

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

Date of decision: 28.01.2025

NAME OF THE BUILDER		ANSAL HOUSING LIMITED SAMYAK PROJECTS PVT. LTD.	
PROJECT NAME		ANSAL HUB 83 BOULEVARD	
S. No.	Case No.	Case title	APPEARANCE
1	CR/750/2022	Preeti Sachdeva, Apeksha Sachdeva & Rita Sachdeva V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.	Sh. Harshit Goyal Sh. Amandeep Kadyan for R1 Sh. Sanya Arora for R2
2	CR/4774/2022	Rita Sachdeva & Anil Sachdeva V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.	Sh. Harshit Goyal 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	<b>"ANSAL HUB 83 BOULEVARD "</b> <b>Sector-83, Gurugram.</b>	
<b>Possession Clause: 30</b>		
<i>"30. The Developer shall offer possession of the Unit within 42 months from the obtaining all the required sanctions and approval sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by the Buyer and subject to force majeure circumstances as described in clause 31. Further there shall be a <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>		
<b>(Emphasis supplied)</b>		
<b>Occupation certificate: - Not obtained</b>		
<b>Complaint No.</b>	<b>CR/750/2022</b>	<b>CR/4774/2022</b>
<b>Unit no. and area admeasuring</b>	G-002 admeasuring 874 sq. ft. [pg. 22 of complaint]	G-032 admeasuring 811 sq. ft. [pg. 24 of complaint]
<b>Date of builder buyer agreement</b>	18.07.2015 [pg. 18 of complaint]	07.07.2015 [pg. 20 of complaint]
<b>Date of endorsement</b>	05.10.2015 [pg. 41 of complaint]	17.08.2015 [pg. 43 of complaint]
<b>Due date of delivery of possession</b>	18.07.2019	07.07.2019
<b>Sale Consideration (SC)</b>	₹1,12,25,716/-	₹1,22,26,703/-

	[pg. 38 of complaint]	[pg. 39 of complaint]
<b>Total Amount paid by the complainant(s)(AP)</b>	₹72,33,504/- [sum of receipts]	₹37,59,890/- [sum of receipts]
<b>Offer of possession</b>	Not offered	Not offered
<b>Relief sought</b>	1. Possession 2. DPC 3. Execute CD	1. DPC 2. Execute CD 3. Not to raise demand which is not as per BBA

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/750/2022 Preeti Sachdeva, Apeksha Sachdeva & Rita Sachdeva 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/750/2022 Preeti Sachdeva, Apeksha Sachdeva & Rita Sachdeva V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.**

Sno.	Particulars	Details
1.	Name of the project	"Ansal Hub 83 Boulevard", Sector-83, Gurugram
2.	Total area of the project	2.60 acres
3.	Nature of the project	Commercial complex part of residential colony
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid up to and 71 of 2010 dated 15.09.20210 valid up to
5.	Name of licensee	Buzz Estate Pvt. Ltd. & others.
6.	Registered/not registered	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres. Valid up to 31.12.2020
7.	Unit no.	G-002 [pg. 22 of complaint]
8.	Area of the unit	874 sq. ft. [pg. 22 of complaint]
9.	Date of execution of BBA with original allottee	18.07.2015 [pg. 18 of complaint]
10.	Date of transfer of unit in name of complainant	05.10.2015 [pg. 41 of complaint]
11.	Possession clause	<b>30</b> <i>The developer shall offer possession of the unit any time, <b>within a period of 42 months from the or date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later</b> subject to timely payment of all the dues by buyer &amp; subject to force majeure circumstances as described in clause 31. Further there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.</i>

		(Emphasis supplied) [page 29 of complaint]
12.	Due date of possession	18.07.2019  (Note: 42 months from date of agreement i.e., 18.07.2015 as the date of commencement of construction is not known. Grace period allowed being unqualified)
13.	Basic sale consideration as per payment plan annexed with BBA at page 22 of complaint	Rs.1,04,31,190/-
14.	Total amount paid by the complainant as per sum of receipts	Rs.72,33,504/-
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

