

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

Complaint no.: 1872 of 2024
Date of decision:- 23.07.2025

M/s Mehta Décor
Through Anil Mehta
R/o: - 1/WZ-11, GF, Jwala Heri Market,
Paschim Vihar, Delhi-110063.

Complainant

Versus

1. M/s. Ansal Housing Limited
Regd. office: 2nd Floor, Ansal Plaza, Sector-1,
Near Vaishali Metro Station, Vaishali,
Ghaziabad, Uttar Pradesh-201010.
2. M/s. Samyak Projects Pvt. Ltd.
Regd. Office: 111, Floor-1st, Antriksh Bhawan, 22,
K.G. Marg, New Delhi-110001.

**Respondent
no.1**

**Respondent
no.2**

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Himanshu Gautam (Advocate)
Amandeep Kadyan(R-1)
Shankar Vij (R-2)

Complainant
Respondents

ORDER

1. The present complaint dated 20.05.2024 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 as provided under the provision 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of project	"Ansals Hub 83 Boulevard"
2.	Location of project	Sector-83, Gurugram.
3.	Nature of project	Commercial shop
4.	DTCP License	License no. 71 of 2010 Dated-15.09.2010
5.	HRERA registered	Registered Vide registration no. 09 of 2018
6.	Allotment letter	Not on record
7.	Unit no.	F-163, Type-Shop, Floor-1 st (As on page no. 18 of complaint)
8.	Unit Area	189.50 sq.ft. [carpet Area]

		(As on page no. 18 of complaint)
9.	Agreement for sale [Between complainant, respondent no.1 and respondent no.1 was the confirming party]	23.10.2019 (As on page no. 15 of complaint)
10.	Possession clause	5. Time is Essence <i>The Vendor shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Authority and towards handing over the said unit alongwith parking (if applicable) to the vendee and the common areas to the association of vendees or the competent authority, as the case may be, as provided under Rule2(1)(f) of the Rules, 2017.</i> (As per BBA at page no. 25 of complaint)
11.	Due date of possession	30.06.2021 (31.12.2020- As mentioned on the RERA's website + 6 months on account of Covid-19)
12.	Sale consideration	Rs.32,05,128.44/- (As on page no. 18 of complaint)
13.	Amount paid	Rs.28,20,819/- (As per payment receipts)
14.	Occupation certificate	Not obtained

15.	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:

- I. That the complainant i.e., M/s Mehta Decor is a partnership firm comprising two partners: Mr. Anil Mehta and Mrs. Ashu Mehta. Through a resolution letter dated 20.04.2024, Mr. Anil Mehta has been appointed as the authorised representative of M/s Mehta Decor.
- II. That the complainant provided painting services for both interior and exterior walls across various project sites of the respondent no. 1 between 2015 and 2019. Instead of fulfilling payment obligations for these services, respondent no. 1, offered a shop to the complainant on 31.07.2019, in the "Ansals Hub 83 Boulevard" project located in Sector 83, Gurugram. Accordingly, the shop bearing unit no. F-163 having carpet area of 189.50 sq. ft. and super area of 358.01 sq. ft. was allotted to the complainant.
- III. That on 23.10.2019, the Builder Buyer Agreement (BBA) was entered into between the complainant and the respondent no.1, wherein as per Payment Plan provided under Schedule-C, the complainant had to make payments as follows:
 - (i) Rs.2,86,172.18/-, at the time of booking,
 - (ii) Rs.8,58,516.55/-, 60 days from the date of booking.
 - (iii) Rs.17,17,033.09/-, on offer of possession with Allied Charges.
- IV. That an amount of Rs.28,20,819/- has been paid/adjusted on part of the complainant till the present date which amounts to 98.5% of the total sales consideration of the said unit.

