

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

**Date of decision: 21.02.2024**

NAME OF THE BUILDER		ANSAL HOUSING LIMITED SAMYAK PROJECTS PVT. LTD.	
PROJECT NAME		ANSAL HUB 83 BOULEVARD	
S. No.	Case No.	Case title	APPEARANCE
1	CR/681/2022	Girish Kr. Ghuliani V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.	Sh. Amandeep Kadyan Sh. Saniya Arora
2	CR/2112/2022	Anita Tyagi and Vinita Tyagi V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.	Sh. Amandeep Kadyan Sh. Saniya Arora

**CORAM:**

Shri Ashok Sangwan

**Member**

**ORDER**

1. This order shall dispose of the 2 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" (group housing colony) being developed by the same respondent/promoter i.e., M/s Ansal Housing Limited and Samyak Projects Pvt. 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 delay possession charges along with interest.

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 HUB 83 BOULEVARD " Sector-83, Gurugram.		
<b>Possession Clause: 30</b> <i>"30. The Developer shall offer possession of the Unit within 42 months from the obtaining all the required sanctions and approval sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by the Buyer and subject to force majeure circumstances as described in clause 31. Further there shall be a grace period of 6 months allowed to developer over and above the period of 42 months as above in offering the possession of the unit."</i> <b>(Emphasis supplied)</b>				
<b>Occupation certificate: - Not obtained</b>				
Complaint No., Case Title	Unit no. and area admeasuring	Date of builder buyer agreement	Due date of delivery of possession	Sale Consideration (SC)/ Total Amount paid by the complainant(s)(AP)
CR/681/2022	G-123, admeasuring 238 sq. ft.	02.05.2015	02.05.2019 (42 months from date of agreement i.e.,	TSC- ₹ 36,17,104/- AP- ₹ 33,49,738/-



			02.05.2015 as the date of commencement of construction is not known. Grace period allowed being unqualified)	
CR/2112/2022	G-069, admeasuring 460 sq. ft.	18.12.2014	18.12.2018 (42 months from date of agreement i.e., 18.12.2014 as the date of commencement of construction is not known. Grace period allowed being unqualified)	TSC- ₹ 72,30,484/- AP- ₹ 73,08,062/-

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder 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 delay possession charges 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.



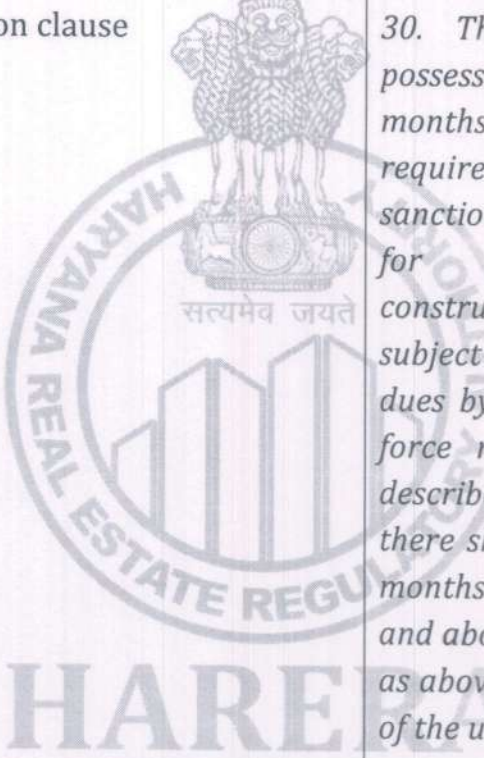
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2112/2022 Anita Tyagi and Vinita Tyagi V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges 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/2112/2022 Anita Tyagi and Vinita Tyagi V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.**

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Hub 83 Boulevard" in Sector 83, Manesar, Gurgaon.
2.	Nature of the project	Commercial
3.	Project area	2.60 acres
4.	RERA Registered/ not registered	Registered vide no. 09 of 2018 dated 08.01.2018 valid upto 31.12.2020
5.	DTCP License No.	113 of 2008 dated 01.06.2008 valid upto 31.05.2018
6.	Name of licensee	Browz Technologies Pvt. Ltd and 4 others