**B. Facts of the complaint**

8. The complainants have made the following submissions in the complaint: -
- That the complainants are innocent allottees of the real estate project named "Ansals HUB 83 Boulevard" situated at sector 83, Gurugram being developed by the respondent company. That the respondent no 1 i.e., Ansal Housing Ltd. is a real estate development company. That the respondent no 2 i.e., Samyak Projects Private Limited is owner of the 'Ansals Hub 83 Boulevard' project land.
  - That the respondent no 2 i.e., Samyak Projects Private Limited entered into an MOU Agreement dated 12.04.2013 with Respondent No 1 i.e., Ansal Housing Limited whereby the development and marketing of the commercial project was undertaken by the respondent no 1 on the project property. However, Samyak Projects Private Limited under Notice dated 10.11.2020 had terminated the MOU agreement dated 12.04.2013 entered with Respondent No 1 Ansal Housing Limited (Previously known as Ansal

- Housing and Construction Limited) in respect of construction and development of the project in question.
- c. The builder buyer agreement was duly executed between the original allottee Mr. Subey Singh and the respondent on 18.01.2015 in respect of the Shop space bearing no GF- 002 situated in Sector 83, Gurugram admeasuring 874 sq. ft. The builder buyer agreement was successfully endorsed in favor of present complainants.
  - d. The rights and benefits of original allottee under Builder Buyer Agreement dated 31.01.2015 was successfully transferred and endorsed in favor of complainants by respondent company vide Transfer Letter dated 05.10.2015.
  - e. As per clause 30 of the Builder Buyer Agreement dated 18.01.2015, the Respondent No 1 was also liable to deliver the possession of the booked unit within a period of 42 months from the date of sanction of the Building Plan i.e., 25.07.2014 or execution of Builder Buyer Agreement i.e., 18.01.2015, whichever is later. Therefore, the due date of delivery of possession was 18.06.2018. However, the Respondent No 1 failed to deliver possession of the booked property till date. However, the Respondent No 1 had failed to fulfil its liability under clause 30 of the Builder Buyer Agreement. Also, the respondents have failed to obtain the Occupation Certificate and deliver the possession of the booked unit till date.
  - f. The complainants also sent Letter dated 26.02.2020 delivered on 29.02.2020 by Indian Speed Post to the Respondent No 1 seeking payment of accrued Delayed Possession Charges in respect of the booked unit, However, Respondent No 1 failed to pay heed to it.



g. The complainants had already paid ₹79,00,930/- out of total sale consideration of ₹1,12,25,716/- as and when demanded by respondent no 1 on a timely basis. The complainants had invested their hard-earned money in the booking of the unit in the project in question on the basis of false promises made by the respondent at the time of booking in order to allure the complainants. However, the respondents have failed to abide all the obligations of him stated orally and under the builder buyer agreement duly executed.

h. Therefore, the present complainants are forced to file present complaint before this hon'ble authority under Section 31 of Real Estate Regulation and Development Act, 2016 read with Rule 28 of Haryana Real Estate (Regulation and Development) Rules, 2017 to seek redressal of the grievances against the respondent company.

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

9. The complainants have sought following relief(s)
- Direct the respondent no 1 to pay delay possession charges at the prescribed rate to the complainants for the period of delay accrued from the due date of possession to the date of offer of possession along with occupation certificate by respondent.
  - 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.
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 bona-fide 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.

**E. Written submissions filed by respondent no. 2**

- a. That the Complainant had booked a unit bearing no. GF-002 in the project "Ansal Hub 83 Boulevard", Sector-83, Gurugram, Haryana which was being developed by the Respondent No.1 i.e. Ansal Housing Ltd. That the Respondent no.1 miserably failed to develop the project. That due to the incompetence of the Respondent no.1 to develop and deliver the project, the MOU between the Respondent No. 1 and Respondent no.2 i.e., Samyak Projects Pvt. Ltd. was terminated.
- b. That it is pertinent to mention here that the project was handed over to Respondent No.2 i.e. Samyak Projects Private Limited as per the above-mentioned orders for completion of the project vide order dated 02.09.2022 and Samyak was also directed by the Hon'ble Arbitrator to collect the funds from the genuine allottees and further persuading them to sign the Addendum agreement. It is also pertinent to mention here that the format of the addendum agreement was validated by the arbitral tribunal in the order dated 14 June 2024.
- c. That it is also submitted that Samyak is willing to handover the fit-out possession to the genuine allottees only upon executing the addendum agreement and upon payment of the balance amount of consideration. However, in the present matter it is pertinent to mention here that the complainant has not approached the Authority with clean hands, and the same is a defaulter in making the payments of the instalments due as per the payment plan annexed with the builder Buyer Agreement. It is pertinent to mention here that the Complainant has defaulted in making the payments of 5 instalments due upon him which is equivalent to



