BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**5298 of 2023**
Date of filing of complaint:	**06.12.2023**
Order pronounced on:	**22.05.2025**

Banwari Lal Khedar
R/o: Chandra Ki Dhani, Post Balmas, District: Jhunjhun, Rajasthan-333012 **Complainant**

Versus

1. M/s Ansal Housing and Construction Limited
Regd. Office: 606 6TH Floor Indraprakash, 21, Barakhamba Road, New Delhi-110001

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

CORAM:
Shri Vijay Kumar Goyal **Member**

APPEARANCE:

Sh. Aniruddha Singh (Advocate)	Complainant
Sh. Amandeep Kadyan (Advocate)	Respondent No.1
Sh. Himanshu Singh (Advocate)	Respondent No.2

ORDER

1. The present complaint 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 under the provision of the Act or the rules and regulations made there under or to the allottee 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 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 31.05.2018 71 of 2010 dated 15.09.2010 Valid up to 14.09.2018
5.	Registered/not registered	Registered vide no. 09 of 2018 dated 08.01.20218 for 2.80 acres Valid up to 31.12.2020
6.	Shop no.	T-121, First Floor [pg. 24 of complaint]
7.	Area of the unit	464 sq. ft. [pg. 24 of complaint]
8.	Date of execution of BBA	05.12.2014 [Pg. 19 of complaint]
9.	Possession clause	***Clause 30.*** ***30.*** *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 date of obtaining all required sanctions and approval for 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 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.* *(Emphasis supplied)* *[Page 31 of complaint]*
10.	Due date of possession	05.12.2018 **[Note:** - As per BBA clause the due date is calculated from the date of execution

		of buyer's agreement + 6 moths of grace period is allowed unconditionally.]
11.	Sale consideration	Rs.32,30,818/- [As per payment plan Annexure-A, at page 40 of complaint]
12.	Total amount paid by the complainant	Rs. 26,47,020/- [As per receipts at page 3-12 of submission of complete payment receipts filed by the complainant on 08.05.2025]
13.	Offer of possession	Not offered
14.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

i. The the complainant booked the shop no.: T-121, having super area admeasuring 464 sq. ft. on 01st June, 2013 under construction linked plan in the project "Ansals Hub 83 Boulevard" of the company M/s Ansal Housing Limited (Earlier Known As M/s Ansal Housing & Construction Limited).

ii. The developer buyer agreement has been executed on 05.12.2014 between the respondent no.1 and the complainant. As per clause 30 of the developer buyer agreement, the respondent no.1 promised to deliver the shop till 15.12.2018 i.e., within 42 months + 6 months of grace from the date of execution of the agreement or date of commencement of construction, whichever is later i.e., 15.12.2014 but failed to do so.

iii. This commercial project is a part of the residential colony named "Vatika India Next" being developed by Vatika Ltd. in terms of license No 113 of 2008 dated 01.06.2008. Vatika agreed to sell/transfer the project land together with complete rights/title and interest therein to one M/s Abhash Developers Pvt. Ltd. vide agreement dated 21.01.2013 and then

a Tripartite Agreement dated 01.04.2013 has been executed amongst ADPL, Vatika and Samyak Projects Pvt. Ltd., in which ADPL agreed to transfer the project land together with complete rights/title and interest therein to respondent no. 2. After that the respondent no 2 entered into an MOU dated 12.04.2013 with M/s ANSAL HOUSING LIMITED whereby the development and marketing of the commercial project were to be undertaken by is the developer on the project property in terms of the license/permissions granted by the DGTCP, Haryana and other Government Authorities. The building plans of the project have been duly approved by DGTCP Haryana vide Memo No. ZP-952/AD(RA)/2014/16361 dated 25.07.2014. The respondent No. 1is therefore fully competent to undertake, market and sell the project called "Ansals HUB 83 Boulevard" in terms of all the arrangements.

iv. The respondent no. 1 has got registered the real estate project "Ansals HUB 83 Boulevard" with Haryana Real Estate Regulatory Authority and a registration certificate bearing Reg. No. 9 of 2018 dated 08.01.2018 has been issued by the Authority in favour of the respondent No. 1, M/s Ansal Housing Limited.

