

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

Date of decision: 12.07.2022

NAME OF THE BUILDER		ANSAL HOUSING & CONSTRUCTION LTD.	
PROJECT NAME		ANSAL HEIGHTS 86	
S. No.	Case No.	Case title	APPEARANCE
1	CR/965/2019	Gaurav Yadav V/s Ansal Housing & Construction Ltd. & Samyak Projects Pvt Ltd.	Shri S.S. Yadav Smt. Meena Hooda
2	CR/2070/2019	Sandesh Tyagi V/s Ansal Housing & Construction Ltd.	Smt. Priyanka Aggarwal Smt. Meena Hooda
3	CR/834/2020	Vinay Nagrath V/s Ansal Housing & Construction Ltd.	Shri Arun Kumar Smt. Meena Hooda
4	CR/1112/2021	Ashok Yadav V/s Ansal Housing & Construction Ltd.	Shri Raghuvender Singh Smt. Meena Hooda

CORAM:Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal**Chairman**
Member**ORDER**

1. This order shall dispose of all the 4 complaints titled as above filed before this authority in form CRA 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.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ansal Heights 86" (group housing colony) being developed by the same respondent/promoter i.e., M/s Ansal Housing & Construction Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.
- The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	ANSAL HOUSING & CONSTRUCTION LTD "ANSAL HEIGHTS 86" Sector-86, Gurugram.
Possession Clause: - 31	<i>"The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."</i> (Emphasis supplied)
Occupation certificate: - Not obtained	
Note: Grace period is allowed being unqualified & included while computing due date of possession.	

Complaint No., Case Title, and Date of filing of complaint	CR/965/2019 Gaurav Yadav V/s Ansal Housing & Construction Ltd. & Samyak Projects Pvt Ltd.	CR/2070/2019 Sandesh Tyagi V/s Ansal Housing & Construction Ltd.	CR/834/2020 Vinay Nagrath V/s Ansal Housing & Construction Ltd.	CR/1112/2021 Ashok Yadav V/s Ansal Housing & Construction Ltd.
Reply status	Reply received on 27.03.2019	Reply received on 02.07.2019	Reply not received	Reply received on 12.07.2022
Unit No.	C-0804 [annexure P5, pg. 21 of complaint]	I-0901 [pg. 19 of complaint]	B-1204 [annexure P1, pg. 22 of complaint]	H-12A03 [annexure A1, pg. 26 of complaint]
Date of apartment buyer agreement	14.09.2012 [annexure P5, pg. 24 of complaint]	02.05.2013 [pg. 16 of complaint]	25.08.2012 [annexure P1, pg. 19 of complaint]	01.09.2012 [annexure A1, pg. 23 of complaint]
Due date of possession	01.10.2017	01.10.2017	01.10.2017	01.10.2017
Note: 42 months from date of start of construction i.e., 01.10.2013 being later + 6 months grace period allowed being unqualified				
Total Consideration / Total Amount paid by the complainant(s)	BSC: ₹ 64,34,042/- AP: ₹ 73,05,977/-	TSC: ₹ 53,07,793/- AP: ₹ 52,48,283/-	TSC: ₹ 73,94,240/- AP: ₹ 67,07,339/-	TSC: ₹ 54,18,917/- AP: ₹ 53,60,621/-
Relief Sought	1. Refund the entire amount along with interest	1. Refund the entire amount along with interest	1. Refund the entire amount along with interest	1. Refund the entire amount along with interest

	2. Respondent is liable for penal action under section 10 of HUDA Act, 1975 & 59 & 61 of RERA Act, 2016 3. Compensation for metal agony & litigation cost	2. Request the authority for conducting forensic audit. 3. Quash the one-sided clauses incorporated in BBA 4. Payment of GST amount levied upon the complainant	2. Compensation of ₹ 10,00,000/-	
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4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/965/2019 Gaurav Yadav V/s Ansal Housing & Construction Ltd. & Samyak Projects Pvt Ltd.** are being taken into consideration for

determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

A. Project and unit related details

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

CR/965/2019 Gaurav Yadav V/s Ansal Housing & Construction Ltd. & Samyak Projects Pvt Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Heights-86", Sector 86, Gurugram.
2.	Total area of the project	12.843 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no.	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
5.	Name of licensee	Resolve Estate Pvt. Ltd.
6.	Registered/not registered	Not registered
7.	Unit no.	C-0804 [annexure P5, pg. 21 of complaint]
8.	Area of the unit	1895 sq. ft. [annexure P5, pg. 21 of complaint]
9.	Date of execution of buyer's agreement with original allottee	14.09.2012 [annexure P5, pg. 24 of complaint]

