

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

Date of decision: 05.07.2024

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| NAME OF THE BUILDER | | 1. ANSAL HOUSING LTD. (FORMERLY KNOWN AS ANSAL HOUSING AND CONSTRUCTION LTD.) 2. SAMYAK PROJECTS PRIVATE LIMITED | |
| PROJECT NAME | | ANSAL HUB 83 BOULEVARD | |
| S. No. | Case No. | Case title | APPEARANCE |
| 1 | CR/8036/2022 | Birendra Kumar V/s Ansal Housing Ltd. & Samyak Projects Private Limited | Ms. Priyanka Saxena Mr. Vikas Punia for R1 Mr. Shankar Wig for R2 |
| 2 | CR/8059/2022 | Devi Shankar Tiwari V/s Ansal Housing Ltd. & Samyak Projects Private Limited | Ms. Priyanka Saxena Smt. Meena Hooda |

CORAM:

Shri Sanjeev Kumar Arora

Member

ORDER

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

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 Hub 83 boulevard" (Commercial Colony) being developed by the same respondent/promoter i.e., M/s **Ansal Housing Ltd.** 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:

| Project Name and Location | ANSAL HOUSING LTD "ANSAL HUB 83 BOULEVARD" Sector-83, Gurugram. | | |
|---|---|-------------------------|-------------------------|
| 30 | <p><i>The developer shall offer possession of the unit any time, within a period of 42 months from the or 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 the dues by buyer & subject to force majeure circumstances as described in clause 31. Further there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.</i></p> <p><i>(Emphasis supplied)</i></p> <p><i>[page 33 of complaint]</i></p> | | |
| Occupation certificate: - Not obtained | | | |
| Sn. | Complaint No. | CR/8036/2022 | CR/8059/2022 |
| 1. | Reply status | Reply by R1- 11.07.2023 | Reply by R1- 11.07.2023 |

| | | Reply by R2- 15.05.2024 | Reply by R2- 15.05.2024 |
|----|--|--|--|
| 2. | Unit no. | T-077 [pg. 26 of complaint] | T-010 (Pg. no 25) Changed Unit no T-008 (Pg. no 27 of complaint) |
| 3. | Date of BBA | 06.01.2015 [pg. 22 of complaint] [NOT SIGNED but R1 in its para 2 of reply dated 11.07.2023 admitted that the BBA has been executed on 06.01.2015 between the parties] | Not executed |
| 4. | Due date of possession | 06.01.2019 [Note: Due date calculated from date of BBA i.e., 06.01.2015 as the date of building plan is not known.] | 16.08.2015 [Note: Due date calculated from date of receipt on which the demand for start of construction was made payable i.e., 19.11.2014 as the BBA has not been executed.] |
| 5. | Total Consideration / Total Amount paid by the complainant(s) | TC: ₹ 21,07,391/- AP: ₹ 7,00,000/- | BSC: ₹ 32,29,923/- AP: ₹ 33,50,215/- |
| 6. | Relief sought | 1. Refund the entire amount paid by the complainant along with the interest. 2. Cost of litigation- ₹55,000/- | 1. Refund the entire amount paid by the complainant along with the interest. |

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| | | | 2. Cost of litigation- ₹55,000/- |
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4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the 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/8036/2022 Birendra Kumar V/s Ansal Housing Ltd. & Samyak Projects Private Limited.*** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.
- A. Project and unit related details**
7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/8036/2022 Birendra Kumar V/s Ansal Housing Ltd. & Samyak Projects Private Limited.

| S. No. | Particulars | Details |
|--------|--------------------------------------|--|
| 1. | Project name and location | Ansals Hub 83 Boulevard, Sector 83 Gurugram |
| 2. | Project area | 2.60acres |
| 3. | Nature of project | Commercial Project |
| 4. | RERA registered/not registered | Registered 09/2018 Dated 08.01.2018 |
| 5. | DTPC license no. & validity status | License No. 71 of 2010 dated 15.09.2010 |
| 6. | Date of execution of buyer agreement | Dated 06.01.2015 (NOT SIGNED but R1 in its para 2 of reply dated 11.07.2023 admitted that the BBA has been executed on 06.01.2015 between the parties) |
| 7. | Unit No. | T-077 (Pg no. 26 of Complaint) |
| 8. | Unit area admeasuring | 283 sq. ft. Ground Floor (Page no. 75 of complaint) |
| 9. | Possession | 30 <i>The developer shall offer possession of the unit any time, within a period of 42 months from the or 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 the dues by buyer & subject to</i> |