v. The complainant has made a total payment of Rs. 24,67,010/- out of his hard-earned money. It has been more than ten years from the date of the booking of the shop and an excessive delay of more than 5 Years from the date of agreed possession but the complainant has not been offered the possession of its unit requisite certificates and NOCs, subsequently the complainant wants the earliest possession of its shop along with the applicable rate of interest for the delayed period from the respondent.

vi. After the requisite payment of all the demands raised time to time by the respondent No.1 according to the payment plan, the complainant left with no choice to wait for the offer of possession and completion of the

project but only time passes. At a sudden the respondent No. 2 came into picture by sending an email dated 03rd February 2022 to the Complainant informing that "Samyak Projects Private Limited (respondent no. 2) has been carrying out construction and development of the said project and to do any/all other necessary acts in respect of the project as Ansal Housing Limited is no longer the developer of the project", being a layman, the complainant could not understand the strategy of both the respondents which was only to enter into a fresh agreement for the development of the project and to receive the NOCs of the all the innocent allottees, whereas the development agreement has been executed with the respondent no. 1. The respondent No. 2 again sent notice and email dated 01.06.2023 and 03.08.2023 to the complainant.

vii. The complainant after receiving constant notices threatening to enter into a fresh agreement with the respondent no. 2 and cancellation of unit in failure to do the same, sent a reply on behalf of allottee to notices and reminders sent by Samyak Projects Pvt. Ltd through emails and speed post to both the respondents and stated in the reply that "after being aware about the current situation about the project, it is to state that due to conduct of you the developers, I am not feeling secure at this stage as I have paid a total amount of Rs. 24,67,010/- out of total cost i.e., Rs. 29,68278/- towards my unit by December 2016 and the project is delayed by almost five years but still I am seeking possession of my unit instead of refund of my entire money with interest. Therefore, it is requested to consider the delay penalty to be paid by you to me for such a huge delay while handing over the possession at the time of final offer of possession or execution of addendum agreement proposed to be sent by 'Samyak Projects Pvt. Ltd., which will firstly be reviewed by my

advocate/legal representative and only upon satisfactory verification of such addendum agreement, will be signed by me.

viii. Further, it is requested to Samyak Projects Pvt. Ltd., if there is any court order directing court to Samyak for executing of addendum agreement with the existing allottees of this project and also share the model draft of the addendum agreement if any determined by the High Court specifying the terms & conditions, remedies & payment/adjustment of delay possession charges payable to the allottees of the project, schedule of possession & handover plan, project action plan& completion timeline and documents like project ownership certificate after transfer of project ownership from Ansal Housing Ltd. to Samyak projects Pvt. Ltd., Transfer of RERA Registration Certificate in the name of Samyak, Permission obtained for water, electricity, firefighting connection, proof of having done registry of units to any customers in the same project, bank approvals for loan facility on the project or other related licensing approvals by the government in favor of Samyak Projects Pvt. Ltd. proving that it is the sole owner of the project "Ansal Hub 83 Boulevard" so that the allottees could review & go through those substantial evidences before signing of the addendum agreement.

ix. The parties to present communication shall be deemed to be-witnessed to this reply to the notice & reminders sent by Samyak Project Pvt. Ltd. and it is requested to Ansal Housing Ltd. to take necessary action & clear the ownership status of the project with appropriate evidences to resolve all the issues raised by Samyak Projects Pvt. Ltd., by issuing various notices and reminders concerning dummy sales transaction and validation of builder buyer agreement earlier executed between us.

x. Respondents have made inordinate delay of more than five years in completion of the project and no update of the current position of the project has been given to the complainant from last 6-7 years.

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

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

   i. Direct the respondents to handover possession of the unit along with delay penalty at applicable rate as per HRERA till date of physical possession of the unit with occupancy certificate/ completion certificate.

   ii. Direct the respondents) not to issue any notice/letter/email to make undue pressure on the complainant to enter into a fresh agreement forgoing delay penalty till the date of possession of the unit along with proper occupancy certificate.

