

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

**Complaint no.:** 1366 of 2023  
**Date of decision:-** 16.04.2025

1. Shailendra Singh
2. Rachna Singh

**Both R/o:** - B703, Shubham Apartment, plot no. 13,  
Near Mount Carmel School,  
Cantonment South West Delhi, Delhi.

**Complainants**

**Versus**

1. M/s. Ansal Housing and Cosntruction Ltd  
**Regd. office:** 15, UFG, Indra Prakash Building,  
21, Barakhamba Road, New Delhi.

2. M/s. Samyak Projects Pvt. Ltd.  
**Regd. Office:** 111, Floor-1<sup>st</sup>, Antriksh Bhawan, 22,  
K.G. Marg, New Delhi-110001.

**Respondents**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Kailash Chand Sharma  
Amandeep Kadyan(R-1)  
Shankar Vij (R-2)

**Complainant**  
**Respondents**

**ORDER**

1. The present complaint dated 05.04.2023 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the

Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Heights 86", Sector-86, Gurugram, Haryana.
2.	Nature of project	Residential
3.	DTCP License no.	Licence No. 48 of 2011 Dated 29.05.2011
4.	RERA registered	Not registered
5.	Unit no.	E-0904, Tower-E (3bhk + 2 Parkings) (As on page 48 of complaint)
6.	Unit shifting letter (Earlier unit B-1303 to E-0904)	15.02.2015 (As on page 28 of complaint)
7.	Unit area	1690 sq.ft. [Super-area] 1066.49 sq.ft [Carpet-area]

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		(As on page 48 of complaint)
8.	Allotment letter	01.03.2016 (As on page 48 of complaint)
9.	Date of execution of flat buyer's agreement	29.01.2016 (As on page 31 of complaint)
10.	Possession clause	<b>Clause 31</b> The Developer shall offer possession of the Unit any time, <b>within a period of 42 months from the date of execution of Agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction</b> , whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a <b>grace period of 6 months</b> allowed to the Developer over and above the period of 42 months as above in offering the possession of the Unit. (As on page 39 of complaint)
11.	Due date of possession	29.01.2020 (Calculated 42 months from date of execution of agreement plus 6 months on account of covid-19)
12.	Sales consideration	Rs.56,84,883.80/- (As on page no. 34 of complaint)

13.	Amount paid by the complainant	Rs.63,26,212.16/- (As per customer ledger dated 21.01.2023 on page 54 of complaint)
14.	Offer of possession	10.10.2022 (As on page 57 of complaint)
15.	Occupation certificate	Not obtained
16.	Conveyance deed	Not executed

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:
  - I. That the somewhere in the year 2010, the respondent through its marketing executives had advertised through various mediums and approached the complainants with an offer to invest and buy a residential unit in the proposed project of respondent, which the respondent was going to launch under the name and style of "Ansal Heights" at Sector-86, Gurugram. The respondent had represented to the complainants that the respondent is very ethical business house in the field of construction of residential and commercial project and in case, the complainants would invest in the project of respondent then they would deliver the possession on the assured delivery date.
  - II. That the respondent had further assured the complainants that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of the project on time with the promised quality and specification. The respondent assured that the allotment letter and Builder Buyer Agreement would be issued to the

complainants within one week of making the booking.