| | | |
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| | | <i>force majeure circumstances as described in clause 31. 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> <i>(Emphasis supplied)</i> <i>[page 33 of complaint]</i> |
| 10. | Due date of Possession | 06.01.2019 Note: Due date calculated from date of BBA i.e., 06.01.2015 as the date of building plan is not known |
| 11. | Total consideration | Rs 21,07,391.64/- Pg no. 67 (as per payment plan attached in complaint) |
| 12. | Total amount paid by the complainant | Rs 700,000.00/- Pg no.76 (As per statement of account) |
| 13. | Occupation certificate | Not obtained |
| 14. | Offer of possession | Not offered |

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- a. That in the year 2013 with the intention of having a commercial unit in the city of Gurugram (Haryana), the Complainant came across the widely circulated and publicized project of the Respondents named as 'Ansal Hub 83 Boulevard' (hereinafter referred as 'said project') in District-Gurugram of Haryana.
 - b. It was informed to the Complainant that Respondent No. 1, previously known as Ansal Housing and Construction Limited ("Ansal") i.e., the

Developers entered into a Memorandum of Understanding, dated 12.04.2013 ("said MoU") with Respondent No. 2 ("Samyak") - i.e., the Landowners for the purpose of development and construction of the said project. As per the said MoU, it was informed that it will be the responsibility of Respondent No. 1 to develop and construct the said project at its own cost and expenses in a timely manner and it will be joint responsibility of the Respondents to deliver possession of the complete project to the various Allottees/Customers.

- c. That on raising a query, the officials of the Respondent No. 1 and official of promoter i.e., Respondent No. 2 approached the Complainant and represented to the Complainant herein that Respondents have launched and have already started developing the said project in full swing on the land of Respondent No. 2. The officials of Respondents advertised themselves as a very ethical business group that lives onto its commitments in delivering its commercial projects as per promised quality standards and agreed timelines. The said officials represented that they always commit and promise to the targeted consumer that their dream retail space & shop will be completed and delivered to them within the agreed time frame. The said officials thus presented a very lucrative offer to invest and buy a retail/commercial space in the proposed said project of Respondents.
- d. That in the next meeting with the officials of the Respondents held at the Respondent's branch office where the officials explained the details and highlighted the amenities of the said project and informed that they would deliver the possession of proposed retail/commercial space within the assured timeline as per the best quality and

standards. The officials have further assured to the Complainant that the Respondents have already processed the file for all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality, specification and standard. The Respondents have also shown the brochures and advertisement material of the said project to the complainant and assured that the builder buyer agreement for the said project would be issued to the Complainant within one week of booking to made by the Complainant.

- e. That the promoters of the Respondents cited that the said project is also registered under the present Authority vide Memo No. HRERA-433/2017/97 dated 08.01.2018. The Complainant being influenced by the advertisements and while relying upon those assurances and believing them to be true, Complainant decided to book a retail/commercial space bearing shop no. G-111, Ansals HUB 83, Boulevard, Sector 83, Gurugram, Haryana in the proposed project of the Respondents measuring approximately super area of 285 sq. ft. (26.48 sq. meter) in the commercial project to be developed by Respondent No. 1 on the land of Respondent No. 2. The price of the said shop was agreed at the rate of Rs. 12,895/- per Sq. ft. mentioned in the said application form.
- f. Accordingly, the Complainant has paid Rs. 3,00,000/- (Rupees Three Lac Only) through cheque bearing no 479793 dt 17.04.2013. Further, as required by the Respondents, the Complainant also paid Rs. 4,00,000/- (Rupees Four Lac Only) as booking amount through cheque no. 479798 dt 17.06.2013 as booking amount. The

Respondents informed that further payment must be made at the time of possession.

- g. That the Respondent No. 1 issued a letter dated 20.07.2013 to the Complainant acknowledging the payment and registration of the unit in the said project, but vehemently mentioned the outstanding amount. That the Complainant approached the Respondents, to inquire about the reason of issuing such letter mentioning outstanding balance, however it was assured that remaining amount is only required to be paid at the time of possession.
- h. That the Respondent No. 1 further issued a letter dated 16.04.2014 to the Complainant whereby the Respondent No. 1 vehemently increased the basic price to the tune of 25% of the entire consideration, which was never agreed upon. That the Respondent No. 1 further issued a letter dated 05.08.2014 to the Complainant whereby the Respondent No. 1 vehemently increased the basic price to the tune of 35% of the entire consideration, which was never agreed upon.
- i. That when the Complainant again approached the Respondents, to inquire about the reason of such deliberate outstanding balance, however the Respondents offered to the Complainant to book another unit in the said project which has a better view and almost same at a cheaper rate. Being influenced by the lucrative offer and false promises, the Complainant decided to change the unit number of the commercial unit. Accordingly, unit no. T-077 was allotted in place of the earlier book unit no. G-111.

