

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

**Date of decision: 13.09.2022**

NAME OF THE BUILDER		ANSAL HOUSING & CONSTRUCTION LTD.
PROJECT NAME		ANSAL HEIGHTS 86
S. No.	Case No.	Case title
1.	CR/2032/2018	MR KRISHNENDU GHOSH DASTIDAR AND MRS ANANYA GHOSH DASTIDAR V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
2.	CR/2049/2018	MR VARUN MITTAL AND MR ARPIT MITTAL V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
3.	CR/2070/2018	MR ANURAG MENDIRATTA AND MRS KANCHAN BALA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
4.	CR/2084/2018	MR CHIMAN LAL AND MRS ANITA RANI V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
5.	CR/2085/2018	MR JAGDISH SINGH CHAUHAN AND MR JEETU SINGH CHAUHAN V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
6.	CR/2105/2018	MR AJAY KUMAR YADAV V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
7.	CR/2125/2018	MR RAJESH KUMAR TANWAR V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
8.	CR/2224/2018	RUCHI SINGH AND SNEH LATA SINGH V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
9.	CR/2444/2018	MRS SHILPA KAPOOR AND MR NAVEEN KAPOOR V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
10.	CR/2462/2018	MR AJAY KAUSHIK AND MRS SHWETA KAUSHIK V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
11.	CR/2493/2018	MRS PRITIKA VATS V/s ANSAL HOUSING AND CONSTRUCTION LIMITED

12.	CR/2510/2018	MR VINEET KUMAR DANGRI AND MRS MAMTA DANGRI V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
13.	CR/2517/2018	MR SANDEEP BAIWAR SINGH AND MRS ANJU SINGH V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
14.	CR/22/2019	MR SUMEET BHATIA MRS AASTHA ARORA AND MR ROHIT KUMAR BHATIA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
15.	CR/32/2019	MR JAGAN KUMAR V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
16.	CR/36/2019	MRS KAVITA RANI AND MR MEDHAVEESH CHOPRA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
17.	CR/39/2019	MR D S MISHRA AND MRS SOMA DEVI MISHRA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
18.	CR/43/2019	MR UDIT JAIN V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
19.	CR/56/2019	MR GAUTAM JAIN V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
20.	CR/66/2019	MRS SHEELA SHARMA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
21.	CR/70/2019	MR ABHISHEK TANDON AND MRS POONAM TANDON V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
22.	CR/135/2019	MR HIMANSHU GARG V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
23.	CR/154/2019	MRS PARAMJIT KAUR AND MR AJIT PAL SINGH V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
24.	CR/159/2019	MR VIJAY SINGH YADAV AND MRS JYOTISANA YADAV V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
25.	CR/176/2019	MRS SAPNA GOYAL AND MR NARENDRA GUPTA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
26.	CR/299/2019	MRS GARIMA ARORA AND MR ANIMESH ARORA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
27.	CR/350/2019	MRS UMA RATHORE V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
28.	CR/360/2019	MR SHAKSHI SHINGHAL AND MRS SHWETA BANSAL V/s ANSAL HOUSING AND CONSTRUCTION LIMITED

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29.	CR/374/2019	MR AMIT JEED AND MRS SAI DEEKSHA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
30.	CR/406/2019	MR JASWANT SINGH PATHANIA AND MR SACHIN PATHANIA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
31.	CR/408/2019	MR RAVI GUPTA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
32.	CR/415/2019	MR YASH PAL ARORA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
33.	CR/599/2019	MR SUJAN SINGH AND MRS POONAM YADAV V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
34.	CR/651/2019	MR SUMIT YADAV V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
35.	CR/742/2019	MR VIPUL KUMAR GUPTA AND MRS PROMILA MITTAL V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
36.	CR/971/2019	COMMANDER JOGENDER SINGH YADAV RETD V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
37.	CR/1412/2019	MR ANKUR KALRA AND MRS DIVYA KALRA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
38.	CR/1607/2019	MR SUBHASH CHANDER KHANNA AND MR ABHINAV KHANNA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
39.	CR/1637/2019	MR HARBANS LAL V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
40.	CR/1809/2019	MR JASPAL SINGH V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
41.	CR/1826/2019	MRS WITTY MALHOTRA BANDUNI AND MR KAPIL BANDUNI V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
42.	CR/2388/2019	MRS ARADHANA AGGARWAL AND MR SANJAY KUMAR AGGARWAL V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
43.	CR/6678/2019	MRS POONAM CHAUDHARY V/s ANSAL HOUSING LIMITED

