BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**2999 of 2023**
Date of filing	**:**	**03.07.2023**
Date of decision	**:**	**20.05.2025**

1. Amit Sharma
2. Parul Sharma

Both RR/o: Flat no Gaj144, Tower J, DLF Newtown Heights, Sector 86, Gurgaon 122004 **Complainants**

Versus

1. M/s Ansal Housing Ltd. *(Formerly known as Ansal Housing & Construction Ltd.)*
   Regd. Office: 15 UGF, Indraprakash, 21, Barakhambha Road, new Delhi -110001
2. M/s Samyak Projects Pvt. Ltd.
   Regd. Office: 111, 1st floor, Antriksh Bhawan, K.G. Marg, New Delhi-110001 **Respondents**

CORAM:

Shri Arun Kumar	**Chairperson**
Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**

APPEARANCE:

Sh. Harshit Batra (Advocate)	**Counsel for Complainant**
Sh. Amandeep Kadyan (Advocate)	**Counsel for Respondent no. 1**
Sh. Shanker Wig (Advocate)	**Counsel for Respondent no. 2**

ORDER

1. The present complaint has been filed by the complainants/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

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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

SNo.	Particulars	Details
1.	Name of the project	"Ansal's Hub 83 Boulevard", Sector-83, Gurugram.
2.	Total area of the project	2.60 acres
3.	Nature of the project	Commercial
4.	HRERA registered/ not registered	**Registered** **09 of 2018 dated 08.01.2018.**
5.	Unit no.	G-101, Type-Shop (As on page no. 27 of complaint)
6.	Area of the unit	811 sq. ft. [Sale area] (As on page no. 27 of complaint)
7.	Execution of BBA (R2 is the confirming party)	05.12.2014 (As on page no. 22 of complaint)
8.	Possession clause	**Clause 30** *The Developer shall offer possession of the Unit anytime, within 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 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.*
9.	Due date of possession	05.12.2018 [Calculated 42 months plus 6 months grace period]
10.	Total sale consideration	Rs.1,13,49,945/- (As per payment plan on page no. 27 of complaint)
11.	Amount paid by the complainant	Rs.37,72,462/-

12.	Occupation certificate	Not received
13.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

a. That the complainants replying on the assurances and warranties of the respondent no.1 booked a unit no. G-101 admeasuring 811 sq. ft entered into a builder buyer's agreement dated 05.12.2014. That after the booking was made by the complainants, the malafide activities of the respondents began to unturn and the false promises, assurances and warranties saw the light.

b. That respondents no. 1 and 2 had entered into a memorandum of understanding on 12.04.2013 wherein the development rights of the project were transferred from respondent no. 2 to respondent no. 1 on the basis of which, the development of the project was carried on by respondent no. 1. Throughout the course of relationship between the respondents no. 1 and 2, the MOU between the parties was terminated by respondent no. 2. Consequently, the dispute between the respondents was referred to Arbitration and are pending adjudication before the Ld. Sole Arbitral Tribunal of Justice A. K. Sikri, former Judge of Hon'ble Supreme Court of India in a case titled as "Case 01: Ansal Housing Limited vs Samyak Projects Private Limited.

c. The respondent no. 1 had sought an interim relief of stay on the termination, however, the same was rejected by the Ld. Tribunal vide order dated 13.08.2021 and vide a subsequent order dated 13.10.2021, physical possession of the site was agreed to be handed over by respondent no. 1 to the respondent no. 2 and the carrying of construction activities thereof.

d. That thereafter, the respondent no. 1 has been sending emails to the allottees of the project wherein, it was conveyed by the respondent no. 1 and the position of respondent no. 2 is only ad hoc and subject to final award. Respondent no. 1 strongly pointed out that it has not been removed as a developer and that respondent no. 2 would not require any consent or no-objection certificate and the same does not form a part of the procedural order.

e. That subsequently, allottees of the project received email from respondent no. 2 wherein a brief summary of the procedural orders passed by the tribunal and copies of termination notice and public notice issued were given and it was restated that it was carrying and complete the construction of the project. That on the basis of the above, prima facie, it is evident the currently, the construction of the project is being carried on by the respondent no. 2, however, both respondent no. 1 and 2 are jointly and severally liable to complete the development of the project and for other grievances of the complainants.

