

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

**Date of decision: 02.02.2023**

<b>NAME OF THE BUILDER</b>		<b>ANSAL HOUSING &amp; CONSTRUCTION LTD.</b>
<b>PROJECT NAME</b>		<b>ANSAL HEIGHTS 86</b>
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>
1.	CR/1999/2018	ANOOP KAR & SHRADHA KAR V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
2.	CR/2031/2018	SURENDER KUMAR V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
3.	CR/2041/2018	KISHORE KUMAR GAUTAM V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
4.	CR/2059/2018	SUNISH KUMAR SULTANIA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
5.	CR/2072/2018	SANJAY KUMAR V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
6.	CR/2120/2018	VIKAS SUHAG V/s ANSAL HOUSING AND CONSTRUCTION LIMITED
7.	CR/2307/2018	GAURAV CHAWLA & AARTI CHAWLA V/s ANSAL HOUSING AND CONSTRUCTION LIMITED

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

Shri Ashok Sangwan

**Member**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Ms. Priyanka Aggarwal (Advocate)

**Complainants**

Ms. Meena Hooda (Advocate)

**Respondent**

### ORDER

1. This order shall dispose of all the 7 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>	
<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,</i>	

*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."*

**(Emphasis supplied)**

**Occupation certificate: - Not obtained**

**Note:** 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> .
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S n o.	Complaint No.	Reply Status	Unit No.	Date of BBA	Total Consideratio n (TC), Basic sale price (BSP) & Total Amount paid by the complainant (AP)
1.	CR/1999/ 2018	16.10.2019	C-0202 [pg. 14 of complaint]	26.07.2012 [pg. 15 of complaint] Date of endorsement in name of complainants 17.02.2016	TC: ₹ 77,98,589/- AP: ₹ 74,27,016/-
2.	CR/2031/ 2018	Reply received. Date of	J-0103 [pg. 19 of complaint]	19.01.2013 [pg. 16 of complaint]	BSP: ₹ 76,55,798/- AP: ₹ 76,84,469/-

		receipt is unmarked			
3.	CR/2041/2018	10.10.2019	E-0506 [pg. 18 of complaint]	16.08.2012 [pg. 15 of complaint]	BSP: ₹ 61,58,433/- AP: ₹ 59,05,694/-
4.	CR/2059/2018	10.10.2019	F-0903 [pg. 21 of complaint]	13.02.2013 [pg. 18 of complaint]	TC: ₹ 63,00,387/- AP: ₹ 59,37,162/-
5.	CR/2072/2018	16.10.2019	F-0501 [pg. 17 of complaint]	Not signed by the respondent	TC: ₹ 61,00,675/- AP: ₹ 60,01,949/-
6.	CR/2120/2018	30.10.2019	I-0706 [pg. 20 of complaint]	18.03.2013 [pg. 17 of complaint]	TC: ₹ 51,15,941/- AP: ₹ 50,37,836/-
7.	CR/2307/2018	10.10.2019	J-0202 [pg. 35 of complaint]	03.06.2013 [pg. 16 of complaint]	TC: ₹ 74,97,072/- AP: ₹ 73,88,021/-

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.
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/1999/2018 Anoop Kar & Shradha Kar 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/1999/2018 Anoop Kar & Shradha Kar 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.	C-0202 [pg. 14 of complaint]
8.	Area of the unit	1690 sq. ft.

		[pg. 14 of complaint]
9.	Date of execution of buyer's agreement with original allottee	26.07.2012 [pg. 15 of complaint]
10.	Date of endorsement	17.02.2016 As alleged by the complainant in its complaint
11.	Possession clause	<b>31.</b> <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) [pg. 20 of complaint]
12.	Date of start of construction as per customer ledger dated 10.01.2016 at pg. 32 of complaint	01.10.2013
13.	Due date of possession	01.10.2017 (Note: 42 months from date start of construction i.e., 01.10.2013 as the date of agreement is not known + 6 months grace period allowed being unqualified)

14.	Delay in handing over possession till the date of filing of this complaint i.e., 19.11.2019	2 years 1 month 18 days
15.	Total sale consideration as per customer ledger dated 10.01.2016 at pg. 28 of complaint	₹ 77,98,589/-
16.	Total amount paid by the complainant as per customer ledger dated 10.01.2016 at pg. 31 of complaint	₹ 74,27,016.78/-
17.	Offer of possession	Not offered
18.	Occupation certificate	Not obtained

**B. Facts of the complaint**

8. The complainants have made the following submissions in the complaint: -
- That the complainants are law abiding citizens and consumers who have been cheated by the malpractices adopted by the respondent, who is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a housing project and the complainants had need of an own home for their family.
  - That the complainants were subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges which were 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 complainants 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- C-0202, tower-C, "Ansal Heights, 86", Gurugram and have legal & valid license to develop this project.

