

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

**Complaint no.:** 4722 of 2023

**Date of decision:-** 16.04.2025

Rahul Jain

**R/o:** - C-1659A, Sushant Lok-1,  
Near Queens Plaza Complex,  
Gurgaon, Haryana-122009.

**Complainant**

**Versus**

1. M/s. Ansal Housing Limited

**Regd. office:** Floor-2<sup>nd</sup>, Ansala Plaza,  
Sector-1, Near Vaishali Metro Station Vaishali,  
Ghaziabad, Uttar Pradesh-201010.

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:**

Priyanka Agarwal

Amandeep Kadyan(R-1)

Shankar Vij (R-2)

**Complainant**

**Respondents**

**ORDER**

1. The present complaint dated 25.10.2023 has been filed by the complainant/allottee 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:

S.No.	Particulars	Details
1.	Name of project	"Ansal Heights-86"
2.	Location of project	Sector-86, Gurugram.
3.	Nature of project	Group Housing Colony
4.	RERA Registered	Not registered
5.	DTCP License	Licence no. 48 of 2011 Datee-29.05.2011.
6.	Flat Buyer's Agreement	26.09.2012 (As on page no. 23 of complaint)
7.	Unit no.	C-0902, Type-3BHK (As on page no. 26 of complaint)
8.	Unit area	1895 sq.ft. (As on page no. 26 of complaint)
9.	Possession clause	<b>Clause-31</b> <i>The Developer shall offer possession of the Unit any time,</i>

		<p><i>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, 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 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>[Emphasis supplied]</p>
10.	Due date of possession	<p>26.09.2016</p> <p>[Calculated 42 months from date of execution of agreement plus 6 months]</p>
11.	Total sale consideration	<p>Rs.73,94,270/-</p> <p>(As per customer ledger at page no. 45 of complaint)</p>
12.	Amount paid	Rs.70,81,512/-
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:
  - I. That the complainant was subjected to unethical trade practice as well

as harassment, arbitrary clause in the Buyer's Agreement regarding escalation cost, many hidden charges which were forcedly imposed on buyer at the time of possession. That the Builder Buyer Agreement executed between the respondent and the complainant mentioned about the developer's, stated the confirming party- 1 has transferred his rights to M/s. Samyak Projects Pvt. Ltd (Confirming Party-2) makes arrangement to jointly promote, develop and market the proposed project being developed with the respondent those all arrangements create doubt, suspicion M/s. Ansal Housing & Construction Ltd. have legal right to collect money from allottees against the C-0902, Tower-C, "Ansal Heights, 86", Gurugram and have legal & valid license to develop the project.

- II. That on 04.12.2011, the complainant booked a 3 BHK flat measuring 1895 sq.ft, along with two covered car parking in the unit no. C-0902, Tower-C in the project "Ansal Heights 86" situated at Sector 86, Gurugram, Haryana. The complainant has paid the initial booking amount of Rs.8,65,549.25/-.
- III. That the respondent in order to dupe the complainant in their nefarious net, even executed the Flat Buyer Agreement signed between M/s Ansal Housing Ltd. & M/s Samyak Projects Pvt Ltd and complainants on 26.09.2012. 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 due to which they were able to extract huge amount of money from the complainant.
- IV. That the total cost of the said unit is Rs.73,94,270/- including PLC, EDC, IDC, Car Parking & Club Membership and the complainant has paid a total amount Rs.70,81,512.75/- in time bound manner.

- V. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement and the complainants signed a one sided Buyer's Agreement after demanding more than 30% amount of total sale consideration and the complainant was bound to sign the BBA and agreed to one sided clause of BBA like Escalation cost, Force majeure, clause of due date of possession, PLC, club charges, other hidden charges.
- VI. That the respondent in an endeavor to extract money from the allottees devised a payment plan under which respondent linked more than 60% of the total sale consideration amount as advance and linked the Rest 40% amount with the construction of super structure only, which is not depended or co-related to the finishing of flat and internal development of facilities amenities and after taking the same respondent did not even bother about the development of the project till date as a whole project is not even 50% complete and in term of particular tower just built a super structure only.
- VII. That the complainant had also took a home loan of Rs.50,00,000/- at the interest rate of 10.15% p.a. for 20 years, from HDFC Limited and has been regularly paying the EMIs, which is an additional burden on the complainant.
- VIII. That as per Clause 31 of the Flat Buyer Agreement, the respondents were liable to offer possession on or before 31.03.2017. The operative part of Clause 31 of the Agreement is reproduced hereinunder:

*"The Developer shall offer possession of the unit any time, 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, 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 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."*

- IX. That the respondent executed the Buyer's Agreement on 22.01.2013 and the construction of the said project commenced on 01.10.2013. As per clause 31, the due date is to be calculated from the later date i.e., 01.10.2013. Therefore, the due date of possession comes out to be 31.03.2017.
- X. That the respondents started construction work almost 10 years back and have delayed the project for more than 6 years. It is pertinent to mention that such a long period makes an adverse effect on construction quality of project and during the 10 years period all approval issued by the competent authority was expired on 2018 and till date the respondent is not applied for revival of approval till date. Furthermore, the said project has not even been registered with the RERA, Haryana, which is a clear violation of section 3 of the RERA Act.
- XI. That as the booking and allotment of the apartment was done on 2011 and 2012 and the due date of possession as per BBA 31.03.2017, i.e., prior to the implementation of the GST Act, 2016 and it is submitted that the complainant is not liable to give extra tax amount to the respondent and the respondent is also liable pass on anti-profiteering benefit to the complainants.
- XII. It is submitted that the cause of action to file the instant complaints have occurred within the jurisdiction of this Authority as the



apartment which is the subject matter of this complaint is situated in Sector 86 Gurugram which is within the territorial jurisdiction of this Authority.

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

4. The complainant has sought following relief(s):-

- i. Direct the respondent to obtain the occupation certificate and immediately hand over the legal physical possession of the unit in habitual condition with all amenities mentioned in the brochure.
- ii. Direct the respondent to pay the delayed possession charges along with an interest of 24%.
- iii. Pass an order for forensic audit of the builder as they have extracted more than 90-95% of the total sale consideration but the project is still incomplete and all the required approval from competent authority expired in 2018.
- iv. Direct the respondent to quash the one sided clauses of the BBA.
- v. Pass an order for refund of GST amount levied upon the complainant and taken the benefit of input credit by builder.
- vi. Direct the respondent not to create any third-party interest in the unit or to alienate the said unit till the final disposal of the present complaint.
- vii. Direct the respondent not to impose any tax liabilities on the complainant after the lapse of the due date of possession i.e., 31.03.2017 as it is because of the fault of the respondent that the project got delayed.

- viii. Direct the respondent not to impose extra burden of GST on the complainant as the due date of possession was 31.03.2017 i.e., before the implementation of the GST, Act.
- ix. Initiate inquiry against the respondents for the violation of the provisions of the Act, 2016 as even after nearly 6 years of implementation of the Act, 2016 the respondents have not registered the project in question.
5. On 02.02.2024, none appeared on behalf of the respondents, and the matter was adjourned to 29.02.2024, a final opportunity was granted to the respondents to file reply. However, on 10.04.2024, neither did anyone appeared on behalf of the respondents nor was any reply filed, despite the matter having been adjourned on a last opportunity basis. Consequently, the matter was placed before the Authority for further proceedings. Vide proceedings dated 10.07.2024, the defence of both the respondents was struck off. Thereafter, on 11.12.2024, the counsel for respondent no.2, M/s Samyak Projects Private Limited, submitted that an application had been moved by her, seeking recall of the order dated 10.07.2024, whereby the defence of the respondent no. 2 was struck off. It was further submitted that the complaint had been served at an address different from the present address of the respondent no.2, and details of the current address, as per the Ministry of Corporate Affairs website, were placed on record.
6. On the same date, the proxy counsel for respondent no.1 also appeared and submitted that the order dated 10.07.2024 may also be recalled in respect of respondent no.1 on the ground that the matter had been reassigned to them and the present counsel has been recently engaged in the matter. Upon consideration, the Authority found the submission made on behalf of respondent no.2 to be bona fide and accordingly, the order dated



10.07.2024, insofar as it pertained to striking off the defence of respondent no.2, was recalled. Respondent no.2 was directed to file its reply within a period of one week. However, the submission made on behalf of respondent no.1 was not found to be convincing, and the order dated 10.07.2024 striking off its defence was not recalled. Nonetheless, in the interest of justice, liberty was granted to respondent no.1 to file written arguments.