f. That pursuant to the above, the complainant was called in the office of the respondent no. 2 and were handed over two copies of the addendum agreement and were coerced to sign the same. The representatives of the respondent no. 2 conveyed to the complainant that failure to sign the same will lead to cancellation of the allotment and forfeiture of the amount paid by the complainant.

g. That however, the complainants, with a very firm foot, denied to execute the same, as it was highly arbitrary and highly affecting the rights of the complainants. Moreover, the agreement entered into by the complainants with Ansal as developer and Samyak as the confirming party.

h. That as per clause 30 of the builder buyer's agreement dated 05.12.2014 the possession of the unit was to be offered within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining of all the required sanctions and approval necessary for commencement of construction, whichever is later. That the sanction of building plan was received on 14.05.2014 and the builder buyer's agreement was executed on 05.12.2014 hence, due date is calculated from the date of execution of agreement. Therefore, the due date of possession comes out to be 05.06.2018.

i. That there has been a delay of approx. 5 years from the due date of possession till now however, till date no offer of possession has been given by the respondents. That out of the total sale price of ₹1,21,08,825.02 the complainants have paid a sum of ₹37,72,462 as evident from the payment receipts.

C. Relief sought by the complainants

4. The complainants have sought the following reliefs:

a. To hold that both Respondent no. 1 and 2 are jointly and severally liable in respect to the project.

b. To direct Respondent no. 1 and 2 to provide the valid physical possession to the Complainant after procuring the occupancy certificate.

c. To direct Respondent no. 1 and 2 to give delay possession charges @ MCLR +2% from the due date of offer of possession till the actual handing over of physical possession.

d. To direct the respondent no. 1 and 2 to refund the amount paid towards the area in which shaft is being covered in the unit, as determined by LC, along with interest.

e. To direct the respondent to refund the amount of ₹4,482/- paid by the complainant towards the labor cess charges.

f. To direct the respondent to not charges any illegal charges.

g. To direct respondent no. 1 and 2 to not charge labor cess, electrification charges, EEC and FFPBIC charges, as the same are illegal.

h. To direct respondent no. 1 and 2 to execute the conveyance deed;

i. To penalize the respondent no. 3 under section 62 of the Act;

j. To penalize respondent no. 1 and 2 for non-submission of BIP, and violation of section 61 for non-extension of registration of the project.

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 no. 1 has contested the complaint on the following grounds.

a. That the complainants had approached the answering Respondent for booking a shop no. G-101 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 to sell dated 05.12.2014 was signed between the parties.

b. 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 2014. 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 2023 and the cause of action

accrue in 2018 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 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.

e. That the Respondent had in due course of time obtained all necessary approvals from the concerned authorities. 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 09.01.2015. 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.

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. Reply by the respondent no. 2

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

a. That the 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 MoU 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). The respondent no.2 was not a party to any builder buyer agreement executed between respondent no.1 and the complainant and for the same respondent no. 2 i.e. Samyak Projects Pvt. Ltd. have filed an

application under Order 7 Rule 11 under CPC for rejection of plaint as a party in this complaint.

b. That 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. That the operating lines at page 3 ("Clause D") of the builder buyer agreement are as follows: "The developer has entered into an agreement with the confirming party i.e., M/s Samyak Projects Pvt. Ltd.

c. 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.

d. 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. 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. That the answering 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.

g. 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.

h. 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. G-101 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. G-101 in question.

i. 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.

j. 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.

k. That said 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.

l. 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 endeavors 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.

m. 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. That BBA dated 05.12.2014 which was signed and executed without coercion or any duress cannot be called in question today.

n. 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.

o. That it is submitted that the Respondent No 2 being a stranger to the contract cannot be impleaded as respondent in the complaint as no cause of action ever accrued in favor of the complainant as against the present Respondent no 2. That it is submitted that since the complainant has no cause of action against the present respondent no 2, he cannot implead him in the array of respondents and the intentional impleadment of the applicant as the respondent is bad in law.

