

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

Complaint no.: 4568 of 2022
Date of filing: 24.06.2022
Order pronounced on: 13.05.2025

Neeta Rani

R/o: - T9, 704, 7th floor, CHD Avenue 71, Sector 71,
Gurugram-122018

Complainant

Versus

1. M/s Ansal Housing Limited (*Formerly known as Ansal
Housing & Construction*)

Regd. Office at: - 15 UGF, Indraprakash, 21,
Barakhamba road, New Delhi-110001

2. M/s Samyak Projects Pvt. Ltd.

Regd. Office at: - 111, 1st floor, Antriksh Bhawan,
22 KG Marg, New Delhi-110001

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairperson
Member
Member

APPEARANCE:

Ms. Priyanka Aggarwal (Advocate)
Sh. Amandeep Kadyan (Advocate)
Sh. Shanker Wig (Advocate)

Complainant
Respondent no. 1
Respondent no. 2

ORDER

1. This complaint has been filed by the complainant/allottees 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 thereunder 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Ansal Hub 83 Boulevard" Sector-83 Gurugram Haryana
2.	Nature of the project	Commercial
3.	Registered/not	Registered 09 of 2018 dated 08.01.2018 Valid till 31.12.2020
4.	Shop No.	F- 152, 296 sq. ft. (Page 55 of complaint)
5	MoU with Ansal for assured return	25.10.2013 (page 29 of complaint)
6	Mou clause	1. ₹26,981/- per month starting from 10.11.2013 and as such return shall be paid till the date of offer of possession. (Page 31 of the complaint)
7.	Date of builder buyer agreement not signed	12.03.2015 [As per page 51 of complaint]
9.	Due date of possession	25.10.2016 (calculated from the date of MoU as per Fortune Judgement)
10.	Total sale consideration	Rs. 27,33,615/- [As per buyer's agreement on page 55 of complaint]
11.	Amount paid	Rs. 28,60,730/- [As per SOA dated 02.04.2022 at pg. 76 of complaint]
12.	Occupation certificate	Not received yet

13.	Offer of possession	Not offered
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B. Facts of the complaint.

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

- a. That the based on promises and commitment made by the respondent, complainants booked a Commercial Unit admeasuring 296 sq. ft., Unit No. F-150 in upcoming Project "Ansal HUB 83 Boulevard" at Sector 83, Gurugram, and Haryana. The Sale Consideration amount of ₹25,96,933/- was paid through cheques. That the complainant booked the unit in down payment plan with Assured Return.
- b. That the respondent to dupe the complainants in their nefarious net even executed MOU Signed Between M/S Ansal Housing Ltd. and Mrs. Neeta Rani on dated 25.10.2013, just to create a false belief that will pay investment return on down payment of ₹25,96,935/- @ ₹26,981.14/- per month till possession. as per MOU Clause No. 1. That As per Clause 1 of the MOU Respondent liable to pay Return of ₹26,981.14/- per month till offer of possession but respondent was not paid return of ₹26,981.14/- from March, 2019 to till date of complaint which is ₹10,25,283/-.
- c. That the respondent 1 send the buyer's agreement dated 12.03.2015 after change of unit no. from F-150 to F-152 and to complainant and complainant sign the agreement and send to the respondent -1 but the respondent -1 was not sent to the complainant after signing by the respondent -1 & 2. That the respondent after sending unsigned buyer's agreement send a new demand notice of EDC, IDC and Labour cess (LCC) to the complainant and complainant request to the

respondent for time of 2 months and the respondent charged interest for this period and paid the demand accordingly.

- d. That the complainants have repeatedly been seeking an update on the progress in the development of the project and investment return which was stopped by builder in April 2019. That the complainants raised his issues about progress of project and unpaid monthly investment return through visited personally and through email in reply builder given to them a firm assurance for give balance assured return but till date builder not paid them balance amount of assured return and offer of possession. In continuations complainants made many requests through visited personally at builder office. However, the queries of the complainants were replied in lethargic manner but till date builder not resolved the issue of assured return and possession of unit The respondent was always vague and evasive to such requests. Finding his repeated efforts being thwarted and dashed. As per term of MOU Builder had committed in the MOU clause no. 1 "In lieu of the above his contribution by the second party the first party has agreed to pay a monthly return. The second party immediately after investing total amount of ₹25,96,933/- shall be entitled to receive a return of ₹26,981.14/- per month starting from 10.11.2013, and such return shall be paid till the date of offer of possession." and as per Buyer's Agreement clause 30 the Respondent/Builder liable to offer possession from 42 months from signing of Buyer's agreement plus 6 months grace period i.e. 11.03.2019 but till date of complaint project is raw and desolated.