- j. That the Respondents, accordingly, sent a buyer's agreement to the Complainant to sign and acknowledge. However, the buyer's agreement seemed stringent and biased having contractual terms which were arbitrary, unilateral, and discriminatory in nature, because every clause of agreement is drafting in a one-sided way and a single breach of unilateral terms of builder buyer's agreement by complainant, will cost him forfeiting of 20% of total consideration value of unit.
- k. That based on the said agreement, the Respondents created a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands with threat of levying interest at a compoundable rate of interest for any delay in payments. Due to persistent demand and threats of levying interest for delay payments, the Respondents extracted the amount as per payment plan but never obeyed the terms and conditions of the Agreement.
- l. As per clause 23 of the builder buyer's agreement, the buyer was charged a very high interest rate i.e., 24% per annum, compounded quarterly. Furthermore, according to clause 24 of the agreement, if the buyer fails to pay due Instalments within the stipulated period, the Respondents could cancel the agreement and forfeit the earnest money, without giving any notice to buyer. However, as per clause 34 of the builder buyer's agreement, the Respondents have very cleverly and specifically accepted a meagre liability to pay Rs.5/-per sq. ft. per month on the super area for the delay in offering possession.

- m. That the Respondents exceptionally increased the net consideration value of shop by adding EDC, IDC and PLC and when Complainant opposed the unfair trade practices of Respondents they inform that EDC, IDC and PLC are just the government levies and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorata basis and company will also compensate at the rate of Rs. 5 per sq. ft per month in case of delay in possession of shop by company. The Complainant opposed these illegal, arbitrary, unilateral, and discriminatory terms of buyer's agreement as there is no other option left with Complainant.
- n. That as per the clause 30 of the said buyer's agreement, the Respondents have agreed and promise to complete the construction of the said commercial unit and deliver its possession within a period of 42 months with a six (6) months grace period thereon from the date of start of construction. From the date of booking and till the late 2015, the Respondents had raised various arbitrary demands for the payment of instalments on complainant towards the sale consideration of said shop, however the construction remained stalled.
- o. By virtue of clause 30 of the agreement, the possession of the subject apartment was to be delivered within 42 months from the date of execution of allotment or sanction of building plans whichever is later. The due date is calculated from the date of commencement of construction i.e., 06.01.2015, being later. Accordingly, the period of 42 months expired on 06.07.2018. As far as grace period is concerned,

the due date of handing over possession becomes 06.01.2019. The Respondents have not yet offered the possession of the subject apartment. Accordingly, it is the failure of the Respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the Respondents have not complied with the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the Respondents.

- p. That it is further relevant to comment on the pre-set 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 Complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter and payment opted plan. The drafting of this clause and incorporation of such conditions are not only seem vague and uncertain but so heavily loaded in favour of the promoter and against the present allottees that even a single default by the Allottees 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. Thus, the incorporation of such clause in the builder buyer agreement by the promoter are just to evade the liability towards timely delivery of subject commercial unit and to deprive the Complainant/Allottees of their right accruing after such huge delay in possession.

- q. Further, Respondent No. 1 had started the construction work almost 7 years back and quickly constructed a bare structure with the sole intention of obtaining money from the Allottees. The Respondents are not completing the project and intends to delay for undefined times to complete the project. Moreover, the huge delay in completing the project had an adverse effect on the construction quality of the said project.
- r. That as per the Payment Plan agreed as per the Builder Buyer Agreement, the Complainant paid more than required amount to be paid within 90 Day(s) from the date of booking. That upon completion of all the initial formalities regarding documentation and execution of agreements, the Complainant herein was assured that the possession of his said commercial unit would be given by, 2019, but to the utter shock and dismay of the Complainant, when the Complainant visited the project land in 2014, the construction had hardly started and moreover the construction was almost stalled due to paucity of labour.
- s. That when the Complainant herein asked the officials of the Respondents present at the Project site about the delay and the reason behind non-completion of the project site, then the officials of the Respondents started giving evasive replies and told the Complainant to approach the head office of the Respondents. That further the said officials of the Respondents have admitted that the construction was not going as per the planned schedule and therefore the possession of the completed units would be delayed.