- III. Relying upon the assurances made by the respondent and believing those to be true, in the year 2011, the complainants booked a residential unit bearing no.1303, in Block/Tower No. B, in the said project against a sale consideration of Rs.56,04,883.50/- including External Development Charges (EDC), and Infrastructure Development Charges (IDC) and also includes the costs of providing electric wiring and switches in the flat.
- IV. Thereafter, vide letter dated 15.02.2015, the respondent without the consent and permission of the complainants changed /shifted the said unit from B-1303 to E-904, measuring an area of 16906 sq. ft. (157 sq. mtrs.)
- V. That after much persuasion made by the complainants, on 25.01.2016, the respondent had executed a Flat Buyer's Agreement with the complainants. At the time of agreement, the complainants were assured by the respondent that it would not change, alter, modify the area of the said flat and shall hand over the unit to the complainants as agreed and mentioned in the agreement.
- VI. Thereafter, the respondent had allotted the unit bearing no. E-904 to the complainants vide Allotment Letter dated 01.03.2016, whereby the basis price of the unit was increased Rs.63,73,353.50/-. Thereafter, the respondent started raising the demand of money /installments from the complainants as per the agreed timelines and the complainants as on the date of filing of the complaint has paid Rs.63,26,612.16/-.
- VII. As per the Agreement, the respondent was required to handover the possession of the unit to the complainants within 36 (thirty six) months plus 6 months grace period from the date of booking, which was booked

by the complainants on February 2015. The date of possession was /is August 2018. The respondent has failed utterly in delivering the possession of the unit to the complainant and therefore, miserably defaulted in fulfilling its commitment as per the terms of the agreement.

VIII. That, as per Clause-35 of the Agreement, it was agreed and undertaken by the respondent that

*"That the Developer would pay to Buyer @ Rs.5/- per sq. ft. per month on Super area for any delay in offering possession of the Unit as mentioned in Clause No.31 above after adjusting all dues including unpaid interest on account of late payments and any amounts of interest waived earlier on the said unit. Similarly in the event of his /her failure to pay all dues before the dues date as mentioned in offer of possession and/or failure to visit the site for Final Verification/Inspection or for taking possession/keys of the Unit for any reason (even if sale deed has been registered) whatsoever, the Buyer shall be liable to pay in addition to interest on delayed payments, holding charges @ Rs.5/- per sq. ft. per month of Super area from due date mentioned in offer of possession letter till the keys of the Unit is taken by the Buyers. In case of delay in final verification/inspection, the Buyer shall pay holding charges from the date of expiry of time given in offer of possession till the actual date of Final verification/inspection. Thereafter there will be a grace period of 60 days within which time the Buyer shall get the sale deed of the unit registered and take the keys of his unit from site in Charge/Estate Manager. In 25 case keys of the Unit are not taken within this grace period of 60 days, the Buyer shall pay further holding charges upto the day of actual handing over the Keys"*

IX. Therefore, the respondent is liable to pay penalty /delayed possession charges with effect from August 2018 (which includes grace period also). Due to the failure on part of the respondent to deliver the unit on time as agreed in the Builder Buyer Agreement, the complainants were constrained to stay in the rented accommodation by paying monthly rent. The complainants have therefore been paying Rs.25,000/- per



month as rentals per month for the rented accommodation for the period of delay i.e. 54 months from August 2018 till filing of the present complaint and so far the complainants have paid rental worth 54 months X Rs.25,000 = Rs.13,50,000/-. The complainants were constrained to pay the aforesaid rental amount solely due to the deficiency in services and negligence on part of respondent in delivering said unit within the timelines as agreed in the Flat Buyers Agreement.

- X. The respondent instead of making the aforesaid amount including but not limited to delayed possession charges, rentals etc. to the complainants, the respondent illegally, unlawfully and arbitrarily started raising demand from the complainants, which is liable to be set-aside /waived off being illegal, exorbitant one.
- XI. That the complainants had requested the respondent to deliver the unit citing the extreme financial and mental pressure they were going through, but the respondent never cared to listen to their grievances and left them with the sufferings and pain.
- XII. That the respondent has not completed the construction till now and the complainants have not been provided with the possession of the said unit despite all promises and representations made by the respondent. The respondent has violated the terms and conditions of the Buyer's Agreement and promises made at the time of booking of said unit.
- XIII. That in order to make the payment, the complainants have also obtained a loan and EMIs thereof are being paid by them from their limited source of income. The respondent has committed grave deficiency in services by not delivering the possession of said Unit and false promises made at the time of sale of the said Unit, which amounts to unfair trade practice

which is immoral and illegal. The respondent has also criminally misappropriated the money paid by the complainants by not delivering the unit by agreed timelines.

