued restraining the respondent from cancelling the allotment of any unit in cases where more than 85% of the sale consideration had already been paid by the allottee, and without adhering to the due process stipulated under the Affordable Housing Policy.

16. The Authority further notes that the complainant has paid approximately 92.63% 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.

17. 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)***

18. 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.

19. 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.

20. 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."*

21. **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)***

22. 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.

23. **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."*

24. 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.

25. 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., 29.09.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

26. 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;"*

27. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80 % by the respondent which is the same as is being granted to them in case of delayed possession charges.

28. 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.

29. 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., @ 10.80% 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.

30. The Authority further 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.

31. 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.

32. Further, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from date of this order, upon

payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.

G. Directions of the Authority

33. 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 10.80% p.a. for every month of delay from the due date of possession i.e., 16.03.2021 till the offer of possession plus 2 months or actual handing over of possession, whichever is earlier.

II. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules, ibid.

III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% 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.

34. The complaints stand disposed of.

35. Files be consigned to the registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.09.2026