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- V. That as per the details available in Form A-H of the above said project, available on the official website of the Authority, Gurugram, the said project was to be completed by 31.12.2020 and thus possession was also to be handed over by 31.12.2020, but even after a delay of almost 3 years and 2 months, the project has not yet been completed and the respondents are still not handing over the possession.
- VI. That vide notice dated 01.06.2023, the respondent no. 2 asked the complainant to submit KYC documents and sign an unilateral, arbitrary and unlawful Addendum Agreement with respondent no. 2 and threatened that if the complainant doesn't submit KYC documents and sign the Addendum Agreement within 15 days, their rights in the said project would be deemed relinquished.
- VII. That as per the notice dated 01.06.2023, the complainant visited the office of respondent no. 2 on the project site in June 2023 and submitted hardcopies of their KYC documents to the staff members of the respondent no. 2. Staff members of respondent no. 2 asked the complainant to sign the Addendum Agreement also but complainant refused to sign the addendum agreement as it was unilateral and had many unlawful terms and conditions which were contradictory to the provisions of Builder Buyer Agreement as well as orders of the Hon'ble Sole Arbitrator Justice A. K. Sikri.
- VIII. That after submitting KYC documents to respondent no. 2, the complainant asked the respondent no. 2 to provide them receipt acknowledgement of the KYC documents. But instead of providing any acknowledgment respondent no. 2 refused to recognize the complainant's rights as allottees on grounds that respondent no. 2 is not a confirming party in their Builder Buyer Agreement. This matter

has also been put before the Sole Arbitrator Justice A. K. Sikri for his consideration and vide order dated 11.10.2022, the Hon'ble Sole Arbitrator directed the respondents to sit together to resolve the dispute between them and also directed respondent no. 2 not to create further interest in respect of the shops sold by the respondent no. 1.

- IX. That repeated calls, meetings and correspondences with the respondents and multiple visits to know the actual construction status not only caused loss to the complainants in terms of time, money and energy but also caused mental agony to him.
- X. That the cause of action arose in favour of the complainants and against the respondents from the date of booking of the said unit and it further arose when respondents failed/neglected to deliver possession of the said units within a stipulated time period. The cause of action further arose when the respondents has not completed the said project with the assured facilities and amenities. It further arose and it is continuing and is still subsisting on day-to-day basis as the respondents has still not rectified his defects and not fulfilled their obligations as per the Builder Buyer's Agreement. Hence, the present complaint is being filed.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):-
- Direct the respondents to pay interest for every month of delay the prescribed rate since 31.12.2020 (due date of possession) as per section 18(1) of Real Estate (Regulation and Development) Act, 2016.
 - Direct the respondents to complete the project in expeditious manner and offer the possession of the shop bearing no. F-163 in the project "HUB 83 Boulevard" located in Sector 83, Gurgaon along with all the

promised amenities and facilities and to the satisfaction of the complainants.

- iii. Direct the respondents to execute the conveyance deed in favour of the complainant with respect to the said shop.
- iv. Direct the respondents to commit a date for offering the possession by submitting an affidavit before the Authority.

D. Reply filed on behalf of respondent no.1 :

5. The respondent no.1 i.e., M/s Ansal Housing and Construction Limited has made the following submissions:

- I. That the complainants had booked shop bearing no. F-163 in their own name in an upcoming project "Ansal Boulevard", Sector 83, Gurugram of the answering respondent. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. a Builder Buyer Agreement was entered dated 23.10.2019 was signed between the parties as per claim of the complainant.
- II. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2019 without coercion or any duress cannot be called in question today. It is submitted that the clause 7.6 of the builder buyer agreement provides for compensation in the event of a delay in giving possession. However, the same clause also provides for the exception that the vendor shall not be liable to pay compensation in case of occurrence of "Force Majeure" and the present project is delayed due to force majeure and not because of the default of the respondent.
- III. 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.

- IV. That the answering respondent has adequately explained the delay. 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.
- V. 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 7.6 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 due to force majeure.
- VI. That the answering respondent has clearly provided in 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 Authority.