XIV. The cause of action accrued in favour of the complainants and against the respondent, when the complainants had booked the said unit and it further arose when the respondent failed /neglected to deliver the unit. The cause of action is continuing and is still subsisting on day-to-day basis.

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

4. The complainants have sought following relief(s):-

- i. Direct the respondent to handover the possession of the unit to the complainants.
- ii. Direct the respondent to pay the interest at the prescribed rate of 18% per annum on the amount of Rs.63,26,612.16 .
- iii. Direct the respondent to pay Rs.13,50,000 to the complainants on account of delay possession charges.
- iv. Pass an order to pay the penalty to the complainant on account of delay in delivering possession of the unit.
- v. Pass an order to waive off ` \_\_\_\_\_ as is being demanded by the respondent illegally, unlawfully and deliberately;
- vi. Direct the respondent not to charge any charges other than the basic sale price and if any is being charged by the respondent, then the same may kindly be waived off being illegal, null, void, ab-initio, non-est in the eyes of law and not binding upon the rights of the complainants in any manner.



- vii. Direct the respondent to pay Rs.45,64,620 to the complainants on account of rentals paid by them at the rate of Rs.25,000 per month with effect from August 2018 till filing of the present complaint;
- viii. Direct the respondent to pay an amount of Rs.55,000 to the complainants as cost of the present litigation.

**D. Reply filed on behalf of respondent no.1 :**

5. The respondent no.1 i.e., M/s Ansal Housing and Construction Limited has made the following submissions:

- I. That the answering respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR with a well-established reputation earned over years of consistent customer satisfaction. That the complainants had approached the answering respondent for booking a Flat no. É-0904 in an upcoming project "Ansal Heights" situated in Sector 86, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 29.01.2016 was signed between the parties.
- II. That the present matter cannot be governed by the Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the 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 the parliament would not make the operation of a statute retrospective in effect.
- III. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. That even if the complaint is admitted to be true and correct, the

agreement which was signed in the year 2016 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 37 of the said agreement provides for Rs. S/ sq foot per month on super area for any delay in offering possession of the unit as mentioned in Clause 31 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Authority in order to alter the penalty clause by virtue of this complaint more than 9 year after it was agreed upon by both parties.

- IV. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. 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.
- V. That the respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the 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. Similarly, the complaint itself reveals that the correspondence from the respondent specifies force majeure, and around Delhi and the COVID -19 demonetization and the orders of the Hon'ble NGT prohibiting construction in pandemic among others as the causes. That the 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 32 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. That admittedly, the complainant had signed and agreed on Builder Buyer Agreement dated 29.01.2016. 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.

- VI. 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 is being developed, but also is a developer in the said project. That M/s Samyak Projects Pvt. Ltd is necessary and proper party to be arrayed to the complaint for proper, fair and transparent disposal of the present case.
- VII. That M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the project well within time as was agreed and given to the respondent, the delay, if any, is on the part of Ms Samyak Project Pvt. Ltd. and not on the part of the respondent no.1, because the construction and development of the said project was undertaken by M/s. Samyak Project Pvt Ltd.

**E. Reply on behalf of the respondent no.2 i.e., M/s. Samyak Projects Private Limited**

6. The respondent no.2 i.e., M/s. Samyak Projects Private Limited has submitted the following by way of written reply:
- I. That the respondent no 2 having acquired the rights to develop the land on which the present project was to be constructed, entered into a Memorandum of Understanding dated 06.09.2011 with the respondent no. 1 i.e. Ansal Housing Limited with respect to the construction and development of the present project "Ansal Heights-86" situated in Sector 86, Gurugran. However, superseding the said MOU, the respondent no. 1 & 2 entered into a Joint Venture Agreement "JVA" dated 24.05.2013.
  - II. As per the clauses of the JVA, the entire scheme of development of the proposed project was to be carried out by respondent no.1 at its own cost and expense including development of internal development services, commercial areas and other related developments, after taking all necessary approvals, sanctions/permissions etc.
  - III. That as per clause 9.2 of the said MOU it was the sole responsibility / obligation of respondent no. 1 towards the buyers/allottees. That as per the MOU, it was the sole responsibility of the respondent no.1 to develop the project and handover the possession to the allottees. It was respondent no.1 who received the consideration amount from all the allottees.
  - IV. It is also further submitted that there are no specific allegations in the complaint against the respondent no.2. The Authority in various cases