10.	Date of transfer of unit in name of complainant	29.11.2012 [annexure P3, pg. 38 of complaint]
11.	Possession clause	<p>31.</p> <p><i>The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.</i></p> <p><i>(Emphasis supplied)</i></p> <p><i>[page 16 of complaint]</i></p>
12.	Date of start of construction as per demand raised by the respondent upon commencement of construction	01.10.2013 [annexure P6, pg. 40 of complaint]
13.	Due date of possession	01.10.2017 (Note: 42 months from date of start of construction i.e., 01.10.2013 being later + 6 months grace period allowed being unqualified)
14.	Delay in handing over possession till the date of filing of this complaint i.e., 13.03.2019	1 year 5 months 12 days

15.	Basic sale consideration as per BBA at page 21 of complaint.	₹ 64,34,042/-
16.	Total amount paid by the complainant as per sum of receipts	₹ 73,05,977/-
17.	Offer of possession	Not offered

B. Facts of the complaint

B. The complainant has made the following submissions in the complaint: -

- a. That the respondents have advertised a real estate project namely Ansal Heights 86 Sector 86 Gurgaon Haryana during the year 2011 and invited applications, for booking of flats meant for sale, from the general public in their project. That the said project was promoted, developed and marketed by the respondents as per their agreement and understanding between landowner, promoters, developer and power of attorney holders. This fact was disclosed in clause 3 of agreement between the petitioner and respondents under heading "developer's representation" that the said project was being developed by the developer under license no. 48 of 2011 dated 29.05.2011 received from DGTCP, Haryana on area of about 12.843 acres in Gurugram under the residential sector- 86, of the Gurgaon Manesar urban Plan 2021.
- b. That the respondents have under an agreement granted, conveyed and transferred all its rights, entitlement and interests in the development, construction and ownership of the total permissible FSI on the land aforesaid to Optus Corona Developers Pvt. Ltd. registered office at J - 181, Saket New Delhi and has also executed a registered general power

of attorney dated 23.03.2012 authoring the respondents to sell, mortgage or otherwise deal with the resultant FSI on the land aforesaid in the manner, deemed fit by the respondents. The respondents have under a separate arrangement agreed to further grant, convey and transfer all its rights, entitlements and interests in the development, construction and ownership of the total permissible FSI on the land aforesaid as conveyed to it by the respondents to M/s Samyak Projects Pvt. Ltd. The Developer has entered into an arrangement with the respondent no. 2 to jointly promote, develop and market the proposed project being developed on the land as aforesaid. The developer further represents that in view of the separate agreements entered into between the respondents and subsequent agreement between the developers and respondent no. 2, the developer has undertaken the development and marketing of the project and has offered for sale to general public residential flats of various types and sizes. It means that in the year 2011, the respondents advertised, invited applications for booking of flats and accepted booking amount and extra amount till 14.09.2012 from the petitioner illegally, fraudulently, unfair manner in as much as without, registration of the project in their name from the monitoring authorities, which is mandatory under the law enforce as required under section 3 of HUDA Act 1975. It is also prohibited to advertise, to book, sell, accept money, and transfer flat/plots under section 7 of HUDA Act 1975. That the respondents advertised and collected the amount with regard to sale of flat was illegal, fraudulent, misleading manner and without the authority of law from the petitioner, therefore, the amount collected is liable to be refunded with

interest to the petitioner. The respondents are also liable for penal action under section 10 of HUDA Act 1975.

- c. That the respondents had advertised, circulated and distributed a brochure in public which shows layout plans of real estate project, which is to be developed, on a plot area of 17.002 acres for which the applications were invented from the general public for booking of residential flats for sale along with booking amount. The respondents persuaded the public at large to book their flat in this project and verbally assured that it would be completed within three years. As per brochure, the respondents were having license no 48 of 2011 dated 29.06.2011 and 100 of 2013 dated 07.09.2012 of in the name of M/s Resolve Estate Pvt. Ltd. & others for group housing project on a piece of land of 17.962 acres. However, the building plans were approved vide **Memo No ZP - 781/JD/BS/2013/50373** dated 03.09.2013 for an area of 12.843 acre, it was also mentioned that all necessary approvals can be checked at the office of the developer. How approvals and other necessary sanctions can be checked, beforehand which were granted to respondents on a later date. This fact has again been confirmed by respondents in notice for collection of first installment on commencement of construction and e-mails send to petitioner and while explaining the reasons for not adhering to time schedule in completing the project. The respondents have reduced area of the project from 17.962 acre to 12.843 acre i.e., total area of 5.019 acres. This fact is unfair, contrary, misleading, and misrepresented and not confirmatory with the advertised material circulated among the public related to the project by the respondents.