- VII. That the complainant had signed and agreed on Builder Buyer Agreement dated 23.10.2019. 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.
- VIII. That the perusal of the Builder Buyer Agreement 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 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."*
- IX. 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. and not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd.
- X. That in the arbitral proceedings 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.
- XI. That in order to give a complete picture of the dispute ongoing, it is relevant to brief out the facts of the case from the very outset. It is



submitted that M/s Samyak Projects Private Limited, is the title holder the plot of land, admeasuring 2.60 acres equivalent to 20 Kanal 16 Marlas comprised under Kewat No. 101 Khata No. 110 Rect. No. 58 Killa No. 20/2 min (1-3), 20/ 1/2min (0-8), 21/1/1 1min (2-9) Rect. No. 59 Killa No. 16/1/2 (0-19), 16/2/1 (2-11), 25/1/2 min (5-17), total land admeasuring 13 Kanal 7 Marlas and Khewat No. 292 Khata No. 316 Rect. No. 59 Killa No. 25/1/3min (0-5) 25/2min (0-8), Rect. No. 62 Killa No. 5min (1-18) total land admeasuring 2 Kanal 11 Marlas and Khewat No. 293 Khata No. 317 Rect. No. 58 Killa No. 20/1/1min(1-8) Rect. No. 59 Killa No. 16/1/1 (3-10) total land admeasuring 4 Kanal 18 Marlas situated in Village Sihi, Tehsil & District Gurgaon in Sector 83 of Gurgaon Manesar Urban Complex Master Plan.

- XII. The respondent no.2 approached the respondent no.1 for development of a commercial project to be developed over the said parcel of land, and pursuant to several discussions, negotiations and after bargain, respondent no.1 entered into a Memorandum of Understanding with respondent no.2 on 12.04.2013, for the purpose of development and construction of a commercial complex on the aforesaid parcel of land.
- XIII. At the time of execution of the MoU i.e., in April 2013, respondent no.1 also paid a Non-Refundable Security Deposit of Rs.4,00,00,000/- to the respondent no.2 , as per the understanding of the parties under Clause 13 of the said MoU, receipt of which was acknowledged by respondent no.2
- XIV. As far as the revenue sharing between the parties was concerned, it was mutually agreed between the parties that revenue generated from this project will be at 55:45 between respondent no.1 and respondent



no.2 respectively.

- XV. The sharing *ratio* in the MoU was also framed/designed in such a manner, that for the first 75 crores received as sale consideration, respondent no.2 shall get 75% of the same and merely 25% comes to respondent no.1, as per Clause 15 of the MoU. The final sharing *ratio* was 45% to respondent no.2 and 55% to respondent no.1, hence respondent no.1 was entitled to receive a substantial amount at the later stage of the construction.
- XVI. That the respondent no.1 also had financially assisted respondent no.2 to the tune of Rs.32.5 crores, to get abovementioned parcel of land transferred from the erstwhile owner in its own (Samyak's) name.
- XVII. That the respondent no.1 was constructing the project at a rapid pace, however, Samyak was causing regular impediment like delay in repayment of the advance of Rs.32.5 crores, and further not cooperating in the other compliances. Also, in November 2016, when the Government of India banned the 500 & 1000 rupees note, the same made a huge impact on the pace of construction of any real estate project. It is a matter of common knowledge, that major part of transactions, be it payment to contractors, labours etc. are done through cash only and banning the same, adversely affected the construction in the year 2016-17. The Hon'ble Punjab & Haryana High Court in the year 2012-2015 had banned the ground water extraction in the reign of Haryana, reason of which the water supply completely stopped in the construction site. This compelled the claimant to get the supply of water from tankers etc. which goes without saying, was very less in supply if compared to earlier.
- XVIII. In 2016, during the Jat Agitation in Haryana, trains and buses were



- stopped & burnt, which not only prevented innumerable labours from reaching the site but also the tractors & trollies of suppliers which highly affected the pace.
- XIX. In April 2015 & November 2015, and further in 2016 -18, the Hon'ble National Green Tribunal also directed to stop construction in Delhi NCR to prevent emission of dust which made the construction at a standstill.
- XX. In addition to the abovesaid, the nation came to a standstill after the outbreak of Covid-19 in the entire world. The period wherein the lockdown was imposed and wherein the labourers migrated to their native places, made it impossible to have any kind of construction from March 2020 – August 2020. That, even after August 2020, the pace of the construction was not very rapid, given the fact that there was shortage of labourers and also since the Covid -19 was also at its peak, pace was much slower if compared to pre-corona times.
- XXI. When respondent no.2 had enough of the share from the sale proceeds, in order to arm twist respondent no.1, sent a notice for termination dated 10.11.2020, and terminated the MoU dated 12.04.2013.
- XXII. Pursuant to the illegal termination, respondent no.1 approached the Hon'ble Delhi High Court under Section 9 of the Arbitration & Conciliation Act 1996, and sought an interim direction to restrain respondent no.2 from creating any third-party interest. Simultaneously, respondent no.1 invoked the dispute resolution clause of the MoU and approached the Hon'ble High Court for appointment of a Sole Arbitrator, and wherein the Hon'ble High Court, appointed Justice Arjan Kumar Sikri, Former Judge, Supreme Court of