pertaining to the same project has already decided that it is the responsibility of the respondent no.1 towards the allottees. That it is also submitted that the Authority in 43 cases has decided that the sole responsibility to return the amount paid by the allottees lies upon the respondent no.1 Moreover, in the matter of "Mr. Krishnendu Ghosh Dastidar And Mrs Ananya Ghosh Dastidar V/S Ms. Ansal Housing And Construction Limited" (2032/2018) vide its order dated 13.09.2022 which disposed of 42 other cases with respect to the project namely "Ansal Heights-86", clearly stated that the payments against the allotted units were received by M/s Ansal Housing & Constructions Ltd. and Samyak Projects Pvt. Ltd, was not party to the BBA's and therefore Samyak Projects Pvt. Ltd. cannot be held responsible.

- V. The Authority has in its various decisions observed that the answering respondent is not a primary party, nor has direct nexus in respect of the consideration of the unit with the decree holder. Moreover, it is important to mention that it is the obligation of the party who has been benefited by the amount of consideration. Hence, it shall prejudice the interest Respondent No.2 i.e. M/s Samyak Projects Pvt. Ltd who has not received any amount toward the completion of the said project by the respondent no. 1.
- VI. Moreover, it is further submitted that the arbitration proceedings with respect to the said project are pending before the sole Arbitrator Hon'ble Justice A.K. Sikri. It is equally important to bring to the knowledge of this Authority that a **status quo has been maintained**



on the project by the Sole Arbitrator vide interim order dated 31.08.2021 till the final award is passed.

VII. That there **is no privity of contract between** the respondent no.2 and the complainant as it was the sole responsibility of the respondent no. 1 to deliver the units to the allottees. Moreover, a status quo has been imposed by the Arbitrator on the project, the unit cannot be handed over to the complainants.

7. Copies of all the relevant documents have been filed and placed on 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.

**F. Jurisdiction of the authority:**

8. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F.1 Territorial jurisdiction**

9. 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**

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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

11. 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 objections raised by the respondent****G.I Objection regarding delay due to force majeure circumstances**

12. The respondent no.1 has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Punjab and Haryana High court, Hon'ble NGT, shortage of labour, demonetisation, outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be

allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the 'Flat Buyer's Agreement' was executed between the parties on 29.01.2016. As per clause 31 of the Flat Buyer Agreement, the due date for offer of possession of the unit was 42 months from the date of execution of the Agreement or 42 months from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later, along with a grace period of six months over and above the said period. The period of forty two months is calculated from the date of execution of the agreement. The Flat's Buyer Agreement has been executed between the parties on 29.01.2016, the period of 42 months from 29.01.2016 comes out to be 29.07.2019. Further, an unqualified grace period of six months has been agreed between the complainant and the respondents to be granted to the respondents over and above the said 42 months. The same is granted to the respondents, being unqualified. Thus, the due date of possession comes out to be 29.01.2020. Since, a grace period of six months has already been granted to the respondent, any further grace would amount to undue advantage in favour of the respondents. The respondent no.1 have submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, but these were for a short period of time and are the events

happening every year. The respondents were very much aware of these event and thus, the promoter/ respondent cannot be given any more leniency based on the aforesaid reasons.

