



**HARERA**  
**GURUGRAM**

Complaint No. 4845 of 2022 and  
anr.

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

**Date of decision: 28.01.2025**

NAME OF THE BUILDER		ANSAL HOUSING LIMITED (FORMERLY KNOWN AS ANSAL HOUSING & CONSTRUCTION LTD.) AND SAMYAK PROJECTS PVT. LTD.	
PROJECT NAME		ANSAL HUB 83 BOULEVARD	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4845/2022	Anita Yadav V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.	Sh. Dinku Yadav Sh. Amandeep Kadyan for R1 Sh. Sanya Arora for R2
2.	CR/5778/2022	Seema Khatter V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.	Sh. Rahul Thareja Sh. Amandeep Kadyan for R1 Sh. Sanya Arora for R2

**CORAM:**

Shri. Arun Kumar  
Shri. Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairperson**  
**Member**  
**Member**

**ORDER**

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

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ansal Hub 83 Boulevard" (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.	
Possession Clause: 30		
<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 <b>grace period of 6 months allowed</b> to developer over and above the period of 42 months as above in offering the possession of the unit."</i>		
		(Emphasis supplied)
Occupation certificate: - Not obtained		
Complaint No.	CR/4845/2022	CR/5778/2022
Unit no. and area admeasuring	T-125 admeasuring 464 sq. ft. [pg. 30 of complaint]	G-174 admeasuring 466 sq. ft. [pg. 33 of complaint]
Date of builder buyer agreement	14.01.2015 [pg. 26 of complaint]	14.03.2015 [pg. 29 of complaint]
Due date of delivery of possession	14.01.2019	14.03.2019
MoU with Ansal	15.10.2013 [pg. 20 of complaint]	20.05.2015 [pg. 59 of complaint]

<b>Sale Consideration (SC)</b>	₹36,20,813/- [pg. 48 of complaint]	₹76,94,042/- [pg. 49 of complaint]
<b>Total Amount paid by the complainant(s)(AP)</b>	₹25,78,432/- [as per SOA dated 20.08.2022 at pg. 50 of complaint]	₹37,59,890/- [sum of receipts]
<b>Offer of possession</b>	Not offered	Not offered
<b>Relief sought</b>	1. DPC. 2. Possession. 3. Revoke the amounts imposed by the respondent illegally, such as for increased area, cost escalation. 4. Litigation cost.	1. DPC. 2. Possession. 3. Execute CD. 4. Litigation cost.

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/4845/2022 Anita Yadav 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/4845/2022 Anita Yadav V/s Ansal Housing Limited and  
Samyak Projects Pvt. Ltd.**

S. N.	Particulars	Details
1.	Name of the project	"Ansal Hub 83", Boulevard Sector-83 Gurugram Haryana
2.	Nature of the project	Commercial
3.	Registered/not	Registered 09 of 2018 dated 08.01.2018 Valid till 31.12.2020
4.	Shop No.	T- 125, 464 sq. ft. (Page 30 of complaint)
5	Mou w.r.t. Assured return	15.10.2013 (Page 20 of complaint)
6.	Date of builder buyer agreement	14.01.2015 [As per page 26 of complaint]
7.	Possession clause	30. <i>The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be of grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.</i> (Emphasis supplied)



8.	Due date of possession	14.01.2019  (Calculated from the date of the execution of this agreement i.e., 14.01.2015 as date of start of construction is not mentioned. Grace period is allowed being unqualified.)
9.	Total sale consideration	Rs. 36,20,813/-  [As per SOA dated 20.08.2022 at page 51 of complaint]
10.	Amount paid	Rs. 35,78,432/-  [As per SOA dated 20.08.2022 at page 50 of complaint]
11.	Occupation certificate	Not received yet
12.	Offer of possession	Not offered