**CORAM:**

 Shri Vijay Kumar Goyal

**Member**

Shri Ashok Sangwan

**Member**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Ms. Priyanka Aggarwal (Advocate)

Ms. Meena Hooda (Advocate)

**Complainants**

**Respondent**

**ORDER**

1. This order shall dispose of all the 43 complaints titled as above filed before this authority in form CRA/CAO under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(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.
3. 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:

<b>Project Name and Location</b>		<b>ANSAL HOUSING &amp; CONSTRUCTION LTD "ANSAL HEIGHTS 86" Sector-86, Gurugram.</b>			
<b>Possession Clause: - 31</b>					
<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 style="text-align: right;"><b>(Emphasis supplied)</b></p>					
<b>Occupation certificate: - Not obtained</b>					
<b>Note:</b> Grace period is allowed being unqualified & included while computing due date of possession.					
<b>Due date of possession</b>		The due date of possession in the present matters have been calculated from the date of start of construction i.e., 01.10.2013 being later. Grace period is allowed being unqualified & included while computing due date of possession. Accordingly, the due date of possession comes out to be <b>01.10.2017</b> .			
<b>S n o.</b>	<b>Complaint No.</b>	<b>Reply Status</b>	<b>Unit No.</b>	<b>Date of BBA</b>	<b>Total Consideration (TC), Basic sale price (BSP) &amp; Total Amount paid by the complainant (AP)</b>
1.	CR/2032/2018	30.09.2019	J-1206 [annexure P1, pg. 20 of complaint]	17.11.2012 [annexure P1, pg. 17 of complaint]	BSP: ₹ 67,86,499/- AP: ₹ 74,51,403/-
2.	CR/2049/2018	10.10.2019	G-1002	17.08.2012	BSP: ₹ 46,16,844/- AP:

16.	CR/36/20 19	30.09.2019	I-1105  [pg. 19 of complaint]	24.01.2013  [pg. 16 of complaint]	BSP: ₹ 58,04,256/- AP: ₹ 59,03,400/-
17.	CR/39/20 19	05.02.2019	E-1003  [pg. 20 of complaint]	01.04.2014  [pg. 18 of complaint]	BSP: ₹ 63,24,898/- AP: ₹ 63,20,457/-
18.	CR/43/20 19	29.01.2019	E-1002  [pg. 22 of complaint]	08.04.2013  [pg. 16 of complaint]	BSP: ₹ 74,44,548/- AP: ₹ 74,49,717/-
19.	CR/56/20 19	10.10.2019	E-0301  [pg. 24 of complaint]	27.06.2013  [pg. 15 of complaint]	BSP: ₹ 74,44,548/- AP: ₹ 74,47,104/-
20.	CR/66/20 19	29.01.2019	F-0503  [pg. 29 of complaint]	14.08.2012  [pg. 19 of complaint]	BSP: ₹ 62,42,933/- AP: ₹ 62,39,502/-
21.	CR/70/20 19	12.02.2019	C-0402  [pg. 20 of complaint]	25.09.2012  [pg. 17 of complaint]	BSP: ₹ 77,37,104/- AP: ₹ 73,99,174/-
22.	CR/135/2 019	12.02.2019	B-0401  [pg. 17 of complaint]	13.07.2012  [pg. 15 of complaint]  Endorsement date: 06.12.2012	BSP: ₹ 73,35,925/- AP: ₹ 70,20,338/-
23.	CR/154/2 019	13.02.2019	01-VILLA	19.01.2012	BSP: ₹ 1,75,22,250 /- AP:

			[pg. 27 of complaint]	[pg. 16 of complaint]	₹1,78,17,609/-
24.	CR/159/2019	05.02.2019	G-0904	12.12.2012	BSP: ₹ 52,29,044/-
			[pg. 17 of complaint]	[pg. 15 of complaint]	AP: ₹ 52,24,961/-
25.	CR/176/2019	20.02.2019	H-0906	27.12.2012	BSP: ₹ 51,02,496/-
			[pg. 19 of complaint]	[pg. 16 of complaint]	AP: ₹ 48,23,549/-
26.	CR/299/2019	20.02.2019	B-0504	Endorsement date: 15.05.2015	TC: ₹ 72,20,434/-
			[pg. 16 of complaint]	[pg. 16 of complaint]	AP: ₹ 72,04,632/-
27.	CR/350/2019	20.02.2019	G-0905	14.12.2012	BSP: ₹ 51,61,044/-
			[pg. 20 of complaint]	[pg. 20 of complaint]	AP: ₹ 53,73,609/-
				Endorsement date: 02.06.2014	
			[pg. 23 of complaint]	[pg. 17 of complaint]	
28.	CR/360/2019	23.10.2019	B-0501	06.09.2012	BSP: ₹ 70,68,066/-
			[pg. 17 of complaint]	[pg. 15 of complaint]	AP: ₹ 70,75,940/-
29.	CR/374/2019	26.09.2019	J-1202	06.12.2012	BSP: ₹ 71,74,909/-
			[pg. 21 of complaint]	[pg. 18 of complaint]	AP: ₹ 71,80,928/-
30.	CR/406/2019	10.10.2019	G-0802	12.12.2012	BSP: ₹ 51,82,770/-
			[pg. 24 of complaint]	[pg. 16 of complaint]	AP: ₹ 41,92,690/-
31.	CR/408/2019	12.02.2019	F-1002	25.02.2013	BSP: ₹ 55,00,383/-

			[pg. 19 of complaint]	[pg. 16 of complaint]	AP: ₹ 61,61,313/-
32.	CR/415/2019	30.09.2019	J-704	24.08.2012	BSP: ₹ 68,16,688/-
			[pg. 17 of complaint]	[pg. 14 of complaint]	AP: ₹ 68,18,043/-
33.	CR/599/2019	05.03.2019	H-0502	17.11.2012	BSP: ₹ 52,27,004/-
			[pg. 19 of complaint]	[pg. 16 of complaint]	AP: ₹ 52,15,401/-
34.	CR/651/2019	01.03.2019	D-0901	09.10.2012	BSP: ₹ 71,62,816/-
			[pg. 20 of complaint]	[pg. 17 of complaint]	AP: ₹ 71,65,663/-
				Endorsement date: 06.12.2012	
				[pg. 15 of complaint]	
35.	CR/742/2019	30.09.2019	G-0303	29.07.2012	BSP: ₹ 53,40,496/-
			[pg. 21 of complaint]	[pg. 18 of complaint]	AP: ₹ 53,45,743/-
36.	CR/971/2019	10.09.2019	G-0901	12.09.2012	BSP: ₹ 50,80,770/-
			[pg. 19 of complaint]	[pg. 16 of complaint]	AP: ₹ 50,69,873/-
37.	CR/1412/2019	16.04.2019	D-1103	22.10.2012	TC: ₹ 77,25,646/-
				[pg. 19 of complaint]	AP: ₹ 76,77,121/-
				Endorsement date: 13.03.2015	
			[pg. 24 of complaint]	[pg. 15 of complaint]	

