

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

Complaint no. : 4436 of 2023
Date of filing : 19.10.2023
Date of decision : 06.05.2025

Ashu Tyagi

R/O: Hno. 135, Village Mohammadheri,
Gurugram

Complainant

Versus

1. M/S Ansal Housing Limited
Registered office at: 15 UGF,
Indraprakash, 21, Barakhambha road, New
Delhi-110001
2. Samyak Projects Pvt. Ltd.
Registered office at: 121, FF Antriksh
Bhawan 22 Kasturba Gandhi Marg New
Delhi

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Satish Kumar Vashisht (Advocate)
Sh. Amandeep Kadyan (Advocate)
Sh. Shanker Wig (Advocate)

Counsel for Complainant
Counsel for Respondent no. 1
Counsel for 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

provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

| S. N. | Particulars | Details |
|-------|--------------------------------------|--|
| 1. | Project name and location | Ansals Hub 83 Boulevard, Sector 83 Gurugram |
| 2. | Project area | 2.60acres |
| 3. | Nature of project | Commercial Project |
| 4. | RERA registered/not registered | Registered 09/2018 Dated 08.01.2018 |
| 5. | DTPC license no. & validity status | License No. 71 of 2010 dated 15.09.2010 |
| 6. | Date of execution of buyer agreement | 26.03.2015 (R2 was the confirming party) [pg. 33 of complaint] |
| 7. | Unit No. | G-105 [pg. 37 of complaint] |
| 8. | Unit area admeasuring | 297 sq. ft. [pg. 37 of complaint] |
| 9. | Possession clause | Clause 30 of BBA <i>The Developer shall offer of the unit any time a period of 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later, further there shall be a grace period 6 months allowed to the developer over and above the period of 42 months.</i> |
| 10. | MoU with Ansal | 15.10.2013 (pg. 25 of complaint) |

| | | |
|-----|--------------------------------------|--|
| 11. | AR clause | ₹36,260/- per month from 02.12.2013 till due date of instalment whereby 95% of the basic cost becomes due for payments a per agreed payment plan of the said unit. |
| 12. | Due date of Possession | 26.03.2019 (Calculated from the date of agreement i.e., 26.03.2015 as the date of start of construction is not known) (Grace period of 6 months is allowed being unqualified). <i>*Note: The due date of possession has been inadvertently wrongly mentioned as 15.02.2019 instead of 26.03.2019 in the POD dated 06.05.2025. The same has been corrected in the said order</i> |
| 13. | Sale consideration | ₹ 43,04,397/- [pg. 53 of complaint] |
| 14. | Total amount paid by the complainant | ₹ 43,51,804/- [As alleged at pg. 21 of complaint] |
| 15. | Offer of Possession | NA |
| 16. | Occupation Certificate | NA |

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That relying upon the representations made by the Respondents and believing those to be true, Complainant was very much induced to buy a shop no. G-105, tentatively admeasuring super area 296 Sq. ft. (Approx.) in "Boulevard" Sector-83, Gurugram and as per assurance of the respondent no.1, the complainant had booked the above said shop and initially paid an amount of ₹4,87,532/- vide payment receipt no. 556595 dated 21.10.2013 as an advance against the above said unit and further as per demand raised by the respondents, the complainant had paid the total amount of ₹43,51,804/- to the respondent.
 - b. That the basic sale price of the above said unit is ₹38,29,815/- and total sale price of the said unit is ₹41,36,348/- and the complainant had already been paid excess amount of ₹43,51,804/- (including service tax,



VAT & GST) through cheques to the respondents and in this regard the respondents have issued the acknowledgment/receipts to the complainant. It is submitted that the complainant had paid excess amount other than the total sale consideration but despite receiving the excess amount the respondents have not delivered the possession of the complainant and the said act of the respondents is altogether illegal and unlawful.

- c. That the respondent no. 1 had entered into a memorandum of understanding with the complainant on dated 18.10.2013 in respect of the above said commercial unit/shop no. G-105 at Ansal Hub 83, Gurugram and as per covenant no. 1 of MOU, it has been clearly mentioned that "In lieu of above contribution by the second party the first party has agreed to pay a monthly return. The second party immediately after investing total amount of ₹35,53,552.52/- shall be entitled to receive a return of ₹36,260.74/- per month from 02.12.2013 to till the due date of that installment, whereby 95% of the basic cost becomes due for payments as per agreed payment plan of the said unit. However, it is submitted that the respondents have miserably failed to pay the assured return to the complainant and despite repeated requests made by the complainant, the respondents did not make the assured return to the complainant.
- d. That thereafter the complainant and respondent no. 1 had entered into a builder buyer's agreement dated 26.03.2015 and as per clause no. 30 of buyer's agreement the company shall give possession of the said unit within 42 months from the date of this agreement and further grace period of 6 months mentioned in the said builder buyer's agreement. So according to this clause of the buyer agreement the respondents had to deliver the shop by latest March, 2019. However, the respondent had



already received an amount of ₹43,51,804/- out of total sale consideration of ₹41,36,348/-.