- approximately Rs. 34,34,361/- (excluding GST) and that the complainant was always cognizant about the default however, intentionally did not disclose the same before the authority in its complaint. That the complainant did not approach the authority with clean hands.
- d. That it is pertinent to mention here that the Complainant is a defaulter of the agreement and cannot take the benefit of their wrongs. More so the relief sought by the complainant with respect to the delay possession charges is explicitly against respondent no.1 and not against respondent no.2. That even though the project is with respondent No. 2 but the complainant has defaulted in adhering to the payment plan and thus cannot take the benefit of its own wrong.
- e. That the application is filed by the Respondent no: 2 i.e. Samyak Projects pvt. Ltd. dated - 30/09/2024, vide HRERA Dak Receipt ID - 80004 to seek clarification with respect to the relief sought by the complainant. The complainant has not filed a reply to the same, for the reason being we are unable to provide the written submissions in proper manner. That the complainant be directed by the Hon'ble Authority to clarify the authority regarding the payment of the balance amount with respect to the unit due upon him to be paid to either respondent no. 1 or respondent no. 2. Moreover, the only purpose to get the addendum agreement executed which is nothing but demand of KYC and statement of accounts of the Allottee and genuineness of the booking regarding the said unit.
- f. It is also pertinent to mention that as Respondent No.2 is only land owner and the development rights as well as the registration certificate was in the name of Respondent No. 1 i.e., Ansal who had the sole responsibility to complete the project, however Ansal has wrongfully enjoyed the hard-

earned money of the allottees and failed to deliver the project within stipulated timelines.

- g. That the intentions of Samyak are bona-fide and are willing to complete the project with the support of the authority. That Samyak (R2) has already given an affidavit to the Arbitrator stating the date of completion of the project. Moreover, is not liable for the delay possession charges for the delay caused by the respondent No.1 in completion of the project. Which was the responsibility of Respondent No.1 to develop and construct within stipulated timelines. Moreso, the relief sought by the complainant is explicitly from the Respondent No.1 and the Respondent no.2 shall not be held liable for the same.
- h. It is also to be noted that the complainant is a defaulter in making the payments as per the payment plan and has approached the court with unclean hands. That it is equally important for the complainant to clarify the same for the better adjudication of the dispute and further clarification with respect to the payment of the balance amount to the respective Respondent. That it is submitted that the Ld. Authority has passed several orders in which the sole liability to comply with the orders rests on the shoulders of Respondent no. 1 i.e., Ansal Housing and construction Ltd.
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.

**F. Jurisdiction of the authority**

14. 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**

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.

**F. 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.

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

**G.I. Direct the respondent no 1 to pay delay possession charges at the prescribed rate to the complainants for the period of delay accrued from the due date of possession to the date of offer of possession along with occupation certificate by respondent.**

18. In the present matter the complainant was allotted unit no. G-002, admeasuring 874 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder for a total sale consideration of ₹1,12,25,716/- and they have paid a sum of ₹72,33,504/-. A buyer's agreement dated 18.07.2015 was executed between the original allottee 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 18.07.2019. 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 18.07.2015 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 18.07.2015 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."*



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 18.07.2015, 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., 18.07.2015. Hence, the due date comes out to be 18.07.2019 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 18.07.2019. 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 18.07.2015. 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 respondent/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 18.07.2019 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.II. 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.**

35. 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

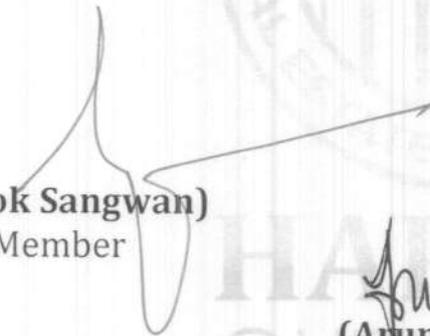
complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. As per the interim order of the sole Arbitrator the said project has now been physically handed over to the respondent no. 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 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.

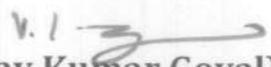
**H. Directions of the authority:**

36. 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., 18.07.2019 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 favour of complainant within 3 months from the date of obtaining occupation certificate.

- c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- d. The 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.
- i. The respondent shall not charge anything which is not the part of BBA.
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
38. The complaints stand disposed of.
39. 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