p. The aforesaid Respondent No. 2 being the land owner had entered into an MoU with the AHL. As per the said MOU dated 12.05.2013 the said AHL was under obligation to construct the shops within the stipulated period of 48 months and needless to mention the AHL has executed the

Builder Buyer Agreement with various allottees in which the Respondent No. 2 was only a confirming party but however the AHL builder was under obligation to complete the project in a timely manner and it was also clearly mentioned in the said Builder Buyer Agreement. In case of any delay in handling possession or any other reason, the financial liability to indemnify the loss to the allottees was of AHL only.

q. 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. That it is submitted that still the Respondent No. 2 being an honest and reputed firm is inclined to raise the entire project within an extended time period after getting approval from the concerned authority and after compliance of usual formalities in the form of Addendum (which will be binding contract on Respondent No. 2 and Allottees) would hand over the units to the Allottees. That it is submitted to the allottees that would be under an obligation to sign a fresh Addendum with the Respondent No. 2 in supersession of the previous agreement executed by the erstwhile AHL.

r. That it is submitted that the complainant has mischievously impleaded the present Applicant as one of the respondents, the complainant entered into a contract with Ansal i.e., Respondent No 1 only and the present Respondent no 2 is not privy to the said contract he cannot implead him in the array of respondents no 2, and the intentional impleadment of the applicant as the respondent no 2, is bad in law.

s. That it is submitted 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 1 & 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

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

F. Jurisdiction of the authority

9. The authority 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, 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.

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) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees,*

or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

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 complainants.

G.I. To hold that both Respondent no. 1 and 2 are jointly and severally liable in respect to the project;

G.II. To direct Respondent no. 1 and 2 to give delay possession charges @ MCLR +2% from the due date of offer of possession till the actual handing over of physical possession.

13. In the present matter the complainant was allotted unit no. G-101, admeasuring 811 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder vide buyer's agreement dated 05.12.2014 wherein the respondent no. 2 was the confirming party for sale consideration of ₹1,13,49,945/- and they have paid a sum of ₹37,72,462/-. 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 necessary for commencement of construction, whichever is later. The due date of possession is calculated from the date of BBA i.e., 05.12.2014 since the date of commencement of construction is not known. The period of 42 months ends on 05.06.2018. As far as grace period of 6 months is concerned the same

is allowed being unqualified. 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'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 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 apartmets, 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"*

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 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.

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 any time a 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 30 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 due date of possession is calculated from the date of BBA i.e., 05.12.2014 since the date of commencement of construction is not known. The period of 42 months ends on 05.06.2018. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 05.12.2018. 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 complainants are seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

> *Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]*
> *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., 20.05.2025 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(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—
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 05.12.2018. 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., 05.12.2018 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.IV. To direct the refund of the PLC amount paid by the Complainants along with interest till the actual realization of the same.
G.V. To direct the Respondent no. 1 and 2 to refund the amount paid towards the area in which shaft is being covered in the unit, as determined by LC, along with interest.
G.VI. To direct the Respondent to refund the amount of Rs 4,482 paid by the Complainant towards the Labour cess charges.
G.VII. To direct the Respondent to not charges any illegal charges.
G.VIII. To direct Respondent no. 1 and 2 to not charge labour cess, electrification charges, EEC and FFPBIC charges, as the same are illegal.

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

G.IX. To direct respondent no. 1 and 2 to execute the conveyance deed.
G.X. To direct Respondent no. 1 and 2 to provide the valid physical possession to the Complainant after procuring the occupancy certificate.

31. 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 to the complainant in terms of section 17 of the Act of 2016, within a period of 2 months after obtaining occupation certificate from the competent authority and thereafter execute conveyance deed in favour of the complainant on

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

G.X. To penalise the Respondent no. 3 under section 62 of the Act;
G.XI. To penalise Respondent no. 1 and 2 for non-submission of BIP, and violation of section 61 for non-extension of registration of the project.

32. The above-mentioned reliefs were not pressed by the complainant during the course of argument.

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., 05.12.2018 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 favor of complainant within 3 months from the date of obtaining occupation certificate.

c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

d. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

e. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.

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

34. Complaint stands disposed of.

35. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.05.2025