India, as a Sole Arbitrator.

- XXIII. The Petition u/s 9 of the Arbitration & Conciliation Act 1996, was converted into an Application u/s 17 of the Act, and the interim relief which was sought before the Hon'ble High Court was therefore sought before the Learned Sole Arbitrator.
- XXIV. During the pendency of the abovementioned application, the Arbitral Tribunal vide Procedural Order No. 04 dated 05.03.2021, directed both the parties, to submit their respective proposal for taking over the task of completion of the balance construction work of the project. In compliance of such direction, both the parties had submitted their respective proposal(s).
- XXV. Although, respondent no.1 itself was competent enough to complete the project on its own within a period of fifteen months, as assured by it through its proposed plan of action, but since respondent no.2 had proposed to complete the balance construction within a period of 10 months, Ansal, without *prejudice* to its legal rights, remedies and claims, consented (by filing an application) to the proposal submitted by the respondent for completion of the balance construction work of project, in the interest of project, and to ensure that the dispute between the promoters must not hamper the interest of the project.
- XXVI. That in compliance of the Order dated 13.10.2021 of the Arbitral Tribunal, the physical possession of the project site was handed over by respondent no.1 to respondent no.2 on 14.10.2021 at 3:00 P.M. The entire records of the project, viz. Customer Ledgers, Builder Buyer Agreements, Title Deeds, Fire NOC, Building Plans etc. were shared with the respondent no.2 via Google Drive, vide Email dated 21.10.2021.

- XXVII. Furthermore, it was undertaken by respondent no.2, which is recorded in the Order dated 02.09.2022, that the overall construction of the project shall be completed within 9 months, i.e., by the end of June 2023.
- XXVIII. During the proceedings held in 11.10.2022, respondent no.1 had informed the Arbitral Tribunal, that some of the allottees of the subject project are approaching it with the grievances' that respondent no.2 is not recognising their rights as flat buyers, and is instigating those allottees to file cases against respondent no.1. On such information, respondent no.2 made a baseless excuse, of there not being a Tripartite Agreement (*between the Samyak, Ansal and the Allottee*), and therefore, the respondent no.2 is not recognising the allottees. This fact is recorded in the Order dated 11.10.2022.
- XXIX. Pertinent to mention, that in terms of the MoU dated 12.04.2013, respondent no.1 was authorised to enter into Agreement(s) with any allottee, and there was no requirement for ratification of the respondent no.2, being a landowner. At the threshold after the execution of the MoU, there were some agreements, wherein, respondent no.2 being the Landowner, had also affixed its seal in the Builder – Buyer Agreements; however, after sometime, respondent no.1 was executing Bilateral Agreements with the Allotees, on the strength of the MoU, as respondent no.2 was not cooperating. Furthermore, those allottees have also made the payments through banking channel to respondent no.1, and all these details, be it the Builder Buyer Agreement and the Customer Ledger, are already provided to respondent no.2 via the Google Drive sent through email on 21.10.2021.