- t. That thereafter, the complainant tried to speak to different officials of the Respondents regarding possession of the property, which got delayed beyond expectation, then the official of the Respondents provided false assurances and pressurized for making payments. That the Complainant recently visited the construction site, however there is still no progress of the construction overall. The construction is still halted and no progress whatsoever is made in this regard.
- u. That as the Respondents failed to fulfil their obligations as per the said MoU and the construction of the said Project was substantially delayed, causing the consequential delay in delivery of the Project to the Allottees. It was informed that Respondent No. 2, on its part, had been pursuing Respondent No. 1 by insisting upon and seeking performance of the various obligations under the MoU. Finally, due to the object failure of Respondent No. 1 to perform its obligations, Respondent No. 2 was left with no option but to terminate the MoU.
- v. It was also informed that the dispute arising therefrom, between Respondent No. 1 and Respondent No. 2, was referred to Arbitration and are pending adjudication before the Ld. Sole Arbitral Tribunal of Justice A.K. Sikri, former Judge of the Supreme Court of India. The prayer for a stay on the termination of the MoU was rejected by the Ld. Arbitral Tribunal in the Arbitration case titled, "Case 01: Ansal Housing Limited vs Samyak Projects Private Limited", [O.M.P. (I) (COMM.) 431 of 2020].
- w. Thereafter, pursuant to the Order, dated 13.10.2021, the said Project was handed over to Respondent No. 2 by Respondent No. 1, vide possession letter, dated 14.10.2021, for the purpose of evaluation and

for taking over the balance construction of the said Project. After the handover, Respondent No. 2 has proceeded to commission experts who are in the process of determining the status of the construction and the further steps/construction necessary to complete the Project, but till date no progress has been made by the Respondent No. 2 to complete the incomplete said project.

- x. That it is evidently clear that the Respondents have committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said shop which amounts to unfair trade practice which is immoral as well as illegal. The Respondents have also criminally misappropriated the money paid by the complainant as sale consideration of said shop by not delivering the unit on agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said shop on the basis of its false and frivolous promises and representations about the delivery timelines aforesaid housing project.
- y. That the Respondents knew in today's scenario looking at the status of the construction of commercial and housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed commercial space within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his/her dream retail space/commercial space. The Respondents, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and falsely represented and warranted to the

consumers that their dream retail space/commercial space will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent for shop along-with the instalments of loan like in the case of other builders in market.

2. That the Respondents are also liable for giving false promises to the Complainant that the said project would be delivered in the time bound manner. That, therefore, the Respondents are further liable for making false representations to its customers and is also liable for deficiency in services by not reverting to the pleas of the Complainant herein with respect to cancellation & refund of the booking amount.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)
- Refund the entire amount paid by the complainant along with the interest.
 - Cost of litigation- ₹55,000/-
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 no. 1.

11. The respondent no. 1 has contested the complaint on the following grounds:
- That the complainants had approached the answering Respondent for booking a shop no. T-077 in an upcoming project Ansal Boulevard, Sector 83, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 06.01.2015 was signed between the parties.

- b. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the answering Respondent was in the year 2014. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.
- c. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong.
- d. That even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2022 and the cause of action accrue on 06.01.2019 as per the complaint itself.
- e. Therefore, it is submitted that the complaint cannot be filed before the HRERA, Gurugram as the same is barred by limitation.
- f. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2015 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 34 of the said agreement provides for Rs. 5/ sq. ft. per month on super area for any delay in offering possession of the unit as mentioned in Clause 30 of the agreement. Therefore, the complainant will be entitled to invoke



- the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 8 years after it was agreed upon by both parties.
- g. That the Respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the Respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the Complainant.
- h. That the answering Respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering Respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The Respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process.
- i. Similarly, the complaint itself reveals that the correspondence from the Answering Respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes

which contributed to the stalling of the project at crucial junctures for considerable spells.

- j. That the answering respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 31 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.
- k. That the answering Respondent has clearly provided in clause 34 the consequences that follow from delayed possession. It is submitted that the Complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram. That admittedly, the Complainant had signed and agreed on Builder Buyer Agreement dated 06.01.2015. That perusal of the said agreement would show that it is a Tripartite Agreement wherein M/s Samyak Projects Pvt. Ltd is also a party to the said agreement.
- l. The said M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the said project well within time as was agreed and given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd.
- m. That in an arbitral proceedings before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. has taken over the present project the answering Respondent for completion of the project and the Respondent has no locus or say in the present project.