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38.	CR/1607/ 2019	23.10.2019	F-0302 [pg. 21 of complaint]	09.10.2012 [pg. 19 of complaint]  Endorsement date: 08.10.2012  [pg. 15 of complaint]	TC: ₹ 64,57,954/- AP: ₹ 63,81,927/-
39.	CR/1637/ 2019	23.10.2019	J-0102 [pg. 19 of complaint]	19.09.2012 [pg. 16 of complaint]	TC: ₹ 67,70,490/- AP: ₹ 67,19,050/-
40.	CR/1809/ 2019	30.04.2019	I-0106 [pg. 19 of complaint]	15.12.2012 [pg. 16 of complaint]	BSP: ₹ 46,84,844/- AP: ₹ 50,93,454/-
41.	CR/1826/ 2019	02.07.2019	C-0903 [pg. 19 of complaint]	29.09.2012 [pg. 16 of complaint]	BSP: ₹ 64,34,042/- AP: ₹ 68,59,910/-
42.	CR/2388/ 2019	02.07.2019	E-1002 [pg. 22 of complaint]	24.04.2015 [pg. 19 of complaint]	BSP: ₹ 84,89,318/- AP: ₹ 58,79,523/-
43.	CR/6678/ 2019	Not filed	F-602 [pg. 22 of complaint]	25.08.2012 [pg. 19 of complaint]	BSP: ₹ 61,58,433/- AP: ₹ 58,24,617/-

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/415/2019 Mr Yash Pal Arora V/S Ansal Housing and Construction Limited.** are being taken into consideration for determining the rights of the allottee(s) qua refund of 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 of the possession, delay period, if any, have been detailed in the following tabular form:

**Cr/415/2019 Mr Yash Pal Arora V/S Ansal Housing and Construction Limited.**

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.	J-704 [pg. 17 of complaint]
8.	Area of the unit	1690 sq. ft. [pg. 17 of complaint]
9.	Date of execution of buyer's agreement	24.08.2012 [pg. 14 of complaint]
10.	Possession clause	<p><b>31.</b></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>[pg. 22 of complaint]</p>
11.	Date of start of construction as per customer ledger dated 14.01.2019	01.10.2013 [pg. 35 of complaint]

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12.	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)
13.	Delay in handing over possession till the date of filing of this complaint i.e., 06.02.2019	1 year 4 months 5 days
14.	Basic sale consideration as per payment plan annexed with BBA at page 30 of complaint.	₹ 68,16,688.50/-
15.	Total sale consideration as per customer ledger dated 14.01.2019 on pg. 31 of complaint	₹ 68,88,994.50/-
16.	Total amount paid by the complainant as per customer ledger dated 14.01.2019 on pg. 34 of complaint	₹ 68,18,043.13/-
17.	Occupation Certificate	Not obtained
18.	Offer of possession	Not offered

**B. Facts of the complaint**

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

- a. That the complainant is a law-abiding citizen and consumer who has been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainant being interested in the project

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because it was a housing project and the complainant had needed an own home for his family.

- b. That the complainant was subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges which will forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided. That the executed builder buyer agreement between respondent and complainant mentioned in developer's representations, DTCP given the licence 48 of 2011 to Resolved Estate Pvt. Limited (confirming party -1) this company was transferred his rights to Optus Corona Developers Pvt. Ltd. (confirming party-2) this company was transferred his rights to Samyak Projects Pvt. Ltd (confirming party-3). At last confirming party -3 makes another arrangement to joint with respondents those all arrangements create doubt, suspicion, M/s Ansal Housing & Construction Ltd. Have legal right to collect money from allottees against the flat no. J-704, Tower-J "Ansal Heights 86", Gurugram and have legal & valid license to develop this project.
- c. That the based-on promises and commitment made by the respondent, complainant booked a 3 BHK flat admeasuring 1690 sq. ft, along with one covered car parking in the unit no. J-704, Tower-J in residential project "Ansal Heights 86". Sector 86, Gurugram, Haryana. The initial booking amount of Rs 8,69,000/- (Including Tax) (Rupees eight lakhs sixty-nine thousand only) was paid through cheque no- 085948 and 085949 dated 27.02.2012 and 15.03.2012.