5. On the date of hearing, the authority explained to the respondents/ promoters 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:**

6. The respondent no. 1 has contested the complaint on the following grounds:

   i. The complainants booked the shop no. T-121 in his name in an upcoming project Ansal Boulevard, Sector 83, Gurugram of the respondent. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. A builder buyer agreement dated 05.12.20214 was signed between the parties as per claim of the complainant.

   ii. The current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the respondent was in the year 2015. The regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. That Parliament would not make the operation of a statute retrospective in effect.

iii. The complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. The complainant cannot be allowed to take advantage of his own wrong.

iv. Even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2023 and the cause of action accrue on 15.12.2018 as per the complaint itself. That the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.

v. Even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2014 without coercion or any duress cannot be called in question today. The builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 34 of the said agreement provides for Rs. 5/ sq. foot per month on super area for any delay in offering possession of the unit as mentioned in clause 30 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 8 years after it was agreed upon by both parties.

vi. The respondent had in due course of time obtained all necessary approvals from the concerned authorities. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.

vii. That the respondent has adequately explained the delay. That the delay has been occasioned on account of things beyond the control of the

answering respondent. The builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID-19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

viii. The respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 31 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.

ix. The respondent has clearly provided in clause 34 the consequences that follow from delayed possession. The complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.

x. The complainant had signed and agreed on builder buyer agreement dated 06.01.2015. That perusal of the said agreement would show that it is a Tripartite Agreement wherein M/s Samyak Projects Pvt. Ltd. is also a party to the said agreement.

xi. The perusal of the builder buyer agreement at page 3 would show that M/s Samyak Projects Pvt. Ltd not only possesses all the rights and unfettered ownership of the said land whereupon the project namely Ansal boulevard, Sector 83 is being developed, but also is a developer in

the said project. That the operating lines at page 3 of the Builder Buyer Agreement are as follow:

> *"The Developer has entered into an agreement with the Confirming Party 3 i.e., **M/s Samyak Projects Pvt. Ltd** to jointly promote, develop and market the proposed project being developed on the land as aforesaid."*

xii. The said M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the said project well within time as was agreed and given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd.

xiii. In an arbitral proceeding before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. has taken over the present project the answering respondent for completion of the project and the respondent has no locus or say in the present project.

E. Reply by respondent no. 2

7. The respondent no. 1 has contested the complaint on the following grounds:

i. The respondent no.2 i.e., Samyak Projects Pvt. Ltd. and respondent No.1 i.e., Ansal Housing Constructions Ltd. entered into a Memorandum of Understanding dated 12.04.2013 in respect of construction and development of a Project known as ANSAL BOULEVARD 83, situated on a land admeasuring 2.60 acres, situated in Village Sihi, Tehsil & District Gurgaon in Sector - 83 of Gurgaon, Manesar forming a part of License No. 113 of 2008 dated 01.06.2008 and License No. 71 of 2010 dated 15.09.2010. As per the said MoU, the respondent no.1 being the Developer, made sales of various units to the allottee, executed builder buyer agreement with allottee and also received sale consideration amount from the allottee. The respondent no.2 was not a party to any builder buyer agreement executed between respondent no.1.

ii. The perusal of the builder buyer agreement at page 3 (clause D) would show that M/s Samyak Projects Pvt. Ltd. possesses all the rights and unfettered ownership of the said land whereupon the projects namely boulevard 83, Sector 83 Gurgaon, Haryana is being developed.

iii. As respondent no.1 failed to fulfil its obligation under the said MoU and construction of the said project was substantially delayed. Therefore, due to abject failure of respondent no.1 to perform its obligations under the said MoU and to construct the said project, the respondent no.2 being left with no other option, terminated the said MoU vide termination notice dated 10.11.2020.

iv. The respondent no.2 also published a public notice in the newspaper dated 16.12.2020 informing the public at large about the termination of said MoU by respondent no.2 due to breach of the terms of MoU by the respondent no.1.

v. The respondent no.1 challenged the termination of MoU before the Hon'ble High Court of Delhi in OMP (I) (COMM) No.431 of 2020 in the matter titled as "Ansal Housing Limited vs. Samyak Projects Private Limited" under Section 9 of the Arbitration and Conciliation Act, 1996. The Hon'ble High Court of Delhi was pleased to refer the matter to Arbitration and appointed Justice A.K Sikri, as the Sole Arbitrator and appointed Local Commissioner.

vi. The relevant extract of the order dated 02.09.2022 is reproduced herein below for the sake of reference:

vii. The learned arbitrator rejected the prayer of respondent no.1 for stay on the termination of MoU and directed the respondent no.1 to handover the possession of said Project on 14.10.2021 to respondent no.2 for taking over the balance construction of the said Project. The Learned Arbitrator vide Order dated 02.09.2022 held that respondent

no.2 shall also be free to approach the allottees and demand and/or collect monies from them in respect of their units.