- XXX. A perusal of the Order dated 11.10.2022, makes it abundantly clear, that the Arbitral Tribunal, had explicitly directed respondent no.2 to not create any third party rights over any unit, until and unless this issue of bilateral agreement is resolved.
- XXXI. Furthermore, on 04.05.2023, in order to resolve the abovementioned, it was further directed by the Arbitral Tribunal to respondent no.2 to visit the office of respondent no.1 on 08.05.2023 at 11:00 am, and to satisfy itself with the genuineness of all bilateral builder buyer agreement. On the directions of the Arbitral Tribunal, the Representatives of the respondent no.2 also visited the Office of respondent no.1 on 17.05.2023; however, despite verifying all the documents, neither any clarity was given by respondent no.2, nor respondent no.2 desisted from its *mala fide* actions.
- XXXII. Pertinent to mention, pursuant to the meeting held on 17.05.2023, despite not finding any lacuna on any transaction, started persuading the allottees to sign an Addendum Agreement with respondent no.2. The attempt to sign addendum agreements with allottees by respondent no.2 is unnecessary and unwarranted. At the time of handing over the project site to respondent no.2, it was expressly mentioned, that respondent no.2 shall be entitled to only enter into agreements with new allottees and not with existing allottees. The agreements entered by respondent no.1 with the existing allottees are valid and subsisting, and therefore, there is no requirement signing any addendum agreement.
- XXXIII. The Arbitral tribunal in its Order dated 02.09.2022, has made it clear, that respondent no.2 shall communicate with the existing allottees only to the extent of collecting sale considerations from them. The act

of respondent no.2 to execute addendum agreement with the allottees goes completely against the Order(s) and undertaking given to the Arbitral Tribunal.

- XXXIV. Again, during the hearing held on 29.07.2023, it was directed by the Arbitral Tribunal, in order to resolve the issue of bilateral agreement, to send a list of all the allottees, along with all necessary particulars to respondent no.2. It was further directed that respondent no.2 within a week of receiving such information, shall submit its comment with respect to those allottees, to which the dispute remains.
- XXXV. Undisputedly, the said list, along with all necessary credentials were supplied to respondent no.2 *vide* email dated 16.09.2023, however, till date, i.e., almost 7 months since supplying of such information, it has not replied or filed any comment citing objection to any such allotment. Hence, since it is unrebutted, it means that respondent no.2 has admitted all the allotment.
- XXXVI. Despite the abovementioned, respondent no.2 in a blatant violation of the Order dated 11.10.2022, and all further subsequent order(s), have not only started to cancel the units, but have also started to create third party rights over the same.
- XXXVII. On 14.10.2023, when the project site was handed over to respondent no.2 for the balance construction work, respondent no.2 was obligated to raise its own funds for the said purpose, and shall not dependent upon the sale receivables of the allottees. Furthermore, the scope of the entrusting the balance work to respondent no.2 was very limited, and it does not entitle respondent no.2 to issue cancellation letters to the allottees. By issuing these cancellation letters to the allottees, respondent no.2 has violated the Order dated 02.09.2022 of

the Arbitral Tribunal.

XXXVIII. Cancelling allotments are nowhere aiding the pace of construction, and is not only creating havoc amongst the allottees. The respondent no.2 was obligated to only complete the construction, and the project has not been handed over to respondent no.2; however, respondent no.2 being the flagbearer of contemptuous acts, is deeming the subject project as its own project and is flouting the order(s) of the Arbitral Tribunal, as the order(s) doesn't matter at all

XXXIX. The act of respondent no.2 to cancel the allotments and create third party rights is beyond the authority given by the Arbitral Tribunal, and therefore, all the acts of respondent no.2 to cancel the allotment and the creation of the third-party rights may be held as void, and illegal.

E. Reply on behalf of the respondent no.2 i.e., M/s. Samyak Projects Private Limited

6. The respondent no.2 i.e., M/s. Samyak Projects Private Limited has made following submissions:
 - I. That the present application filed by the complainant under section 36 of the Act, 2016 with respect to unit no F-163 having carpet area of 189.50 sq. ft. and super area of 358.01 sq. ft. in the said project i.e. "Ansal Hub 83 Boulevard." That the application is liable to be dismissed at the outset as the complainant has no cause of action against the respondent no.2 .
 - II. It is pertinent to mention that no Builder Buyer Agreement was executed between the respondent no. 2 and the complainant and there is no privity of contract between the complainant and respondent no. 2.