- d. That the respondent to dupe the complainant in their nefarious net even executed flat buyer agreement signed between M/S Ansal Housing & Construction Ltd. and Mr Yash Pal Arora dated 24.08.2012 just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.
- e. That it is pertinent mentioned here that according to the statement the complainant paid a sum of Rs. 68,18,043/- (Rupees sixty-eight lakhs eighteen thousand forty-three only) to the respondent till March 2017 and before this builder was demanded more than 95% amount without doing appropriate work on the said project, which is illegal and arbitrary.
- f. 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.
- g. That complainant has paid all the instalments timely and deposited Rs. 68,18,043/- (Rupees sixty eight lakhs eighteen thousand forty three only) that respondent in an endeavour to extract money from allottees devised a payment plan under which respondent linked more than 35% amount of total paid against as an advance rest 60% amount linked with the construction of super structure only) of the total sale consideration to the time lines, which is not depended or co-related to the finishing of

flat and internal development of facilities amenities and after taking the same respondent have not bothered to any development on the project till date as a whole project not more than 40% and in term of particular tower just built a super structure only. Extracted the huge amount and not spend the money in project is illegal and arbitrary and matter of investigation.

- h. That the builder was started construction work almost 6 years back still respondent want to 3 more year to complete the project that 8-10 year long period make adverse effect on construction quality of project. That as the delivery of the apartment was due on February 2016 which was prior to the coming into of force of the GST Act, 2016 i.e., 01.07.2017, it is submitted that the complainant is not liable to incur additional financial burden of GST due to the delay caused by the respondent. Therefore, the respondent should pay the GST on behalf of the complainant but just reversed builder collect the GST from complainant and enjoy the input credit as a bonus, this is also matter of investigation.
- i. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainant and his family and new possession date given by builder also too long from now December 2021 has been rudely and cruelly been dashed the savoured dreams, hopes and expectations of the complainant to the ground and the complainant is eminently justified in seeking return of the entire money with interest.

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- j. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured unit in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainant who has spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.

**C. Relief sought by the complainant: -**

9. The complainant has sought following relief(s)
- Refund entire amount paid by the complainant along with the interest.
  - Pass order for forensic audit of the project.
  - Direct the respondent to quash one sided clause from BBA.
  - Pass order for payment of GST levied upon the complainant.
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:
- That the present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this Hon'ble 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, 2016 (hereinafter referred to as "the Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and not by this Hon'ble 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 24.08.2012, 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

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agreement, situated within the revenue estate of Village Nawada Fatehpur, Gurugram, which falls within the area of Sector-86, Gurugram, Manesar Urban Development Plan.

- d. That the complainant approached the respondent sometime in the year 2012 for purchase of an independent unit in its upcoming residential project "Ansal Heights" (hereinafter "the project") situated in Sector 86, Village Nawada, Fatehpur, Gurgaon. 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 the respondent.
- e. That thereafter the complainant vide application form dated 29.02.2012 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. J-0704 in Tower -J. 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.

- f. It is further submitted 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. Occupation certificate is awaited, as and when the occupation certificate is received by the respondent the possession of the unit in question would be delivered to the complainant, subject to the terms and conditions of the buyer's agreement. It is pertinent to note that once an application for grant of occupation certificate was submitted for approval in the office of the concerned statutory authority, the respondent ceased to have any control over the same. The grant of sanction to the application preferred by the complainant is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate.
- g. That the relief sought in the complaint by the complainant is based on false and frivolous grounds and she is not entitled to any discretionary

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relief from this Hon'ble 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 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.

- 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 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 it is submitted that the complaint is not maintainable or tenable under the eyes of law as the complainant has not approached to this Hon'ble 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 Hon'ble Authority with unclean hands and has suppressed and concealed the material facts and proceedings which has direct bearing on the very maintainability of purported complaint and if there had been discloser 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 Page 1* in which the Hon'ble Apex Court of the land opined that non-discloser 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.