**B. Facts of the complaint**

8. The complainants have made the following submissions in the complaint: -
- a. That the complainant signed a memorandum of understand (Hereinafter referred as MOU) with the respondent on 15th October 2013, wherein the complainant invested ₹33,21,179/- vide cheque no. 206993 drawn on Canara Bank, in lieu of allotment of developed unit once all the necessary sanctions and approvals of its upcoming commercial project in Sector-83, Gurgaon, Haryana. As per the MOU the respondent also agreed to pay the assured return of ₹34,800/- from 29.08.2013 to 28.08.2016 and of ₹29,000/- from 29.08.2016 to 28.08.2019. This amount of assured return was duly paid by the respondent to the complainant.
  - b. That on 14th January 2015, in persuasion of the MOU, unit no. T-125 in project Ansal HUB 83 boulevard in sector-83, Gurugram was allotted to the complainant and subsequently a builder buyer agreement was executed between complainant and respondent. As per the agreement total consideration of ₹33,23,400/- was agreed to be paid by the respondent to





the complainant and as on this day ₹33,21,179/- was already paid to the respondent.

- c. That as per the apartment buyer agreement it had been agreed that the possession of the said apartment shall be offered 48 months of date of execution of apartment buyer agreement which comes to 14th January 2019, but the respondent miserably failed to deliver the possession of the apartment within agreed time frame. That the complainant has already paid the full and final payment with regard to the sale consideration of the said unit and the same has been reflected in the statement of accounts. That as of now there has been a delay of more than 3 years 6 months but the possession of the said unit has not been offered by the respondent. Such delay on part of the respondent has neither been explained or justified.

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

9. The complainants have sought following relief(s): -
- a. A sum of ₹29,820/- should be paid by the respondent per month for delay of possession, at the rate of 10% as per the prevailing MCLR plus 2 per centum, till the rightful legal possession is handed over to the complainants. The amount is calculated as prescribed in the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.
  - b. Direct the respondent to hand over the legal and rightful possession of the flat to the complainants, after completing the construction of the flat and common area amenities and facilities.
  - c. Direct the respondent to revoke/waive-off/cancel/withdraw the amounts imposed by the respondent illegally, unlawfully and fraudulently such as

amount of increased area and huge cost escalation charges, charged on the flat of the complainants.

- d. Direct the respondent to pay legal expenses of ₹1,00,000/- (one lakh) incurred by the complainants.

10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent no. 1.**

11. The respondent has contested the complaint on the following grounds:

- a. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority, as the complainant has admitted that he has not paid the full amount. The complainant has filed the present complaint seeking interest. The present complaint is liable to be dismissed on this ground alone.
- b. That even otherwise, the complainant has no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the allotment letter/buyer's agreement dated 31.12.2014, which is evidentiary from the submissions made in the following paragraphs of the present reply.
- c. That the original allottee approached the respondent sometime in the year 2014 for the purchase of an independent unit in its upcoming residential project "ANSAL HUBS" (hereinafter be referred to as the "project") situated in Sector-83, District Gurgaon (Haryana). It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only



after the complainant was being fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same and the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner.

- d. That thereafter the complainant applied to the respondent for provisional allotment of a unit in the project in the year 2015. The complainant, in pursuant to the application, was allotted shop/office space bearing no. G-002 in the project "ANSAL HUB" situated at Sector 83, District Gurgaon, Haryana. The complainant consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant should remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant.
- e. It is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within the prescribed time period as given by the respondent to the authority.
- f. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and





21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing Air Quality Index being worst, may be harmful to the public at large without admitting any liability. 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 Builder Buyer Agreement as well as in compliance of other local bodies of Haryana Government.

- g. That the respondent is carrying his business in letter and spirit of the Builder Buyer Agreement 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.
- h. 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 as the same was beyond the control of the respondent. 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.
- i. That it is submitted that the complaint is not maintainable or tenable under the eyes of law as the Complainant has not approached this Hon'ble



Authority with clean hands and has not disclosed the true and material facts related to this case of complaint. The Complainant, thus, has approached the Hon'ble Authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1 in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the

Hon'ble Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.

- j. 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 respectfully 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. The provisions of the Act relied upon by the complainant seeking refund, interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the builder buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any



interest or compensation beyond the terms and conditions incorporated in the builder buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in a case titled as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298, the liberty to the promoter/developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para no.86 and 119 of the above said citations are very much relevant in this regard.