- III. That a bogus "Agreement to sell" was executed between respondent no.1 and the complainant wherein the respondent no. 2 was neither a party to the agreement to sell nor the same was executed in the presence of respondent no. 2. Hence, no cause of action accrued in the favour of the complainant as against the respondent no.2.
- IV. It is submitted that there are no financial transactions in the books of account with respect to the above mentioned unit. That as per the receipts issued by the respondent no 1 it is evident that the same are certain adjustments made by respondent no 1. The complainant did not paid even the booking amount towards the alleged unit.
- V. That the respondent no.2 has no obligation / liabilities towards the complainant as there is no financial transactions in the books of accounts of respondent no.2 with respect to the said unit and hence, It is a settled proposition of law that without consideration an agreement is "Nudum Pactum" i.e. void ab initio.
- VI. That neither the complaint filed by the complainant nor the present application is maintainable in the eyes of law, as the complainant has not paid even the 10% of the total sale consideration of the said unit to the respondent. Moreover, there are receipts of only adjustments made by respondent no.1 which reflects the ill and malicious intention of c and the liability/onus to prove the same is on respondent no.1.
- VII. Furthermore, respondent no.2 is neither confirming party or the recipient of any amount, thus there is no privity of contract between the complainant and respondent no. 2 in the present case.
- VIII. 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 Authority with unclean hands and has impleaded the respondent no. 2 without any cause of action.

- IX. That it is submitted that it is a bogus transaction and so-called adjustments made by respondent no. 1 are not considered to be any sort of financial transaction pertaining to the unit allotted in the project and thus 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.
- X. It is therefore most respectfully prayed that keeping in view the aforesaid acts this Ld. Authority may be pleased to dismiss the present application and make only respondent no-1 liable towards the complainant.
7. 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:

8. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.1 Territorial jurisdiction

9. 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

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

10. 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 objections raised by the respondents

G.I Objection regarding delay due to force majeure circumstances

11. The respondent no.1 has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Punjab and Haryana High court, Hon'ble NGT, shortage of labour, demonetisation, outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so

taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the 'Builder Buyer Agreement was executed between the parties on 23.10.2019. As per clause 5 of the Agreement dated 23.10.2019, the due date for offer of possession of the unit

5. Time is Essence

The Vendor shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Authority and towards handing over the said unit alongwith parking (if applicable) to the vendee and the common areas to the association of vendees or the competent authority, as the case may be, as provided under Rule2(1)(f) of the Rules, 2017.

[Emphasis supplied]

12. As per the details available on the website, the date of completion of the project as disclosed at the time of registration of the project with the Authority is 31.12.2020. The Authority vide notification no. **9/3-2020** dated **26.05.2020** have provided an extension of 6 months for projects having completion date on or after 25.05.2020, on account of force majeure conditions due to the outbreak of Covid-19 pandemic and the same is also allowed to the respondent in lieu of the notification of the Authority. Thus, the due date of possession comes out to be 30.06.2021.
13. The respondent no.1 have submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, shortage of labour etc but these were for a short period of time and are the events happening every year. The respondents were very much aware of these event and thus, the promoter/ respondent cannot be given any leniency based on the aforesaid reasons.

G.II Objection regarding no privity of contract between the respondent no.2 and complainant and that neither the respondent no.2 is a confirming party to the agreement for sale nor has ever received any consideration from the complainants.

14. The respondent no.2 has raised an objection that the respondent no.2 is not a party to the agreement and the agreement was executed between complainant and respondent no.1 and thus, there is no privity of contract between the complainant and the respondent no.2. The Authority observes that a Builder Buyer Agreement has been executed between the complainant and the respondent no.1 and the respondent no.2 is not a confirming party to the said agreement. It is observed that the complainant has not made any monetary payments towards the allotment of the subject unit, either to respondent no.1 or to respondent no.2. The payment receipts annexed with the complaint appear to be mere internal adjustments made by respondent no.1 in lieu of services rendered by the complainant to respondent no.1. Instead of making payment for the said services, respondent no.1 allotted the subject unit to the complainant and issued receipts accordingly. As per the proceedings dated 19.03.2025, respondent no.1 has submitted that it has no objection to the reliefs sought by the complainant. However, learned counsel for respondent no.2 has objected to the said receipts and contended that the amounts reflected therein pertain to adjustments against an allotment made by respondent no.1 in a separate project.