**G.II. Objection regarding no privity of contract between respondent no.2 i.e., M/s. Samyak Projects Pvt Ltd. and the complainant.**

13. The respondent no.2 i.e., M/s. Samyak Projects Pvt Ltd has raised an objection that there is no privity of contract between the complainant and respondent no.2 as it was the sole responsibility of respondent no. 1 to construct and handover the units to the allottees. The respondent no.2 further submitted that as per clause 9.2 of the MOU executed between the respondent no.1 and respondent no.2, it was the sole responsibility/obligation of the respondent no.1 towards the allottees to develop the project and handover the possession and all the consideration amount has been received by respondent no.1 from the allottees.
14. The Authority observes that the Flat Buyer Agreement dated 29.01.2016 was duly executed between the complainants and respondent no.1, with respondent no.2, M/s Samyak Projects Pvt. Ltd., being a confirming party to the said agreement. It is further observed, based on the submissions of respondent no.2, that it had earlier entered into a Memorandum of Understanding (MoU) dated 06.09.2011 with respondent no.1, which was subsequently superseded by a Joint Venture Agreement (JVA) dated 24.05.2013. As per the terms of the JVA, the entire development of the project, including internal development works, commercial areas, and

other ancillary developments, was to be undertaken by respondent no.1 at its own cost, and after obtaining all requisite approvals, sanctions, and permissions.

15. Importantly, both the MoU and the JVA were agreements executed exclusively between respondent no.1 and respondent no.2 and the complainants were neither a party to these agreements nor was the arrangement disclosed to the complainants, nor did the complainants have any role in its execution. The document establishing the legal relationship between the complainant and the respondents remains the Flat Buyer Agreement dated 26.09.2012, to which respondent no.2 is a confirming party. Therefore, the objection raised by respondent no.2 regarding the absence of privity of contract with the complainants is without merit and is accordingly rejected.

**G.III. Objection regarding status quo being imposed by the Learned Arbitrator on the project.**

16. The respondent no.2 has raised an objection that since the arbitration proceedings are going on between the respondent no.1 and respondent no.2, status quo has been imposed by the Learned Arbitrator on the project and thus the unit cannot be handed over to the complainant.
17. The Authority observes that the respondent no.2 terminated the MOU and the JVA that was executed between the respondents vide notice dated 02.02.2021 and issued a public notice in respect of the termination of the MOU. The matter pursuant to the dispute was referred to the Hon'ble Delhi High Court under Section 9 of the Arbitration and Conciliation Act, 1996 and vide order dated 22.01.2021, Hon'ble Justice A. K. Sikri, former judge of the Hon'ble Supreme Court of India has been appointed as a sole

arbitrator of the Arbitral Tribunal by the Hon'ble Delhi High Court. As per the order dated 31.08.2021, the Hon'ble Tribunal observed that the construction of the project is almost complete and the respondent no.1 has applied for Occupancy Certificate. As per the present status of the project, it would be apt that the respondent no.2 also does not deal with the project by entering into any arrangement with third parties during the pendency of these proceedings and/or till further orders.

18. The Authority is of the view that the order dated 31.08.2021 is limited to the extent of the dispute inter se the respondents and does not bar the jurisdiction of this Authority to grant relief to the complainant under the provisions of the Act, 2016.

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

**H.I Direct the respondent to handover the possession of the unit to the complainants.**

**H.II Direct the respondent to pay the interest at the prescribed rate of 18% per annum on the amount of Rs.63,26,612.16/-.**

**H.III Direct the respondent to pay Rs.13,50,000/- to the complainants on account of delay possession charges.**

**H.IV Pass an order to pay the penalty to the complainant on account of delay in delivering possession of the unit.**

19. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainants booked a unit bearing no. 1303, Block/Tower-B, in the project "Ansal Heights" Sector 86 by the respondents for a sale consideration of Rs.56,84,883.80/- and they have paid a sum of Rs.63,26,212.16/- A buyer's agreement dated 29.01.2016 was executed between the complainants and respondent no. 1 wherein



respondent no. 2 was the confirming party. As per clause 31 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 29.01.2020. The occupation certificate for the project has not yet been obtained from the competent authority.