- c. That complainants approached to the respondent for booking of a flat in the above said project and respondent suggested him a flat which was previously booked on dated 27.03.2012 in the name of Mrs Komal Sharan was not interested to continue in the said project hence finally endorsed these flat to complainants with same flat buyer's agreement.
- d. That based on the promises and commitment made by the respondent, complainants booked a 3 BHK flat admeasuring 1895 sq. ft., along with two covered car parking in the unit no.C-0202,Tower-C in residential project Ansal Heights, 86", Sector 86 , Gurugram, Haryana which initial allocated to Mrs Komal Sharan by flat agreement dated 26.07.2012 and respondent endorse the said agreement in favor of complainants by endorsement letter and application for change in right to purchase a property letter dated 17.02.2016 by this endorsement complainants became legal allottee and purchaser of the said property. The initial booking amount of Rs 9,31,900/-(including tax) (Rupees nine lakhs thirty one thousands nine hundred only) was paid on receipts 496987



- and 499326 and receipts dated 12.03.2012 and 28.03.2012(more than 6 years back).
- e. That it is pertinent mentioned here that according to the statement the complainants paid a sum of Rs.74,37,017/-(Rs seventy-four lac thirty-seven thousand seventeen only) to the respondent till September 2015and only before this builder has 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) complainants have fulfilled their responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainants herein are not in breach of any of its terms of the agreement.
  - g. That the complainants were sanctioned home loan of Rs. 53,00,000/- from SBI bank which was taken for buying this flat, and EMI created extra financial burden on complainants and still complainants are paying EMI of home loan.
  - h. That complainants have paid all the instalments timely and deposited Rs. 74,37,017/-(Rs seventy-four lac thirty-seven thousand seventeen 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.
- i. That as the delivery of the apartment was due on January 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 complainants are 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 complainants but just reversed builder collect the GST from complainants and enjoy the input credit as a bonus, this is also matter of investigation.
  - j. 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 complainants and their 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 complainants to the ground and the complainants are eminently justified in seeking return of the entire money with interest.
  - k. 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 complainants 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)
  - a. Refund entire amount paid by the complainant along with the interest.
  - b. 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:
  - a. 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.

- b. 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 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. It is also worthwhile to mention here that the respondent has applied for registration of project with RERA which is pending.
- c. 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.

- d. 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.

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

**E. Written submissions filed by the respondent.**

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

- a) 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.

- b) That, earlier, the complainant vide application dated 27.03.2012 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. C-0202, measuring 1895 sq. ft., on 2<sup>nd</sup> 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 27.03.2012 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 26.07.2012 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 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.
- e) 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.
- f) 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 incorporate 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.
- g) Apart from this, the union of India and respective states including Haryana state in order to breakout the surge of global pandemic, named, COVID-19, has imposed the lockdown throughout India and Haryana state, due to which construction work is almost stopped since March 2020, the respondent could not resume the same because all the labours under the scare-of lockdown left for their houses, by leaving the project in mid. The lockdown was beyond the control and command of the respondent.
- h) That, it is now out of place to mention here that the said project i.e., Ansal height-86 consisting total 11 (ten) numbers of towers and more than 7 towers have already been developed and ready to move-in, the respondent is in position to offer the possession to allottees of 6 towers and shall also be in position to offer the possession of two (2) towers very soon.
- i) That, as per the Real Estate (Regulation and Development) Act, 2016 read with the Haryana Real Estate (Regulation and Development) Rules, 2017, the Hon'ble Authority itself in the several judgments held that

where project has been completed to the tune of 40%, then no refund can be allowed to the allottee.

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

14. 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**

15. 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**

16. 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.*

17. 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.
18. 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."*

19. 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**

20. 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".*

21. 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"*

22. 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.**

23. 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.
24. "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.

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

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

25. In the present complaints, the complainants intend to withdraw from the project and is seeking return of the amount paid by them in respect of subject unit along with interest 24% p.a. 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)***

***n accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***

***(b)***

***ue 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)*

26. 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."*

27. 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.
28. **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 sucking /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 respondent contented that 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.

29. The promoter has proposed to hand over the possession of the apartment within a period of 42 months from date of agreement or from the date of approvals required for the commencement of construction which whichever is later. The due date of possession is calculated 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 of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be 01.10.2017.
30. Keeping in view the fact that the complainants wish to withdraw from the project and are 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. 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 2 years 1 month 18 days on the date of filing of the complaint.

31. 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 allottee 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....."*

32. Further in the judgement of 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***, it was 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."*

33. 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 allottee as per agreement for sale under section 11(4)(a) of the Act. 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 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 the unit with interest at such rate as may be prescribed.
34. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
35. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund of the amount paid along with interest at @24% p.a. However, section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee 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."*

36. 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.
37. 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., **02.02.2023** is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
38. The authority hereby directs the promoter to return the amount received by him along with interest at the rate of 10.60% (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 Rules *ibid*. In the complaints where the complainants have availed loans from the banks then out of the total amount so assessed, the amount paid by the bank/payee be refunded in the account of bank and the balance amount along with interest be refunded back to the complainants.

**H. II. 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.

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

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

40. 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.

**I. Directions of the authority**

41. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent/promoter is directed to refund the amount received by it from the complainant along with interest at the rate of 10.6% 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. In the complaints where the complainants have availed loans from the banks then out of the total amount so assessed, the amount paid by the bank/payee be refunded in the account of bank and the balance amount along with interest be refunded back to the complainants.
- 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.

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

43. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
44. Files be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2023



**HARERA**  
**GURUGRAM**