7.	Unit no.	G-069 (Page no. 55 of complaint)
8.	Unit admeasuring	460 sq. ft. (Page no. 55 of complaint)
9.	Date of builder buyer agreement	18.12.2014 (page no. 50 of complaint)
10.	Possession clause	 <p>30. The Developer shall offer possession of the Unit within 42 months from the obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by the Buyer and subject to force majeure circumstances as described in clause 31. Further there shall be a grace period of 6 months allowed to developer over and above the period of 42 months as above in offering the possession of the unit.</p>
11.	Due date of delivery of possession	18.12.2018 (Note: 42 months from date of agreement i.e., 18.12.2014 as the date of commencement of construction is not known. Grace period allowed being unqualified)
12.	Total sale consideration	Rs. 72,30,484/-



		(as per payment plan on page 71 of complaint)
13.	Total amount paid by the complainant	Rs. 73,08,062/- (as alleged by complainant on page no. 05 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not Offered

### B. Facts of the complaint

8. The complainants have made the following submissions in the complaint:
  -
9. That based on promises and commitment made by the respondent, complainant booked a commercial unit bearing no. G-069 admeasuring 460 sq. ft. in the project of the respondent "Ansals HUB 83 Boulevard", Sector 83, Gurugram, Haryana and paid a booking amount of Rs 7,00,000/- through cheque.
10. That the respondent to dupe the complainant, executed developer buyer agreement on 18.12.2014. As per clause 23 of the developer buyer agreement the buyer was charged very high interest rate i.e. 24% per annum, compounded quarterly. Furthermore, according to clause 24 of agreement if buyer fails to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature. Whereas, as per clause 34, the developer/ respondent had 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 of possession.



11. That the total cost of the said commercial unit is Rs 72,30,484/- and a sum of Rs 73,08,062/- was paid by the complainants in time bound manner. This amount constituted more than 95% of the total sum taken from the complainant within 4 years. The respondent declined to complete the project after collecting money and there has been little progress in construction from 2016 onwards.
12. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016, complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainant herein is not in breach of any of its terms of the agreement.
13. That the complainant booked a commercial unit dated 19.06.2013 and as per developer buyer agreement, respondents are liable to offer possession on or before 17.12.2018. The complainant visited several times in the respondent office and project site, regarding possession of the unit and delay interest however respondent did not reply till date.
14. That due to the malafide intentions of the respondent and non-delivery of the commercial unit the complainants have accrued huge losses on account of the future of the complainants and their family are rendered dark as the planning with which the complainants invested his hard earned monies have resulted in sub-zero results and borne thorns instead of bearing fare fruits. Due to delay in possession complainants have incurring huge financial and mental harassment month after month complainants visited respondent's office several times and requested for possession but the respondent did not bother to respond till date.

**C. Relief sought by the complainants:**



15. The complainants have sought following relief(s)
- Direct the respondent to complete the project immediately and hand over the possession of the commercial unit with all basic amenities which mention in brochure.
  - Direct the respondent to pay delay interest on paid amount of Rs. 73,08,062/- at the rate of 24% till the handing over the physical possession.
  - Direct the respondent to quash the one-sided clauses from developer buyer agreement.
  - Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder.
16. 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.**
17. That the complainants had approached the answering respondent for booking a shop in an upcoming project Ansal Boulevard, Sector 83, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. a shop bearing unit no. G-069 was allotted to him on 19.06.2013.
18. 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.

19. 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 2024 and the cause of action accrue in 2018 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
20. 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 foot 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 9 years after it was agreed upon by both parties.
21. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that 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.



22. 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. 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. 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.
23. 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.
24. That the answering respondent has clearly provided in clause 31 the consequences that follow from delayed possession. The complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.
25. That the complainant had signed and agreed on builder buyer agreement dated 27.04.2015. 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.