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[ansalhoksharma2@ansals.com](mailto:ansalhoksharma2@ansals.com)); the delivery report of which shows that delivery was completed. Despite service of notice, the promoter/respondent has failed to file a reply within the stipulated time period. On the last date of the hearing dated 10.08.2022 the respondent was directed to file the reply in two weeks i.e., by 24.08.2022 with a cost of ₹ 5,000/- failing which its defence may be struck off. Since, till today no reply has been submitted therefore, the authority assumes/observes that the respondent has nothing to say in the present matter and accordingly, the authority proceeds with the case without reply and the defence of the respondent stands 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 passed by hon'ble supreme court *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. Written submissions filed by the respondent**

16. The respondent has submitted the written arguments raising objections on the following grounds:

- a) That, brief fact, which leading to file the present application, are that the 49 cases including the present one was fixed for mediation on dated 31.08.2022. More than 6 (six) cases out of 49 cases have been settled by the respondent herein amicably and thereafter, remaining cases were listed for 13.09.2022 for arguments and in all these cases, the Hon'ble Authority was pleased to allow the refund of the payment of the allottees (complainants). While passing the order dated 13.09.2022, the Hon'ble Authority was also pleased to afford an opportunity of being heard to the respondent herein has directed the respondent to file written arguments in their defence.

- b) That, earlier, the complainant vide application dated 30.11.2011 applied to the respondent for provisional allotment of a unit in the project, whereby opting for the construction linked payment plan. In pursuance of the aforesaid application form, the complainant was allotted an independent unit bearing no. 1- 0106, measuring 1360 sq. ft., on 1 floor in the project named, ANSAL HEIGHTS, Sector-86, Gurugram.
- c) The complainant consciously and wilfully opted for a construction linked payment plan for remittance of the sale consideration for the unit 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 and complainant further undertook to be bound by the terms and conditions of the application form. In wake of application form dated 30.11.2011 and after allotment of the unit to the complainant, an apartment buyer's agreement was executed by the respondent company with the complainant on dated 15.12.2012 and the said agreement was executed by the complainant without any fear, pressure, threat, coercion, undue influence of any kind whatsoever while in sound states of mind.
- d) The project named, ANSAL HEIGHTS at Sector-86, Gurugram relates to licence no.48 of 2011 dated 29.05.2011 received from the director general town and country planning (DGTCP), Haryana, Chandigarh over the land measuring 12.843 acres comprising in rect. no.19, killa no.3 min (6-0), 4 (8-0), 5 (8-0), 8/1 (0-8), 13/2 (0-8), 1/1 Min (0-4), 17/1 (17/1 (5-14), 24/2/1 (1-8), 25 (8-0), 7 (8-0), 14 (8-0), 17/2 Min (0-18),



rect, no.14, killa no.19. (8-0), 20 (8-0), rect. no.15, killa no.14/2 (3-7), 16 (8-0), 17 (8-0), 24/1 (4-8), 22/2 min (0-5), 23 min (7-15) situated within the revenue estate of village Nawada-Fatehpur, Gurugram, which falls within Sector-86, Gurugram, Manesar-Urban Development Plan. The building plans of the project have been approved by the DGTCP, Haryana vide memo no. ZP-781/D/(BS)/2013/50373 dated 03.09.2013. Thereafter, respondent was granted the approval of Firefighting scheme from the fire safety point of view of the housing colony measuring 12.843 acres by the Director, Haryana Fire Service, Haryana, Chandigarh vide letter memo no. DFS/F.A./2015/326/66492 dated 24.11.2015.