- e. That the builder liable to paid assured return till possession but in this complaint, builder had started the default from march, 2019 detail of un-paid instalment of assured return mention below:

Calendar Years	Unpaid Instalment
2019	10
2020	12
2021	12
2022(till April 2022)	4
Total unpaid till April 2022	38

- f. That the respondent at no stage informed the complainants on the status and development of the project, but demanded full payments in advance with the commitment of assured return till possession & timely possession which was never give. To meet these huge demands raised by the respondent, Complainant had to not only liquidate their investments, but had to borrow money through unsecured loan at high rate of interest.
- g. That the complainants were requesting many times in between 2019 to till date for non-payments of assured return, and status of project but builder not replied to the point and lingered on the subject matter. That the respondent has failed to meet the obligations and with malafide intentions have collected huge amount of money from the complainant. This act on part of the respondent has not only caused huge financial losses, but have also offset the family life.
- h. That the complainant with good intentions have paid all demands raised by respondent amounting to 100% of the Unit cost however, respondent has failed to meet their obligations and commitments.

This undue delay in handing over the possession of the unit for more than 3 years from committed date as per agreement is not only a breach of trust but is also indicative of ill intentions of the respondent. The act on part of respondent has caused undue financial losses and mental agony to the complainant.

- i. From the above it is abundantly clear that the respondent sold the unit in 2013, extracted 100% at the time of booking from innocent buyer by giving false promised of Return of ₹26,981.14/- per month. This was done by executing illegal, unilateral, one-sided MOU. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble Authority as the apartment which is the subject matter of this complaint is situated in Sector 83 Gurugram which is within the jurisdiction of this Hon'ble Authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Assured Investment Return @ ₹26,981.14/- per month from April 2019 to till handing over of possession and Interest for every month of delay of payable assured investment return at Prevailing rate of interest.
 - b. Direct the respondent to pay interest on due amount of assured Investment Return from the due date of Instalment of Assured Investment Return to till actual payment.
 - c. Direct the respondent to give Physical possession of the unit with assured return as per clause 1& 4 of the MOU or return the principal amount with assured return till actual realisation of amount.

- d. Direct the respondent to quash all the demands at the time of offer of possession.
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:
- a. That the Complainant approached the Respondent sometime in the year 2013 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.
 - b. That thereafter the Complainant applied to the Respondent for provisional allotment of a unit in the project. The Complainant, in pursuant to the application, was allotted Shop/Office Space bearing No. F-152 in the project "ANSAL HUB" situated at Sector 83, District Gurgaon, Haryana. The Complainant consciously and wilfully 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 instalment on

time as per the payment schedule. The Respondent had no reason to suspect the bonafide of the Complainant.

- c. 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 in full mode and the work will be completed within the prescribed time period as given by the respondent to the authority. It is further submitted that the respondent no.2 has taken over the said project from the respondent no.1 and is completing the same in a timely manner.
- d. 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 labour 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.

- e. 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. 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.
- f. 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. 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.
- g. That it is submitted that several allottees have defaulted in timely remittance of payment of instalment 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.

- h. The Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in Clause 7 & 8 of the Builder Buyer's Agreement, vide which Complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The Complainant further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.

E. Reply by the respondent no. 2

7. The respondent has contested the complaint on the following grounds:
- a. It is pertinent to mention that the no builder buyer agreement was executed between any of the respondents and the complainant and there is no privity of contract between the complainant and respondent no.2. It is further submitted that no consideration and communication has ever been received by the respondent no.2 from

the complainant and the same were received by the respondent no.1 at all times.

- b. Moreover, it is a settled proposition of law that without consideration an agreement is nudum pactum i.e. void ab initio. That it is submitted that the respondent is not even a confirming party to the agreement that is pressed into service by the complainant. More so, the complainant has approached this Hon'ble Authority with unclean hands and has impleaded the respondent no. 2 without any cause of action. That it is also submitted that the only motive of showing this fictitious entry by the erstwhile directors of the respondent no. 1 company was only to accommodate the complainant for certain ulterior motives.
- c. It is also submitted that the complainant and respondent no.1 are acting in connivance with each other for the fulfilment of their ulterior motives and harm the reputation of the respondent no.2 for the reasons best known to the respondent no.1 and complainant. It is a settled position of law that one who seeks equity must do equity. That the complainant has approached this Hon'ble Authority with and fraudulent document with the sole intention to mislead the Authority by filing false and frivolous documents. There being no privity of contract between the complainant and respondent no.2
- d. the application shall be dismissed. It is important to bring before the notice of this Hon'ble Authority that respondent no. 1 entered into 143 agreements to sell during the period of 2017 to 2021 and collected huge amount of money against the same from the public at

large. The same has been apprised by the Respondent No. 1 before the Arbitrator.