**D. Written submissions on behalf of respondent no.1 :**

5. The respondent no.1 i.e., M/s Ansal Housing Limited has made the following written submissions:
  - I. That the present complaint is neither maintainable nor tenable. The BBA was executed between the parties on 26.09.2012 and the complainant is approaching the Authority in 2023. The present complaint is liable to be dismissed on this ground alone.
  - II. That the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing Air Quality Index being worst, may be harmful to the public at large without admitting any liability.

- III. Apart from these the demonetization is also one of the major factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent unable to cope with the labor pressure. However, the respondent is carrying its business in letter and spirit of the Villa Buyer Agreement as well as in compliance of other local bodies of Haryana Government.
- IV. That the respondent has been carrying his business but due to COVID-19 the lockdown was imposed throughout the country in March, 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- V. That similar lockdown was imposed in the year 2021 which extended to the year 2022 which badly affected the construction and consequently respondent was not able to handover the possession on time.
- VI. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the ongoing construction of the project.
- VII. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the Authority, the Act cannot be said to be operating retrospectively.

- VIII. That several allottees have defaulted in timely remittance of payment of installment which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effect on the operation and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite the default of several allottees has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. The construction of the project is completed and ready for delivery, awaiting occupancy certificate which is likely to be completed by the year 2022.
- IX. That the Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in Clause 7 & 8 of the Builder Buyer's Agreement, vide which complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainant further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
- 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 present complaint is based on false, frivolous and baseless facts and is devoid of any valid cause of action or true grievance qua the respondent. It is submitted that the respondent no. 2 i.e. Samyak Projects Private Limited, having acquired the rights to develop the land on which the present project was to be constructed, entered into a Memorandum of Understanding "MOU" 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" on a land admeasuring 102 kanals 15 marlas (12.843 acres) falling in Rect. No. 14, 15 & 19, situated in the revenue estate of village Nawada Fathehpur, Tehsil and District Gurgaon, Haryana which is presently part of residential Sector 86 of Gurgaon, Manesar Urban Plan 2021 ("Scheduled Land") for the development of group housing society.
- II. However, superseding the said MOU, the respondent no. 1 and 2 entered into a Joint Venture Agreement "JVA" dated 24.05.2013. 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 the bare perusal of clause 9.2 of the MOU clearly reflects that it is the sole responsibility / obligation of the respondent no.1 towards the buyers/allottees to develop the project and handover the possession to

the allottees. It is also submitted that it was the respondent no.1 who received the consideration amount from all the allottees.

- IV. That there are no specific allegations in the complaint against the respondent no.2. It is also submitted that 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 73 cases has decided that the sole responsibility to return the amount paid by the allottees lies upon the respondent no.1. Moreover, the Authority through Hon'ble members Sh. Sanjeev Arora, Sh. Ashok Sangwan and Sh. Vijay Kumar Goyal 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. Also, it was held that the sole responsibility to return the amount paid by the allottees lies upon the respondent no.1
- V. 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.
- VI. That there is no privity of contract between the respondent no.2 and the complainant as it was the sole responsibility of respondent no.1 to



deliver the units to the allottees. Moreover, a status quo has been imposed by the learned Arbitrator on the project, the unit cannot be handed over to the complainant.

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. I 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**

10. 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.1 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 26.09.2012. 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 26.09.2012, the period of 42 months from 26.09.2012 comes out to be 26.03.2016. 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 26.09.2016. The respondent is seeking the benefit of Covid-19, which came into effect much after the due date of offer of possession. Therefore, no further relief in respect to the same can be granted to the respondent. The respondent 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.