E. Reply on behalf of respondent no. 2

12. The respondent no. 2 has contested the complaint on the following grounds:

- a. That the respondent no.2 i.e., Samyak Projects Pvt. Ltd. (Landowner) and respondent no.1 i.e., Ansal Housing Constructions Ltd. (Developer/ AHL) entered into a memorandum of understanding dated 12.04.2013 (hereinafter referred to as "MoU") in respect of construction and development of a project known as ANSAL BOULEVARD 83 (hereinafter referred to as "said project"), situated on a land admeasuring 2.60 acres (equivalent to 20 Kanal 16 Marlas), situated in Village Sihi, Tehsil & District Gurgaon in Sector - 83 of Gurgaon, Manesar forming a part of license no. 113 of 2008 dated 01.06.2008 and license no. 71 of 2010 dated 15.09.2010. As per the said MoU, the respondent no.1 being the developer, made sales of various units to the allottee(s), executed builder buyer agreements with allottee(s) and also received sale consideration amount from the allottee(s). The respondent no.2 was not a party to any builder buyer agreement executed between respondent no. 1.
- b. As respondent no.1 failed to fulfil its obligation under the said MoU. Therefore, due to abject failure of respondent no.1 to perform its obligations under the said MoU, the respondent no.2 being left with no other option, terminated the said MoU vide termination notice dated 10.11.2020. The respondent no.2 also published a public notice in the newspaper dated 16.12.2020 informing the public at large about the termination of said MoU by respondent no.2 due to breach of the terms of MoU by the respondent no. 1.

- c. The respondent no.1 challenged the termination of MoU before the Hon'ble High Court of Delhi in OMP (I) (COMM) No.431 of 2020 in the matter titled as "Ansal Housing Limited vs. Samyak Projects Private Limited" under Section 9 of the Arbitration and Conciliation Act, 1996. The Hon'ble High Court of Delhi was pleased to refer the matter to Arbitration and appointed Justice A.K Sikri, (Retired Judge of Supreme Court) as the Sole Arbitrator.
- d. The learned arbitrator rejected the prayer of respondent no. 1 for stay on the termination of MoU and directed the respondent no.1 to handover the possession of said project on 14.10.2021 to respondent no.2 for taking over the balance construction of the said project. And the Ld. Arbitral Tribunal, passed various orders on time to time in favour of answering respondent and against the AHL till today.
- e. That the answering respondent acting in good faith and in the interest of public at large, in benefit/interest of the allottees of the aforementioned project, the answering respondent sought to authenticate and verify the veracity of the agreements/allotments made by AHL and urged the allottees including the complainants vide various Emails to come forward for KYC process.
- f. It came to the knowledge of respondent no.2 that respondent no. 1 has done several dummy transactions by creating fake profiles of allottees. Thus, the respondent no.2 issued notice dated 04.05.2023 to the complainant for verification of the complainant and legitimacy of the transaction undertaken by respondent no.1.
- g. After verification process of the complainant and legitimacy of the transaction undertaken by respondent no.1. Found that complainant



in under dummy transactions profiles. And no satisfactory response or compliance was received from complainant, It is pertinent to note that the said Ansal Housing Ltd executed the agreement with the complainant if any malfeasance and intentionally as dummy transactions and for that complainant will not entitled to make any claim, not initiate any civil, criminal or legal proceedings of any nature whatsoever against respondent no.2. As respondent no.2 was not a party to the agreement executed if any with respondent no.1. The captioned complaint is liable to be dismissed against respondent no.2.

- h. Recently Hon'ble Arbitrator passed the order dated 03.09.2024 for appointment of forensic audit which reproduce herein below for the sake of reference.