26. That the perusal of the builder buyer agreement at page 3 would show that **M/s Samyak Projects Pvt. Ltd** not only possesses all the rights and unfettered ownership of the said land whereupon the project namely Ansal boulevard, Sector 83 is being developed, but also is a developer in the said project. That the operating lines at page 3 of the builder buyer agreement are as follow: *"The Developer has entered into an agreement with the Confirming Party 3 i.e M/s Samyak Projects Pvt. Ltd to jointly promote, develop and market the proposed project being developed on the land as aforesaid."*
27. 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.
28. 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. Written submissions filed by respondent no. 2**

29. That the present matter has been filed by the complainant with respect to unit no. G-069 in the project "Boulevard 83", Gurugram, Haryana.
30. That the present complaint has been filed by the complainant against in collusion with the respondent no.1 i.e. Ansal Housing and Construction



Limited and it is clearly evident from the documents annexed by the complainant with its complaint.

31. However, the Hon'ble Authority vide its dated 03.11.2023 struck off the defence of the respondent no. 2 and proceeded ex parte against the respondent no. 2.
32. The respondent no. 2 has already filed a short affidavit /reply and the same was submitted in the registry on 16.04.2024.
33. That the application is filed by the respondent no. 2 to seek clarification with respect to the relief sought by the complainant. The complainant has not filed a reply to the same and has failed to clarify the relief sought in the complaint as to from which respondent the relief is sought.
34. That the Authority has passed several orders in which the sole liability to comply with the orders rests on the shoulders of respondent no. 1 i.e Ansal Housing and construction Ltd. In complaint no. 4337 of 2020, decision dated 19/08/2021 the authority had passed an order for delaying possession charges with the sole liability of respondent no. 1 i.e Ansal Housing and construction Ltd. Further, in complaint no. 8036 & 8059 of 2022, decision dated 05/07/2024 the authority had passed an order for refund amount along with interest.

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

35. 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**





36. 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**

37. 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.

38. 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.



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

**G.I Direct the respondent to complete the project immediately and hand over the possession of the commercial unit with all basic amenities which mention in brochure.**

**G.II Direct the respondent to pay delay interest on paid amount of Rs. 73,08,062/- at the rate of 24% till the handing over the physical possession.**

39. In the present matter the complainant was allotted unit no. G-069, admeasuring 460 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder for a total sale consideration of ₹ 72,30,484/- and they have paid a sum of ₹ 73,08,062/- A buyer's agreement dated 18.12.2014 was executed between the complainant and respondent no. 1 wherein respondent no. 2 was the confirming party. 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 within 42 months from obtaining all the required sanctions and approval sanctions and approval necessary for commencement of construction, whichever is later. The due date of possession comes out to be 18.12.2018. The occupation certificate for the project has not yet been obtained from the competent authority.

40. 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 and issued a public notice in newspaper for termination of the MoU. The matter pursuant to the dispute was referred to the Delhi High Court under section 9 of the Arbitration & Conciliation Act, 1996 and vide order dated 22.01.2021 Hon'ble High Court of Delhi appointed the Hon'ble Justice A.K. Sikri, former Judge of the Hon'ble Supreme Court of India as a sole arbitrator of Arbitral Tribunal.

41. The complainant i.e., Ansal Housing Pvt. Ltd. in the petition sought various reliefs including to stay the operation of the termination letter dated 10.11.2020 and the public notice dated 16.12.2020 till the final arbitral award is given. The Arbitral Tribunal vide order dated 31.08.2021 granted no stay on termination notice dated 10.11.2020 and no restraining order in this regard was passed against the M/s Samyak Projects Pvt. Ltd. Further, vide order dated 13.10.2021 of the sole arbitrator respondent no. 1 was directed to handover the aforementioned project to the respondent no. 2. Following the directive outlined in the order dated 13.10.2021 of the sole arbitrator, respondent no. 1 handed over the 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 and to collect funds from the allottees with a condition that the amount so collected shall be put in escrow account.
42. The authority is of the view that the builder buyer agreement dated 18.12.2014 was signed by the complainants and the respondent no. 1. The