- e) The relief sought in the complaint by complainant is based on false and frivolous grounds and he is not entitled to any discretionary relief from the Hon'ble Authority, as the person does not come 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 and possessed by the respondent through its subsidiary M/s Resolve Estates Pvt. Ltd., having its registered office at 153, Okhla Industrial Estate, Phase-III, New Delhi-110020. The said company has under an arrangement granted, conveyed and transferred all its rights, entitlement and interest in the development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Optus Corona Developers Pvt. Ltd., having Registered Office at J-181, Saket, New Delhi. The said M/s Resolve Estates Pvt. Ltd. has further under an arrangement granted, conveyed and transferred all its rights, entitlement and interest in the development, construction and

ownership of the total permissible FSI on the land aforesaid to M/s Samyak Project Pvt. Ltd., having its Registered Office at 111, First Floor, Antriksh Bhawan, K.G. Marg, and New Delhi.

- f) The respondent has entered into an arrangement with M/s Samyak Project Pvt. Ltd. but the samyak has not fulfilled its obligations as per the agreements executed between Ansal housing Ltd. and Samyak, therefore the intervention of Hon'ble Real Estate Authority is required in the said cases. That the Hon'ble authority may direct the Samyak to fulfil its obligation as Samyak falls under the definition of promoter.
- g) That the breach of terms on the part of Samyak are reproduced below for your perusal:
- i. That Samyak and respondents have executed a memorandum of Understanding (Hereinafter referred to as MOU) for construction and development of group housing project namely Ansal Heights sector 86.
  - ii. That after much deliberation and persuasion, details of which are envisaged in the above-mentioned para's, both the parties were able to give a legitimate shape to its final entitlement and obligation qua development and construction over the land, after delay vide joint venture agreement (herein after referred as JVA) dated 24.05.2013 executed between Samyak and respondent.
  - iii. Ensuring the said parcel of land is free from all encumbrances was the 'mother of all performances' of the respondent qua JVA, but Samyak failed to perform this obligation, which is reason that the respondent has not been able to hand over the possession to the allottees. That due to the misdeeds on the part of Samyak the

construction of the project was delayed for over 2 years. The breach was admitted by Samyak, as samyak accepted in the letter that the zoning plans which earlier provided was incorrect.

- iv. That as per mandate of Section 3 of Real Estate regulation and development Act 2016 (Herein referred to as RERA), any real estate project who has not obtained OC/CC was to be mandatorily required to be registered with Rera within 3 months from the date of enactment of statute.
- v. That as per clause 17.1 of the JVA, it was obligatory upon the respondent to arrange and corporate the claimant for the purpose of getting any approval(s) sanction(s) from any competent authorities. Clause 17.1 is reproduced herein below for the sake of ready reference:

*"Clause 17.1-the first party agrees to get signed all types of paper. Documents and applications, affidavits, undertakings, indemnity bonds, agreement and other deeds, etc. from the owners, if and when necessary, for obtaining all requisite approvals/renewals including that of building plans and in that connection to submit any applications, affidavits, undertaking. The developer shall pay/deposit any fees, charges, etc. in the name of owners and shall bear and pay any other incidental expenses related thereto."*

- vi. Further, clause 3.2 of JVA, which is also reproduced herein for the sake of ready reference, the respondent was under obligation to cooperate in getting any approval/permissions etc.

*"Clause 3.2 - first party shall fully cooperate in the submission of necessary application/building plans for approval and agrees to get signed and executed any applications, documents for that purpose from the owners as and when required to get executed or execute appropriate letters of authority or appropriate power of attorney in favour of developer and/or their nominees."*

- vii. That Samyak was under obligation to extend its cooperation in getting project registered with RERA, but despite being joint-venture partner and Promoter under the real estate laws, the Samyak never cooperated and assisted to get the registration done with RERA which shows its attitude of non-concern qua this real estate project. Whatever the obligations of the respondent had qua the MoU and JVA not a single obligation has been fulfilled by the respondent in its letter and spirit. That the act of non-cooperation by samyak has delayed the process of RERA registration. This has been done by samyak despite receiving large part of its revenue from the project.
- viii. That due to non-registration of RERA, umpteen number of units are unsold, which ought to have been sold in 2017 itself, but due to breaches by the Samyak, respondents had been deprived of fund which ought to have been earned, been registered with RERA.
- ix. That Samyak at this stage has terminated the MoU and JVA which is an illegal act in view of embargo u/s 60(b) OF Indian Easement Act, u/s 202 of Indian contract Act 1872 and u/s 53A of transfer of property act 1882. That the act of Samyak is illegal and beyond the statutory provisions of law.