20. The respondent no. 2(land owner) and respondent no. 1(developer) entered into a MoU dated 06.09.2011 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. After the aforesaid arrangement got fructified, the JVA dated 24.05.2013 was entered into between the parties. Upon failure of respondent no. 1 to perform its obligations and complete the construction of the project within the agreed timeline, respondent no. 2 terminated the said MoU vide notice dated 02.02.2021 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.
21. 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.

22. The Authority is of the view that the Flat Buyer Agreement dated 29.01.2016 was signed by the complainants and the respondent no. 1. The respondent no. 2 is a confirming party to that Agreement and the respondent no. 2(land owner) and respondent no. 1(developer) entered into separate agreements 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 sub judice 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 apartmets, 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*

23. In view of the above facts and circumstances as well as the fact that the arbitration proceedings between respondent no.1 and respondent no.2 are still ongoing, the Authority is of the considered view that 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 also lie with the respondents.
26. 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)*

27. Clause 31 of the Flat Buyer Agreement (in short, agreement) provides for handing over of possession and is reproduced below:

*31. The Developer shall offer possession of the Unit within 42 months from the date of execution of Agreement or within 42 months from the date of 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 32. 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."*

28. **Due date of possession and admissibility of grace period:** As per clause 31 of the agreement dated 29.01.2016, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all required sanctions and approvals necessary for commencement of construction, whichever is later. Further, an unqualified grace period of 6 months is agreed between the parties over and above the period of 42 months. The date of obtaining the required sanctions and approvals is not known. Therefore, the due date is calculated from date of execution of flat buyer agreement i.e., 29.01.2016.

Hence, the due date comes out to be 29.01.2020 including grace period of 6 months as it is unqualified.

**29. 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.***

30. 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.

31. 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., 16.04.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

32. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

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

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

33. 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.

34. 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 31 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 29.01.2020 . However, till date no occupation certificate has been



received by respondents and neither possession has been handed over to the complainant till date.

35. 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 29.01.2016. 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.
36. 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., 29.01.2020 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.

**H.V. Pass an order to waive off \_\_\_\_\_ as is being demanded by the respondent illegally, unlawfully and deliberately.**

37. The Authority observes that the above mentioned relief is not clear and is vague. Hence, the Authority cannot adjudicate on the same.

**H.VI. Direct the respondent not to charge any charges other than the basic sale price and if any is being charged by the respondent, then**



**the same may kindly be waived off being illegal, null, void, ab-initio, non-est in the eyes of law and not binding upon the rights of the complainants in any manner.**

38. As per clause 6 and clause 7 of the Buyer's Agreement dated 29.01.2016, the complainants-allottees in addition to the basic sale price, agreed to pay property tax, service tax, ground rent or any other taxes by whatever name called, in connection with the execution and sale of project and EDC, IDC, Cost of external electrification, cost of sewerage treatment plan, electric connection, water supply connection charges, sewer connection charges etc as applicable in the project. Thus, no directions restricting the respondents from charging any other charges other than the basic sale price cannot be given to the respondents. Although, the respondents are directed not to charge anything that is not part of the Buyer's Agreement.

**H.VII. Direct the respondent to pay Rs.45,64,620 to the complainants on account of rentals paid by them at the rate of Rs.25,000 per month with effect from August 2018 till filing of the present complaint;**

**H.VIII Direct the respondent to pay an amount of Rs.55,000 to the complainants as cost of the present litigation.**

39. The complainants are seeking the above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)* has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be

adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

### **I. Directions of the authority**

40. 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 promoters as per the functions entrusted to the authority under section 34(f):
- i. 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., 29.01.2020 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.
  - ii. The respondents are directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate
  - iii. The rate of interest chargeable from the allottee 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.

- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules as per rule 16(2) of the rules.
- vi. The respondents shall not charge anything from the complainants which is not the part of the agreement.
- 41. Complaint stands disposed of.
- 42. File be consigned to registry.



**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 16.04.2025

**HARERA**  
GURUGRAM