- e. That the complainant entered into an addendum agreement on dated 19.06.2023 in respect of the above said commercial unit with the respondent no. 1 as the respondent no. 2 take over the above said property as per terms and conditions of the addendum agreement. That the respondent as and when raised the demands in respect of the above said commercial unit, the complainant paid the amount as mentioned in the table as per payment plan. Despite elapsed more than six years, the respondents have failed to deliver the possession of the commercial unit of the complainant despite repeated requests, emails, personal visits and by way of other modes. It is further submitted that the respondents have illegally and unlawfully demanding the alleged amount without completion the entire work of the shop.
- f. That there is delay of six years for delivering the possession of the above said shop. However, the possession has not been delivered to the complainant till date. Therefore, the complainant is entitled for the compensation /penalty of the delayed possession at the market prevailing rate of ₹5/- per sq. ft. per month on super area.
- g. That the complainant has invested his hard-earned money in the above said commercial unit but the respondents with their vested interest grabbed the said amount and did not deliver the possession because they have not completed the project well within prescribed time period and still the project is uncompleted. That it is pertinent to mention here that the respondents as per their own accord and convenient mentioned the terms and conditions one sided in the buyer's agreement, which is absolutely illegal and unlawful. That the respondents deliberately violated the terms and conditions of the buyer's agreement and neither

deliver the possession of the said commercial unit nor given the penalty on the delayed period only to cause wrongful loss to the complainant and to gain wrongfully themselves.

- h. That the respondents are illegally and unlawfully raising demands to make 5% more amount then they will issue the offer of possession but the complainant had already been paid excess amount other than the sale consideration, therefore, the respondent no. 2 is not liable to get the above said 5% more amount. The demand of the respondent no. 2 is absolutely illegal and unlawful.
- i. That the respondents have acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the commercial unit in the above said project within the timelines agreed as contained in agreement. The respondents are therefore, liable to pay the damages and compensation for the monetary loss and harassment suffered by complainant due to the delay in delivering the possession of aforesaid commercial unit.
- j. That by having intentionally and knowingly induced and having falsely misrepresented the complainant and thereby making them to act in accordance to its misrepresentations, and owing to all the deliberate lapses/delays on the part of the respondents, the respondents are fully liable to pay penalty/compensation for the delayed possession of the shop in question.
- k. That the complainant has undergone severe mental harassment due to the negligence on part of respondent. The complainant had faced all these financial burdens and hardship from his limited income resources, only because of respondent's failure to fulfil its promises and commitments. The failure of commitment on the part of respondents has made the life of the complainant miserable socially as well financially. Therefore, the respondents have forced the complainant to suffer grave and severe

mental and financial harassment with not fault on their part. The complainant being common persons just made the mistake of relying upon respondent's false and fake promises. The respondents have trapped the complainant in a vicious circle of mental, physical and financial agony, trauma and harassment.

- l. That the respondents have acted in a very deficient, unfair, wrongful, fraudulent manner by not refunding the amount paid by the complainant in project situated at Sector-83, Gurugram. That the conduct on part of respondents regarding delay in delivery of possession of the said commercial unit has clearly manifested that the respondents never ever had any intention to deliver the said commercial unit on time as agreed. It has also cleared the dust on the fact that all the promises made by the respondents at the time of sale of the said commercial Unit were fake and false. The respondents had made false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said commercial unit on the basis of its false and frivolous promises, which the respondents never intended to fulfill.
- m. That the respondents have committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said commercial unit, which amounts to unfair trade practice, which is immoral as well as illegal. The respondents have also criminally misappropriated the money paid by the complainant as sale consideration of said commercial unit by not delivering the unit by agreed timelines. The respondents have also acted fraudulently and arbitrarily by inducing the complainant to buy the said commercial unit on the basis of its false and frivolous promises and representations about the delivery timelines of the aforesaid project.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct the respondent to handover the possession of the unit to the complainant.
 - Direct the respondent to pay delay possession charges on the amount paid by the complainant at the prescribed rate of interest till the actual handing over of possession.
 - Direct the respondent to execute conveyance deed in favour of the complainant.
 - Direct the respondent to return the assured amount since 02.02.2013 till its realization as per terms of BBA.
 - Litigation cost.
5. 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:

6. The respondent has contested the complaint on the following grounds.
- That the complainants had approached the answering Respondent for booking a shop in an upcoming project Ansal Boulevard, Sector 83, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement dated 26.03.2015 was signed between the parties.
 - That 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 answering Respondent was in the year 2015. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.

- c. That 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 2024 and the cause of action accrue on 08.04.2019 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
- d. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2015 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 34 of the said agreement provides for Rs. 5/ sq. ft. 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.
- e. That 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.
- f. That the answering respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering respondent. It is further submitted



that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the Answering 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.