viii. The respondent acting in good faith and in the interest of public at large, in benefit/interest of the allottees of the aforementioned project, the answering respondent sought to authenticate and verify the veracity of the agreements/allotments made by AHL and urged the allottees including the complainants vide various Emails to come forward for KYC process and show bona fide by paying the balance amounts payable due as the project stood on the verge of completion.

ix. It came to the knowledge of respondent no.2 that respondent no.1 has done several dummy transactions by creating fake profiles of allottees. Thus, the respondent no.2 issued notice dated 04.05.2023 to the complainant for verification of the complainant and legitimacy of the transaction undertaken by respondent no.1.

x. Notice dated 04.05.2023 to the complainants in order to comply with the verification process. It was specifically mentioned that, in case no response is received on or before 20.05.2023 from the allottees, then the allotment of the said unit bearing no. T-121 shall stand forfeited/cancelled. Despite numerous attempts to engage with the addressees of the complainants, no satisfactory response or compliance was received, leading to the cancellation of the allotment of said unit bearing no. T0121 in question.

xi. That the respondent no.1 is registered as 'Promoter' in respect of the said project with this Authority, respondent no. 2 requires a no objection certificate from the allottees for the purpose of carrying forth the development of the said project and obtain necessary permission from the RERA. Therefore, in order to change the developer of said project, the respondent no. 2 required written consent of the allottees of said project. In this regard, respondent no.2 issued Notice dated

01.06.2023 and 03.08.2023 requesting the complainant to sign the addendum agreement with respondent no.2 to accept and acknowledge respondent no. 2 as the new developer.

xii. That more than 135 satisfied allottees after all the verification process executed the addendum agreement with the respondent no.2 wherein it was agreed that the allottees will not make any claim against respondent No.2 till the expiry of permitted period of completion of said project as granted by the relevant authorities. It was further agreed by the allottees that allottees will not initiate any civil, criminal or legal proceedings of any nature whatsoever against respondent no.2 before the expiry of the permitted period of completion of said project.

xiii. As respondent no.2 was not a party to the builder buyer agreement executed with respondent no.1. The captioned complaint is liable to be dismissed against respondent no.2.

xiv. That Ansal Housing Ltd in terms of its BBA dated 05.12.2014 with the complainant. It is pertinent to note that the delay in completion of the project is caused due to the malfeasance and negligence of the M/s Ansal Housing Ltd. Not on the part respondent no.2, because the construction and development of the said project was undertaken by M/s Ansal Housing Ltd.

xv. The respondent no.2 has proceeded to commission experts who are in the process of determining the status of the construction and the further steps / construction necessary to complete the project, respondent no.2 is making its best endeavours to ensure that the progress of the said project can be fast-tracked. However, the pace of development of said Project is being affected by frivolous and premature challenged being made against the efforts of respondent no.2.

xvi. That after fully understanding that respondent no. 2 as a land owner have their limited liabilities to the extend provided the land only and as a confirming party and sign builder buyer agreement without having any obligation towards completion and construction and financial liability in the project and builder buyer agreement.

xvii. That BBA dated 05-12-2014 which was signed and executed without coercion or any duress cannot be called in question today. the complainant has mischievously impleaded the present applicant as one of the respondents in the present complainant and the possibility of some foul play on the part of the complainant cannot be ruled out. That a bare glimpse at the documents submitted by the complainant would reveal that he does not have any privity of contract with the present respondent no 2 & respondent no 2 is neither has any responsibility regarding the paying any delay payment charges nor responsible for handing over physical vacant possession to the complainant after obtaining occupation certificate from the component authority under entered into a contract with Ansal i.e., respondent no 1.

xviii. It is therefore most respectfully prayed that this Learned Authority may be pleased to dismiss the complaint as against the applicant in the interest of justice.

xix. That the allottees is interested in the refund of the amount paid by them to the erstwhile AHL. The present respondent no. 2 shall may be refund the actual amount paid by any such allottees without any interest, only to settle the matter as the applicant is not legally bound to indemnify the loss, as it was the sole duty of the AHL.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties as well as the written submission of the complainant.

F. Jurisdiction of the authority:

9. 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

10. 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

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

12. 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 complainant at a later stage.

G. Findings on objections raised by the respondent

G.I Objection regarding delay due to force majeure circumstances.

13. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and demonetization. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 05.12.2018 with a maximum extension of 6 months as grace period from this date. The events such as various orders by Punjab and Haryana High Court were prior to execution of agreement and NGT ban and demonetization were for a shorter duration of time and were not continuous as there is a delay of more than 6 years and do not impact on the project being developed by the respondent. Even today no occupation certificate has been received by the respondent. Thus, the promoters/respondents cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

14. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown came into effect on 23.03.2020 whereas the due date of handing over of possession was (15.12.2018) much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession. Hence, the plea taken by the respondent stands rejected.

H. Findings on relief sought by the complainant:

H.I Direct the respondents to handover the possession of the unit along with delay penalty at applicable rate as per HRERA till date of physical possession of the unit with occupancy certificate/ completion certificate.

15. The complainant was allotted a unit in the project of respondent "Ansal Hub 83 Boulevard", in Sector 83, Gurugram for a total sum of Rs.32,30,818/-. An agreement to sell dated 05.12.2014 was executed between the respondent no. 1 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.26,47,020/-. However, in the said BBA it is specifically written that the respondent no. 1 & 2 have entered into a memorandum of agreement. 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 a period of 42 months from the date of execution of agreement or within 42 months from date of obtaining all required sanctions and approval for necessary for commencement of construction, whichever is later.

16. 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.

17. 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.

18. The Authority is of the view that the builder buyer's agreement was signed by the complainants and the respondent no. 1. In the builder buyer agreement, 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*
> *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*
> *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

xxxxxxxx"

19. 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).

20. Further, the authority observes that the occupation certificate for the project is yet to be received and the project stands transferred to the respondent no. 2 who is now responsible to complete the same. In absence of any final arbitration award the Authority cannot deliberate up on the ratio of financial liability between the promoters. In view of the above, the liability under provisions of Section 18(1) of the Act & Rules read with builder buyer agreement shall be borne by both the respondents jointly and severally and the liability to handover the unit shall lie with respondent no. 2.

21. In view of the above, the liability under provisions of Section 18(1) of the Act & Rules read with builder buyer agreement shall be borne by the respondent. The complainant herein intends to continue with the project and is seeking delayed possession charges against the paid-up amount as

provided under the section 18(1) of the Act. 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 of 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)***

22. In the present complaint, the complainant is seeking delayed possession charges along with interest on the amount paid. Clause 30 of the flat buyer agreement provides for handing over of possession and is reproduced below:

> ***The Developer shall offer possession of the Unit any time, within a period of 42 months from the date of execution of this 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 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.*

23. As per above-mentioned clause the promoter has proposed to handover the possession within a period of 42 months from the date of execution of this agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction,

whichever is later. The due date of possession is calculated from the date of exeution of buyer's agreement i.e., 05.12.2014. The period of 42 months expired on 05.06.2018. Since in the present matter the agreement incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 month is allowed to the promoter being unqualified. Hence, the due date comes out to be 05.12.2018.

24. **Admissibility of delay possession charges along with 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.*

25. 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.

26. 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;"

27. 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., 22.05.2025 is **9.10%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%.**

28. On consideration of the documents available on record and submissions made regarding contravention of 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 builder buyer agreement. The respondent did not offer possession of the subject unit on time. It is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the builder buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee is liable for interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 for every month of delay from due date of possession i.e., 15.12.2018 till offer of possession plus 2 months or actual handover whichever is earlier after obtaining the occupation certificate from the competent authority, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.

I. Directions of the Authority:

29. 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):

i. The respondents/promoters jointly and severally are directed to pay interest to the complainant against the paid-up amount of Rs.26,27,020/- at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 15.12.2018 till the date of offer of possession plus two months after obtaining the occupation certificate or actual handing over possession whichever is earlier, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.

ii. The arrears of such interest accrued from due date of possession i.e., 15.12.2018 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.

iii. The respondent no. 2 is directed to handover the actual possession of the allotted unit of the complainant within 2 months after obtaining occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.

iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

v. The respondent is directed to get the conveyance deed of the allotted unit executed in the favour of the complainants in terms of section 17(1)

of the Act of 2016 on payment of stamp duty and registration charges as applicable.

vi. The respondent shall not charge anything which is not the part of BBA.

vii. 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.

30. Complaint stands disposed of.

31. File be consigned to the registry.

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 22.05.2025