- e. Further, the respondent no.1 fraudulently offloaded data on the HARERA portal in the year 2023. That a complaint against the frivolous conduct of the respondent no. 1 has already been filed before the HARERA Authority. That it is humbly submitted that the current fraudulent sale conducted by respondent no.1 i.e. Ansal was discovered by respondent no. 2 and a complaint has already lodged with the RERA authority, asserting that Ansal obtained RERA registration through fraudulent means. Despite this, no significant action has been taken, and we have urged immediate intervention to investigate the matter and Authority should take appropriate legal action against Ansal i.e., respondent no. 1.
 - f. It is therefore most respectfully prayed that keeping in view the aforesaid facts this Ld. Authority may be pleased to dismiss the present complaint with exemplary costs in the interests of justice.
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.

F. Jurisdiction of the Authority:

9. The authority observes that it has complete territorial and 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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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.

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. Assured return

13. In the present complaint, the Complainant entered into a Memorandum of Understanding (MoU) dated 25.10.2013 with Respondent No. 1 in relation to a real estate unit having an approximate super area of 296 square feet. As per Clause 1 of the said MoU, Respondent No. 1 undertook to provide an assured monthly return of ₹26,981/-, commencing from 10.11.2013 and continuing until the date of offer of possession. The Complainant has, remitted a sum of ₹28,60,730/- to Respondent No. 1 towards the sale consideration of ₹27,33,615/- as stipulated in the Statement of Account (SOA) issued by Respondent No. 1 on 02.04.2022.
14. The Complainant has expressed the intention to continue with the project and has approached this Authority seeking relief in the form of assured returns, interest and possession under the provisions of the Real Estate (Regulation and Development) Act, 2016 ("RERA"). Upon examination of the facts and documents on record, this Authority observes that no Builder Buyer Agreement (BBA) has been executed between the parties to date. As a result, the specific date of possession cannot be determined. In this regard, reference is made to the judgment of the Hon'ble Supreme Court in *Fortune Infrastructure & Ors. v. Trevor D'Lima & Ors.*, MANU/SC/0253/2018, wherein the Apex Court held that a purchaser cannot be compelled to wait indefinitely for possession of an allotted unit and is entitled to seek a refund along with compensation. The Court further observed that in the absence of a stipulated delivery timeline in the agreement, a reasonable period must be considered. In the present case, considering the facts and circumstances, a period of three (3) years from the date of execution of the MoU, i.e., 25.10.2013, is deemed reasonable for

completion and delivery of possession. Accordingly, the due date for possession is determined to be 25.10.2016.

15. The contention raised by Respondent No. 2 regarding the absence of privity of contract with the complainant is upheld by the Authority. Upon due consideration, it has been determined that the Memorandum of Understanding (MoU) constitutes the sole document giving rise to contractual obligations between the parties. Respondent No. 2 is neither a signatory to the said MoU nor has executed the same as a confirming party. Moreover, the MoU does not make any reference to the existence of a collaboration agreement or joint venture agreement (JVA) between Respondent Nos. 1 and 2 pertaining to the development of the subject project. Consequently, liability in the present matter is confined solely to Respondent No. 1.
16. Moreover, an agreement defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.
17. It is not disputed that the respondent is a real estate developer, and the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay

assured return to the complainants-allottees in terms of the MoU dated 25.10.2013.

18. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., ₹26,981/- on monthly basis from 10.11.2013 till the date of valid offer of possession after obtaining occupation certificate from the competent Authority.
19. Accordingly, the respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

G. Directions of the authority

20. 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 respondent no. 1 is directed to pay the amount of assured return at the agreed rate i.e., ₹26,981/- on monthly basis from 10.11.2013 till the date of valid offer of possession after obtaining occupation certificate from the competent Authority.
 - b. The respondent no. 1 is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

- c. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.
- d. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
21. Complaint stands disposed of.
22. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 13.05.2025

HARERA
GURUGRAM