- d. The complainants have an amount of Rs.15,00,000/- out of total sale consideration of Rs.21,00,000/- against the unit as on 31.10.2012. Thereafter, the total payments made towards the unit were also confirmed by the developer respondent while issuing transfer permission letter dated 14.09.2012 in favour of the petitioner.
- e. That the respondent's developer, transferred the flat no C-804, (unit) in favour of the petitioner as per intimation and transfer letter dated 29.11.2012 and allotment letter dated 13.12.2012.
- f. That the respondents also entered into an agreement for sale of unit on 14.09.2012 between the complainants. The respondents agreed as per clause no 31 of the agreement, signed in between both the parties, that the respondents shall offer possession of the unit any time, within a period of 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever, is later subject to timely payment of all the dues by buyer and subject to force majeure circumstances as described in clause 32. Further there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.
- g. That the respondents issued a letter no 3497 dated 01.09.2013 to the complainants for a demand of Rs.2,88,505.81/- as an instalment on commencement of construction, service tax and also an interest amounting to Rs.50,083/- even when there was no construction activity at the site prior to issue of this letter. Therefore charging of interest and demand thereof is totally unfair, illegal, ill-founded and

untenable without any base or reason of such demand. However, to avoid any confusion, the petitioner paid the amount of Rs.2,88,506/- which also includes service tax and Rs.50,003/- as interest till 04.09.2013 vide cheque no. 011529 dated 29.09.2013. Thereafter, the respondents issued a letter no. 3803 dated 27.05.2014 for a demand of Rs.6,15,393.26/- on account of external development, infrastructure development and service tax on basic to the petitioner. The petitioner had paid amount of Rs.6,15,393.26/- as demanded vide cheque no 11530 dated 22.06.2014, which was acknowledged by the developer vide receipt no 580755 dated 12.06.2014.

- h. That the respondents issued a letter no. 5929 dated 26.08.2014 demanding an amount of Rs.9,07,046/- on account of basic covered car parking including service tax on basic. The petitioner paid the amount demanded vide cheque no. 11533 dated 13.09.2014 and also acknowledged by respondent developers vide receipt no 589726 dated 15.09.2014. Further, the respondents issued a letter no 249969 dated 13.11.2014 demanding therein an amount of Rs.4,21,582/- from the petitioner on account of (PLC) comer cum Park facing/adjoining including service tax on basic and service tax on PLC and others and also labour cess amounting to Rs.34,110/- from the complainants. However, the complainants paid the amount of Rs.4,21,582/- as demanded vide cheque no. 11535 dated 24.11.2014 which was also acknowledged by respondents vide receipt no 595104 dated 24.11.2014.
- i. That the respondent developer sent a e-mail to the complainants on 04.11.2017 explaining the reasons of delay in execution or completion

of project was because of delay in obtaining necessary sanctions, approval from the state authorities were obtained in the month of October 2013 and force major circumstances. As per this letter the necessary sanctions were obtained only in October 2013 and other reasons for delay in completion of project on flimsy grounds as explained by the respondent developer is violation Section 3 of HUDA Act 1975 and 11 and 12 the Act of 2016.

- j. That it appears that the respondents are justifying delay in completion of project on time and non-delivering the possession of unit to the petitioner as per time schedule in the agreement, illogically. The complainants have also mentioned that how the explanation given by respondent was not tenable vide letter dated 30.12.2017.
- k. That on 29.09.2018 a report was published in Times of India Newspaper that the project named Ansal Heights 86 promoted, developed and marketed by respondents cannot be completed by the end of the year 2018 in the light of progress going on at site. The representative of the petitioner visited the site and from the site inspection and progress made till that date by the respondents towards completion of the project it was found that it is a fact that the project is not likely to be completed during the year 2018. Therefore, a letter through e-mail was sent to the respondent developer on 30.09.2018 asking therein, the reasons for not completing the project and status of delivery of possession of his unit and also for damages, compensation of financial and mental agony, penal interest on his deposits to be made till date of actual physical possession of unit or refund of amount

deposited, which is gross violation of their agreement and breach of trust. Therefore, it should be treated as legal notice.