- k. That the respondent reserves its right to file additional reply and documents, if required, assisting the Hon'ble Authority in deciding the present complaint at the later stage.
- l. That it is submitted 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 earnest 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.
- m. 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.

12. 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.
13. The complainants & respondent no. 2 have filed the written submissions on 12.12.2023 & 02.01.2025 respectively which is taken on record. The authority has considered the same while deliberating upon the relief sought by the complainants.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

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

authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

16. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

17. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

F.I. A sum of ₹29,820/- should be paid by the respondent per month for delay of possession, at the rate of 10% as per the prevailing MCLR plus 2 per centum, till the rightful legal possession is handed over to the complainants. The amount is calculated as prescribed in the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017.

F.II. Direct the respondent to hand over the legal and rightful possession of the flat to the complainants, after completing the construction of the flat and common area amenities and facilities.



18. In the present matter the complainant was allotted unit no. T-125, admeasuring 464 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder for a total sale consideration of ₹36,20,813/- and they have paid a sum of ₹25,78,432/-. A buyer's agreement dated 14.01.2015 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 period of 42 months expires on 14.07.2018. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 14.01.2019. The occupation certificate for the project has not yet been obtained from the competent authority.
19. 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.

20. 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.
21. The authority is of the view that the builder buyer agreement dated 14.01.2015 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 14.01.2015 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*

22. 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).
23. The Authority further observes that the Occupation Certificate for the project has not yet been obtained and that the project has since been transferred to Respondent No. 2, who now assumes the responsibility for its completion. In light of the fact that the project is currently the subject of arbitral proceedings

and the final arbitral award has not yet been rendered, it is not feasible at this stage to ascertain the precise apportionment of financial liability among the respondents. Accordingly, in view of the foregoing, the liability arising under Section 18(1) of the Act and the applicable Rules, as read with the terms of the Builder-Buyer Agreement, shall be borne by Respondent No. 1 and Respondent No. 2 jointly and severally. The responsibility for handing over possession of the unit shall rest solely with Respondent No. 2.

24. 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)*



25. 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."*

26. **Due date of possession and admissibility of grace period:** As per clause 30 of the agreement dated 14.01.2015, 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., 14.01.2015. Hence, the due date comes out to be 14.01.2019 including grace period of 6 months as it is unqualified.

27. **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.*

28. 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.
29. 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., 28.01.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
30. 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;"*
31. 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.

32. 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 14.01.2019. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.
33. 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 14.01.2015. 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.
34. 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 respondents/promoters 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., 14.01.2019 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.

**F.III. Direct the respondent to pay legal expenses of ₹1,00,000/- incurred by the complainants.**

35. The complainants in the above reliefs are seeking litigation expenses & monthly rent reimbursement. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s*

*State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & 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 & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants may approach the adjudicating officer for seeking the relief of litigation expenses.

**F.IV. Direct the respondent no 2 to execute and register the sale deed in the concerned sub registrar office in favour of complainants of the booked unit.**

36. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. As per the interim order of the sole Arbitrator the said project has now been physically handed over to the respondent no. 2 and there is nothing on the record to show that the said respondent has applied for occupation certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent no. 2 is directed to handover possession of the flat/unit and execute conveyance deed in favor of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

**G. Directions of the authority:**

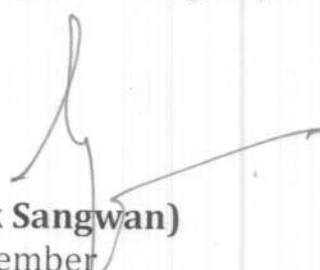
37. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast

upon the promoter as per the function entrusted to the authority under section 34(f):

- a. 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., 14.01.2019 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 further directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate upon payment of outstanding dues, if any after adjustment of interest for the delayed period and thereafter execute conveyance deed in favor of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.
  - 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 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.
  - d. The respondent shall not charge anything which is not the part of BBA.
38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

39. The complaints stand disposed of.

40. Files be consigned to registry.



**(Ashok Sangwan)**  
Member



**(Vijay Kumar Goyal)**  
Member



**(Arun Kumar)**  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.01.2025