respondent no. 2 is a confirming party to that BBA. In the builder buyer agreement dated 18.12.2014 it was specifically mentioned that 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. Although the respondent no.2 i.e., Samyak Projects Pvt. Ltd. cancelled the agreement vide termination notice dated 10.11.2020 and the matter is subjudice before the arbitral tribunal appointed by Delhi High Court vide order dated 22.01.2021. It is relevant to refer the definition of the term 'Promoter' under the section 2(zk) of the Real Estate (Regulation and Development) Act, 2016.

2. Definitions.-

(zk) "promoter" means

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
- (iii) xxxxxxxx

43. The authority observes that landowner is covered by the definition of promoter under sub clause (i) or (ii) of section 2(zk). A person who constructs or causes to be constructed a building or apartments is a promoter if such building or apartments are meant for the purpose of





selling to other persons. Similarly, a person who develops land into a project i.e., land into plots is a promoter in respect of the fact that whether or not the person also constructs structures on any of the plots. It is clear that a person develops land into plots or constructs building or apartment for the purpose of sale is a promoter. The words, "causes to be constructed" in definition of promoter is capable of covering the landowner, in respect of construction of apartments and buildings. There may be a situation where the landowner may not himself develops land into plots or constructs building or apartment himself, but he causes it to be constructed or developed through someone else. Hence, the landowner is expressly covered under the definition of promoter under Section 2 (zk) sub clause (i) and (ii).

44. Further, the authority observes that the occupation certificate for the project is yet to be received and the project stands transferred to the respondent no. 2 who is now responsible to complete the same.
45. In view of the above, the liability under provisions of Section 18(1) of the Act & Rules read with builder buyer agreement shall be borne by both the respondents jointly and severally and the liability to handover the unit shall lie with respondent no. 2.
46. The complainants intend to continue with the project and are seeking delay possession charges interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules:

*"Section 18: - Return of amount and compensation*



18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

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

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

**he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:**

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

47. Clause 30 of the builder buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

*30. The Developer shall offer possession of the Unit within 42 months from the obtaining all the required sanctions and approval sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by the Buyer and subject to force majeure circumstances as described in clause 31. Further there shall be a grace period of 6 months allowed to developer over and above the period of 42 months as above in offering the possession of the unit.."*

48. **Due date of possession and admissibility of grace period:** As per clause 30 of the agreement dated 18.12.2014, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 42 months from obtaining all required sanctions and approvals necessary for commencement of construction, whichever is later. Further, grace period of 6 months is sought. The date of start of construction is not known. Therefore, the due date is calculated from date of execution of builder





buyer agreement i.e., 18.12.2014. Hence, the due date comes out to be 18.12.2018 including grace period of 6 months as it is unqualified.

**49. Payment of delay possession charges at prescribed rate of interest:**

The complainants are seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. 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.

50. 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.

51. 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., 21.02.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

52. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the





promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

53. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
54. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 18.12.2018. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.
55. The Authority is of considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated





18.12.2014. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

56. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 18.12.2018 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**G.III Direct the respondent to quash the one-sided clauses from developer buyer agreement.**

57. The respondent/promoter shall not charge anything from the complainant which is not the part of the BBA.

**G.IV Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder.**

58. The complainant has sought the relief with regard to input tax credit to the complainants and charge the GST as per rules and regulations, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act,



2017/Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below.

*"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

59. As per the above provision, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. In the event, the respondent/promoter has not passed the benefit of ITC to the buyers of the unit in contravention to the provisions of section 171(1) of the HGST Act, 2017. The allottee is at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

#### **H. Directions of the authority**

60. 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):
- The respondents/promoters jointly and severally are directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 18.12.2018 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.



- b. The respondent no. 2 is directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate
- c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- d. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- e. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
61. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
62. The complaints stand disposed of.
63. Files be consigned to registry.

**HARERA**  
**GURUGRAM**

(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.02.2024