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

- H.I Direct the respondent to obtain the occupation certificate and immediately hand over the legal physical possession of the unit in habitual condition with all amenities mentioned in the brochure.**
- H.II Direct the respondent to pay the delayed possession charges along with an interest of 24%.**

13. In the present complaint, the complainant was allotted unit no. C-0902, Type-3BHK, admeasuring 1895 sq. ft. in the project "Ansal Heights-86" Sector 86 by the respondents 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.

14. As per the Flat Buyer Agreement, 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.

15. 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.
16. The Authority is of the view that the Flat Buyer Agreement dated 26.09.2012 was signed by the complainant and the respondent no. 1. The respondent no. 2 is a confirming party to that Agreement. In the Flat Buyer Agreement dated 26.09.2012 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 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 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*

17. In view of the above facts and circumstances as well as the facts 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 also lie with both the respondents.



18. The complainant intend to continue with the project and is 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)*

19. 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.."*

**20. Due date of possession and admissibility of grace period:** As per clause

31 of the agreement dated 26.09.2012, 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., 26.09.2012. Hence, the due date comes out to be 26.09.2016 including grace period of 6 months as it is unqualified.

**21. 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.*

22. 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.

23. 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%**.

24. 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;"*

25. Therefore, interest on the delay payments from the complainant 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.
26. 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 26.09.2016 . However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the complainant till date.
27. 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 complainant as per the terms and conditions of the buyer's agreement dated 26.09.2012. 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.
28. 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., 26.09.2016 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.III. Pass an order for forensic audit of the builder as they have extracted more than 90-95% of the total sale consideration but the project is still incomplete and all the required approval from competent authority expired in 2018.**

**H.IV. Initiate inquiry against the respondents for the violation of the provisions of the Act, 2016 as even after nearly 6 years of implementation of the Act, 2016 the respondents have not registered the project in question.**

29. The counsel for the complainant did not press for the above mentioned reliefs during the arguments and also failed to mention any specific facts in this regard. Thus, in the absence of the above mentioned, the Authority cannot adjudicate the said reliefs.

**H.V. Direct the respondent to quash the one sided clauses of the BBA.**

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

**H.VI. Direct the respondent not to create any third-party interest in the unit or to alienate the said unit till the final disposal of the present complaint.**

31. Vide proceedings dated 11.12.2024, the respondents were directed to maintain status quo with respect to the unit of the complainant. Thus,

the Authority is of the view that the respondents must have complied with the said order and not created any third party rights on the complainant's unit.

**H.VII. Pass an order for refund of GST amount levied upon the complainant and taken the benefit of input credit by builder.**

**H.VIII. Direct the respondent not to impose any tax liabilities on the complainant after the lapse of the due date of possession i.e., 31.03.2017 as it is because of the fault of the respondent that the project got delayed.**

**H.IX. Direct the respondent not to impose extra burden of GST on the complainant as the due date of possession was 31.03.2017 i.e., before the implementation of the GST, Act.**

32. As per Clause 7 of the Flat Buyer's Agreement dated 26.09.2012, it has been agreed between the parties that the basic sale price of the unit does not include property tax, service tax, ground rent or any other taxes by whatever name called and such taxes shall be reimbursed/payable by the allottee as and when demanded by the promoter. The said clause is reiterated below:

*7. The Basic sale price of unit mentioned herein above does not include property tax, service tax, ground rent or any other taxes by whatever name called, in connection with the execution and sale of project (hereinafter collectively referred to as "taxes"). Such taxes shall be reimbursed/payable by the Buyer, from the date of booking even if applied with retrospective effect, as and when demanded by the Developer along with applicable interest for delay in paying/reimbursing such taxes or other charges.....xx.....*

*[Emphasis supplied]*

33. The complainant has himself agreed to pay the taxes as and when demanded. No directions regarding the refund of the GST charged by the respondent-promoter is hereby granted. Although with respect to the Input Tax credit, the Authority is of the view 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."*

34. 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.

**I. Directions of the authority**

35. 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):
- 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., 26.09.2016 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 complainant 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 complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - v. The arrears of such interest accrued from 31.08.2014 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date 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.
  - vi. The respondents shall not charge anything from the complainant which is not the part of the agreement.
36. Complaint stands disposed of.
37. File be consigned to registry.

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

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 16.04.2025