#### **F. Jurisdiction of the authority**

17. 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.

##### **F. I. Territorial jurisdiction**

18. 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.

**F. II. Subject matter jurisdiction**

19. 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.

20. 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.

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21. 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."*

22. 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.

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

**G.I Objection regarding jurisdiction of authority w.r.t. retrospectivity of the Act**

23. Objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the

*RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports"*

24. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed:

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored"*

25. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

**G.II Objection regarding collaborator to be treated as promoter**

26. The respondent alleged that the land of the project is owned and possessed by the respondent through its subsidiary M/s Resolve Estates Pvt. Ltd., having its registered office at 153, Okhla Industrial Estate, Phase-III, New



Delhi-110020. The said company has under an arrangement granted, conveyed and transferred all its rights, entitlement and interest in the development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Optus Corona Developers Pvt. Ltd., having Registered Office at J-181, Saket, New Delhi. The said M/s Resolve Estates Pvt. Ltd. has further under an arrangement granted, conveyed and transferred all its rights, entitlement and interest in the development, construction and ownership of the total permissible FSI on the land aforesaid to M/s Samyak Project Pvt. Ltd., having its Registered Office at 111, First Floor, Antriksh Bhawan, K.G. Marg, and New Delhi. The respondent has entered into an arrangement with M/s Samyak Project Pvt. Ltd. but the samyak has not fulfilled its obligations as per the agreements executed between Ansal housing Ltd. and Samyak, therefore the intervention of Hon'ble Real Estate Authority is required in the said cases.

27. "M/s Resolve Estates Pvt. Ltd." is a subsidiary of "M/s Ansal Housing Ltd." and there was a contract inter-se M/s Resolve Estates Pvt. Ltd and "M/s Samyak Project Pvt. Ltd." for development of project. But it is pertinent to note than neither M/s Samyak Project Pvt. Ltd. is party to such buyer's agreement. Moreover, the payment from the complainant has also been taken by the M/s Ansal Housing Ltd. Hence, the plea of the respondent on account of delay in completion due to non-performance of the duties of M/s Samyak Project Pvt. Ltd is not tenable. And it is the sole responsibility of M/s Ansal Housing Ltd. to refund the amount paid by the complainants.

*12* **H. Findings on the relief sought by the complainants**

**H.I Refund entire amount paid by the complainant along with the interest**

28. 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) i  
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) d  
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)*

29. 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."*

30. 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.

31. **Due date of handing over possession and admissibility of grace period:**

The respondent/promoter has raised the contention that the construction of the project was badly affected on account of the 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 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.

32. In this particular case, the Authority considered the above contentions raised by the respondent and observes that 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 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.
33. **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.*

34. 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.
35. 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., 13.09.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
36. 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 24.08.2012, 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 4 months 5 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., @ 10% 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*.

**H. II. Request the authority for conducting forensic audit.**

**H.III. Quash the one-sided clauses incorporated in BBA.**

38. In view of the findings detailed above on issues no. 1, and as allottee in seeking refund of the amount and does not wish to continue in the project therefore other issues become redundant being related to possession of the unit.

**H.IV. Payment of GST amount levied upon the complainant.**

39. The amount of service tax or GST, if not refundable from the concerned taxation authority, the same shall not be included in the refundable amount.

**I. 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 10% 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.
  - iii. The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
47. This decision shall mutatis mutandis apply to all the 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.
49. Files be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.09.2022