- l. That a reply on e-mail was received from the respondent on 03.12.2018, in response to petitioner's e-mail after two months, that a meeting of respondents officials was held and the following issues would be taken up in future related to the project i.e., tentative tower wise schedule of possession may be given to the buyers , bar chart of major work to be completed in future , RERA registration update to be shared - by November 2018 , renewal of license by January 2019, projected cash flows of project - in terms of o/s and receivables and will provide Tower H and I possession by June 2019, plan for next meeting was within January 2019, extra/inter development such as sewerage work would be started only from December 2018 and clarity on Escalation charges will also be discussed. This mail is all related to internal matters of respondents, when and how to complete this project. It appears that the respondents are justifying, the delay of completion of their project and non-delivery of possession of unit to the petitioner, by lame excuses and sidetracking the real issue.
- m. That the respondents are not completing the project and not giving the possession of the unit to the petitioner is not only unfair but clear violation of the agreement and breach of trust. Hence this appeal under section 31 of Act 2016 read with rule 28 of Haryana the rules 2017.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)

- a. Direct the respondent to refund the amount of Rs.73,05,977/- along with prescribed rate of interest per annum on compounded rate from the date of booking from the flat in question.
 - b. Respondent is liable for penal action under section 10 of HUDA Act, 1975 & 59 & 61 of RERA Act,2016.
 - c. Compensation for mental agony & litigation cost.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

11. The respondent has contested the complaint on the following grounds.
- a. That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this authority. The complainant has filed the present complaint seeking refund and interest for alleged delay in delivering possession of the unit booked by the complainant. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under Section 71 of the Real Estate (Regulation and Development) Act, read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, and not by this authority. The present complaint is liable to be dismissed on this ground alone.
 - b. That even otherwise, the complainant has no locus-standi or cause of action to file the present complaint. The present complaint is based on

an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 14.09.2012, as shall be evident from the submissions made in the following paragraphs of the present reply.

- c. That the respondent is a Public Limited Company registered under the Companies Act, 1956 having its registered office at 606, Indraprakash, 21 Barakhamba Road, New Delhi - 110001. The present reply is being filed by the respondent through its duly authorized representative named Mr. Vaibhav Chaudhary whose authority letter is attached herewith. The above said project is related to licence No.48 of 2011 dated 29.05.2011 received from DGTC, Chandigarh over the land measuring 12.843 Acres details of the same are given in builder buyer agreement, situated within the revenue estate of Village Nawada Fatehpur, Gurugram, which falls within the area of Sector-86, Gurugram, Manesar Urban Development Plan. The building plans of the project has been approved by the DTCP Haryana vide **memo No. ZP-781/D/(BS)/2013/50373 dated 03.09.2013.**
- d. That the relief sought in the complaint by the complainant is based on false and frivolous grounds and he is not entitled to any discretionary relief from this authority as the person not coming with clean hands may be thrown out without going into the merits of the case. However, the true facts of the case are that the land of the project is owned by

M/s Resolves Estates Pvt. Ltd., having its registered office at 153, Okhla Industrial Estate, Phase-III, New Delhi - 110020. M/s Resolve Estate Pvt. Ltd. and possessed by the through its subsidiary M/s Optus Corona Developers Pvt. Ltd., having registered office at J-181, Saket, New Delhi and M/s Samyak Project Pvt. Ltd., having its registered office at 111, First Floor, Antriksh Bhawan, K.G. Marg, New Delhi.

- e. That the complainant approached the respondent sometime in the year 2011 for purchase of an independent unit in its upcoming project. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same, that the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by them.
- f. That thereafter the complainant vide application form dated 15.11.2011 applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing No. C-804 in Tower -C. The complainant consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the

complainant shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant. The complainant further undertook to be bound by the terms and conditions of the application form.

- g. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period as given by the respondent to the authority.
- h. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No. 20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse,

may be harmful to the public at large without admitting any liability. Apart from these from the direction issued by Chairman of EPCA wide letter No EPCA-R/2018/L-91 to MCG Gurugram and MCG Gurugram passed an order dated October 2018 wide which they have directed to stop all the construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material is used) to remain closed in Delhi and other NCR district from November 1-10-2018 and all the stone crushers, hot mix plants generating dust pollution to remain closed in Delhi and other NCR district from November 1-10-2018 etc. The demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only buy liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government

- i. That the complaint is not maintainable or tenable under the eyes of law as the complainant has not approached to this authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainant thus has approached the authority with unclean hands and have suppressed and concealed the material

facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as *S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC* in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the Hon'ble Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as *Tata Motors Vs. Baba Huzoor Maharaj* bearing RP No.2562 of 2012 decided on 25.09.2013.