"Since PricewaterhouseCoopers International Limited (PWC) had gone into the accounts and submitted its Report, in order to expedite the process, it would be appropriate to appoint PWC itself as Forensic Auditor who shall go to the relevant records in each of the Project and in particular, the following aspects:

- i. Receivables from the allottees against bookings;*
- ii. Demand raised to allottees;*
- iii. Payment made to allottees;*
- iv. Receipt of payment received in the accounts;*
- v. Appropriation of the monies (Division of monies received in share as per the respective Agreements)*
- vi. Payment made by the Claimant to Respondent as per respective shares in terms of the Agreement Bookings cancelled by Allottees:*
 - i) Cancellations*
 - ii) Appropriation of amounts as per respective share;*
 - iii) Refund by Respondent to Claimant;*
 - iv) Adjustments made by the Claimant.*

** It is also clarified that while undertaking the exercise of Forensic Audit, the aforesaid expert will be at liberty to go into any other aspects it deems appropriate and would be entitled to take into consideration suggestions given by the Parties in this behalf."*



- i. Respondent No.2 has proceeded to commission experts who are in the process of determining the status of the construction and the further steps/construction necessary to complete the project, respondent no.2 is making its best endeavours to ensure that the progress of the said project can be fast- tracked. However, the pace of development of said project is being affected by frivolous and premature challenged being made against the efforts of respondent no.2.
 - j. The respondent no. 2 as a land owner have their limited liabilities to the extend provided the land only. Not sign any builder buyer agreement, and don't have any obligation towards builder buyer agreement with the complainant. That it is submitted that though the respondent no. 2 is in no way liable for performance of any contract with the allotment/allottees as applicant was not a privy to the any contract with them and all the documents were executed by the AHL in favour of allottees.
 - k. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favor of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent no.2 with this frivolous complaint and hampering the project.
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. Keeping in view the judgement of Hon'ble Supreme Court in the 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

F. Jurisdiction of the authority

15. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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



E. II Subject matter jurisdiction

17. 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.

18. 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.
19. 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."

20. 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 relief sought by the complainants.

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

4. In the present matter the complainant was allotted unit no. T-077, admeasuring 283 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder for a total sale consideration of ₹ 21,07,391.64/- and he has paid a sum of ₹ 7,00,000/- which is approx. 33% of the sale consideration. As per clause 30 of the BBA, respondent no. 1 was obligated to complete the construction of the project and hand over the possession of

- the subject unit by 06.01.2019. The occupation certificate for the project has not yet been obtained from the competent authority.
5. As per the BBA respondent no. 2(land owner) and respondent no. 1(developer) entered into a MoU dated 12.04.2013 whereby the development and marketing of the project was to be done by the respondent no. 1 in terms of the license/permissions granted by the DTCP, Haryana. Upon failure of respondent no. 1 to perform its obligations as per MoU and complete the construction of the project within the agreed timeline, respondent no. 2 terminated the said MoU vide notice dated 10.11.2020. The matter pursuant to the dispute was referred to Arbitration and is pending adjudication before the Ld. Sole Arbitral Tribunal of Justice A.K. Sikri, former Judge of the Hon'ble Supreme Court of India.
 6. Following the directive outlined in the order dated 13.10.2021 of the sole arbitrator, respondent no. 1 handed over the aforementioned project to respondent no. 2 via a possession letter dated 14.10.2021, for the purpose of undertaking the remaining construction tasks. Subsequently, on 02.09.2022, the Sole Arbitrator directed respondent no. 2 to finalize the project within the stipulated timeline, specifically by the conclusion of June 2023. During the proceedings on 17.05.2024 before the Authority, the counsel representing respondent no. 2 asserted in court that the project is ready for handover, accompanied by an offer of possession for fit-outs.
 21. The authority observes that since as per MoU the development rights were with the respondent no. 1 and the amount against the sale consideration of the units allotted has been collected by respondent no. 1 only. It is an undisputed fact that M/s Samyak Projects Pvt. Ltd. possesses all rights and ownership of the land for the project, was a confirming party in the buyer's



agreements executed with the existing allottees. However, it is essential to note that all payment were made in favor of the respondent no. 1 i.e., Ansal Housing Ltd. by the allottees as evident from the payment receipts issued by the respondent no. 1 itself. Although now the project has been handed over to respondent no. 2 but since the payments have been accepted by Ansal Housing Ltd. therefore, the liability to refund shall be casted upon respondent no. 1 and not on respondent no. 2.

22. Keeping in view the fact that the allottee complainants wishes to withdraw from the project and 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 06.01.2019.
23. 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...."

24. 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:

"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"

25. 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). 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.

26. 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.

27. The authority hereby directs the promoter to return the amount received by him i.e., ₹7,00,000/- with interest at the rate of 10.95% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II. Cost of litigation- ₹ 55,000/-

28. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

29. 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 no. 1 is directed to refund the amount received by it from the complainant along with interest at the rate of 10.95% 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 no. 1 to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent no. 1 is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.
30. This decision shall *mutatis mutandis* apply to cases mentioned in para 3 of this order.
31. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
32. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2024