- g. That the answering 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.
- h. That the answering Respondent has clearly provided in clause 34 the consequences that follow from delayed possession. It is submitted that the Complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.
- i. That admittedly, the Complainant had signed and agreed on Builder Buyer Agreement dated 25.11.2014. 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.
- j. That the perusal of the Builder Buyer Agreement at page 3 would show that M/s Samyak Projects Pvt. Ltd not only possesses all the rights and unfettered ownership of the said land whereupon the project 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."*

- k. 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. That 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. Short affidavit filed by respondent no. 2

7. The respondent has contested the complaint on the following grounds:
- a. Respondent No.2 i.e., Samyak Projects Pvt. Ltd. (Landowner) and Respondent No.1 i.e., Ansal Housing Constructions Ltd. (Developer/ AHL) entered into a Memorandum of Understanding dated 12.04.2013 (hereinafter referred to as "MoU") in respect of construction and development of a Project known as ANSAL BOULEVARD 83 (hereinafter referred to as "said Project"), situated on a land admeasuring 2.60 acres (equivalent to 20 Kanal 16 Marlas), 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(s), executed

Builder Buyer Agreement(s) with Allottee(s) and also received sale consideration amount from the Allottee(s).

- b. 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.
- c. 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.
- d. 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, (Retired Judge of Supreme Court) as the Sole Arbitrator and appointed Local Commissioner.
- e. 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.
- f. 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.

- g. Since Respondent No.1 is registered as 'Promoter' in respect of the said Project with the Real Estate Regulatory Authority ("RERA"), 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 26.05.2023 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.
 - h. 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.
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 those undisputed documents and submissions made by the parties.
- 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, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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 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) 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.

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 complainants at a later stage.

G. Findings on the relief sought by the complainant.

G.I. Direct the respondent to pay delay possession charges on the amount paid by the complainant at the prescribed rate of interest till the actual handing over of possession.

13. In the present matter the complainant was allotted unit no. G-105, admeasuring 297 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder for a total sale consideration of ₹43,04,397/- and she

has paid a sum of ₹43,51,804/-. A buyer's agreement dated 26.03.2015 was executed between the 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 the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval sanctions and approval necessary for commencement of construction, whichever is later. The occupation certificate for the project has not yet been obtained from the competent authority.

14. 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.
15. The complainant i.e., Ansal Housing Pvt. Ltd. in the petition sought various reliefs including to stay the operation of the termination letter dated 10.11.2020 and the public notice dated 16.12.2020 till the final arbitral award is given. The Arbitral Tribunal vide order dated 31.08.2021 granted no stay on termination notice dated 10.11.2020 and no restraining order in this regard was passed against the M/s Samyak Projects Pvt. Ltd. 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.

16. The authority is of the view that the builder buyer agreement dated 26.03.2015 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 26.03.2015 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

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*

XXXXXXXXXX

17. 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).
18. 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 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.
19. 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 intends 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. -

in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or 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)

20. Clause 30 of the BBA provides for handing over of possession and is reproduced below:

"Clause 30

The Developer shall offer possession of the unit within a time period of 42 months from the date of execution of Agreement or within 42 months from the date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later. 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."

21. **Due date of possession and admissibility of grace period:** As per clause 31 of the BBA, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of within 42 months from the date of execution of Agreement or within 42 months from the date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later. The period of 42 months is calculated from the date of buyer's agreement i.e., 26.03.2015 as the date of commencement of

construction is not known. 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 26.03.2019. The occupation certificate for the project has not yet been obtained from the competent authority.

22. **Payment of delay possession charges at prescribed rate of interest:** The complainant is 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]

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.

23. 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.
24. 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., 06.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
25. The definition of term 'interest' as defined under section 2(z) 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—

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 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;"

26. 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.
27. 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 31.12.2018. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.
28. 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 allotment letter. 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.
29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent/promoter is established. As such, the allottee shall be paid by the promoter interest for

every month of delay from the due date of possession i.e., 26.03.2019 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.

G.II. Direct the respondent to handover the possession of the unit to the complainant.

G.III. Direct the respondent to execute conveyance deed in favour of the complainant.

30. 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 favour 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 favour 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.IV. Direct the respondent to return the assured amount since 02.02.2013 till its realization as per terms of BBA.

31. The complainant is seeking assured return from the respondent in terms of BBA. The authority in the present matter observes that there exists no clause with respect to assured return in the BBA accordingly, the Authority cannot deliberate up on the said relief.

G.V. Litigation cost

32. The complainants in the above reliefs are seeking litigation expenses. 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.

H. Directions of the authority

33. 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., 26.03.2019¹ 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 directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate and thereafter execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016


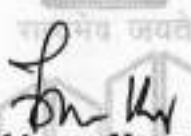
¹ The due date of possession has been inadvertently wrongly mentioned as 15.02.2019 instead of 26.03.2019 in the POD dated 06.05.2025. The same has been corrected in the said order

on payment of stamp duty and registration charges as applicable, within 3 months after obtaining occupation certificate from the competent authority.

- c. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- d. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.

34. Complaint stands disposed of.

35. File be consigned to registry.


(Ashok Sangwan)
Member
(Arun Kumar)
Chairperson
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.05.2025

HARERA
GURUGRAM