- j. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement.

- k. That without prejudice to the contentions of the respondent, it is submitted that the present complaint is barred by limitation. The complainant has himself alleged that the possession of the unit was to be given not later than September 2016 and therefore cause of action, if any, accrued in favour of the complainant in September 2016. Thus, the complaint seeking interest as a form of indemnification for the alleged delay is barred by limitation.
- l. That it is also a conceded and admitted fact that the project related to the present complaint has not yet been registered under this Act and as such the authority lacks jurisdiction to entertain the present complaint.
- m. That several allottees, including the complainant, has defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. It is further submitted

that the respondent had applied for registration with the authority of the said project by giving afresh date for offering of possession, which is up-to 31.03.2021. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

12. Notice to the promoter/respondent in complaint bearing no. **CR/834/2020 Vinay Nagrath V/s Ansal Housing & Construction Ltd.** through speed post and through e-mail address (marketing@ansals.com & samyakprojects@gmail.com) was sent; the delivery report of which shows that delivery was completed. Despite service of notice, the promoter/respondent has failed to file a reply within stipulated time period. Since the respondent company's put in appearance through its counsel Smt. Meena Hooda Advocate, on 09.03.2021. Further, the counsel for the respondent requested for adjournment to file written reply and the same was allowed with a specific direction to file the same within 3 weeks with an advance copy to the complainant. However, the respondent has failed to comply with the orders of the authority dated 09.03.2021, by not filing written reply within the time allowed, therefore, the defence of the respondent is struck off.
13. 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.

14. The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. SLP(Civil) No(s). 3711-3715 OF 2021*), the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in *CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP* and was observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.
15. Keeping in view the judgement of Hon'ble Supreme Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)* the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/CRA. Both the parties want to proceed further in the matter accordingly. The Hon'ble Supreme Court in case of *Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019* has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly,

the authority is proceeding further to decide the matter based on the pleading and submissions made by both the parties during the proceedings.

E. Jurisdiction of the authority

16. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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

E. II Subject matter jurisdiction

18. 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.

19. 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 complainants at a later stage.
20. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the

ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

21. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants

F.1 Refund entire amount paid by the complainant along with the interest

22. In the present complaints, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"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.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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, 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:

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."

(Emphasis supplied)

23. Clause 31 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

“31.

The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.”

24. The authority has gone through the possession clause and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.
25. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the

possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

26. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The authority calculated due date of possession from the date of date of commencement of construction i.e., 01.10.2013 being later. The period of 42 months expired on 01.04.2017. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.
27. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. 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.

28. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
29. 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., 12.07.2022 is 7.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.70%.
30. 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;"

31. On consideration of the documents available on record and submissions made by both the parties 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. By virtue of clause 31 of the agreement executed between the parties on 14.09.2012, the possession of the subject apartment was to be delivered within stipulated time i.e., by April 2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 01.10.2017.
32. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.
33. The due date of possession as per agreement for sale as mentioned in the table above is 01.10.2017 and there is delay of 1 years 5 months and 12 days on the date of filing of the complaint.
34. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as

observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

35. Further, the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. observed as under: -

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

36. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the

project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

37. 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 refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 9.70% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F. II Respondent is liable for penal action under section 10 of HUDA Act, 1975 & 59 & 61 of RERA Act, 2016

38. As the project is registerable and has not been registered by the promoters, the authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent. A copy of this order be endorsed to registration branch for further action in the matter.

F.III Compensation for mental agony & litigation cost

39. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has 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 complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F.IV Request the authority for conducting forensic audit.

F.V Quash the one-sided clauses incorporated in BBA.

F.VI Payment of GST amount levied upon the complainant.

40. In view of the findings detailed above on issues no. 1, other issues become redundant being related to possession of the unit.

G. Directions of the authority

46. 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/promoter is directed to refund the amount received by it from the complainant along with interest at the rate of 9.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

47. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

48. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter. There shall be separate decrees in individual cases.
49. Files be consigned to registry.

V.K. Goyal
(Vijay Kumar Goyal)
Member

Dr. K.K. Khandelwal
(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.07.2022



HARERA
GURUGRAM