15. The Authority is of the view that there is no privity of contract between the respondent no.2 and the complainant and thus no directions are granted by the Authority against the respondent no.2 and it is solely the

responsibility of respondent no.1 to complete and handover the unit to the complainant and also pay delayed possession charges to the complainant.

H. Findings on the relief sought by the complainant.

H.I Direct the respondents to pay interest for every month of delay the prescribed rate since 31.12.2020 (due date of possession) as per section 18(1) of Real Estate (Regulation and Development) Act, 2016.

H.II Direct the respondents to complete the project in expeditious manner and offer the possession of the shop bearing no. F-163 in the project "HUB 83 Boulevard" located in Sector 83, Gurgaon along with all the promised amenities and facilities and to the satisfaction of the complainants.

H.III Direct the respondents to execute the conveyance deed in favour of the complainant with respect to the said shop.

H.IV Direct the respondents to commit a date for offering the possession by submitting an affidavit before the Authority.

16. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainant was allotted a shop bearing no. F-163, on the First Floor, in the project "Ansal Hub 83 Boulevard" situated in Sector 83 of the respondents for a sale consideration of Rs.32,05,128.44/- . The Agreement For Sale dated 23.10.2019 was executed between the complainant and respondent no. 1 wherein respondent no. 2 was not the confirming party. As per clause 5 of the Agreement dated 23.10.2019, respondent no. 1 was obligated to complete the construction of the project and hand over possession of the subject unit by 31.12.2020. The occupation certificate for the project has not yet been obtained by the respondent from the competent authority.
17. The 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.

18. The complainant (respondent no.1 herein) 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.

19. The Authority is of the view that the Builder Buyer Agreement dated 23.10.2019 was signed by the complainant and the respondent no. 1. The respondent no. 2 is not a confirming party to that Agreement. The Authority further observes that the Occupation Certificate for the project is yet to be received and the project is not yet complete.
20. The Authority observes that, in the present matter, the complainant-allottee has not made any direct monetary payment towards the allotment of the subject unit. The payment receipts placed on record by the complainant, as annexed from page nos. 52 to 60 of the complaint and amounting to ₹28,20,819/-, have been issued by respondent no.1 and are titled as 'Adjustment Receipts.' These receipts pertain to adjustments made by respondent no.1 in consideration of services rendered by the complainant in connection with other projects undertaken by respondent no.1, and not in respect of any actual payments made by the complainant towards the allotment of the subject unit. For eg., payment receipt dated 31.07.2019 annexed on page no. 52 of complaint remarked as **"Adjustment Receipt. ADVANCE BOOKING OF SHOP NO F-163"**, the payment receipt dated 12.08.2019 annexed at page no. 53 of the complaint is remarked as **"Fresh Booking. Adjustment Receipt. Adjustment from 11 RA WO: ALW173 PA-151841"**, payment receipt dated 12.08.2019 annexed at page no. 54 of complaint remarked as **"Adjustment Receipt. Adj. from 4RA WO:2450130 Sec-86 PA-161709"**, Payment receipt dated 12.08.2019 annexed at page no. 55 of complaint remarked as **"Adjustment Receipt . adj. from 1 RA WO:1410073 Sumanglam PA-16170"**, Payment receipt dated 12.08.2019 annexed at page no. 56 of complaint remarked as **"Adjustment Receipt. Adj. from 12RA WO : ALW-173 PA-156417"**, Payment receipt dated 12.08.2019 annexed at page no. 57 of complaint

remarked as **"Adjustment Receipt. Dj. From 3 RA WO: 2420151 Sec-92 PA-161708"**, Payment receipt dated 14.10.2019 annexed at page no. 58 of complaint remarked as **"Adjustment Receipt. Adj. from RA WO 2450252 PA-163604 sec-86"**, Payment receipt dated 14.10.2019 annexed at page no. 59 of complaint remarked as **"Adjustment Receipt. Adj. frm 5 RA WO 2450130 PA-163607 sec-86"**, Payment receipt dated 06.12.2019 annexed at page no. 60 of complaint remarked as **"Adjustment receipt. Adjustment from 13/F RA WO :ALW 173 PA-164696"**. It can be clearly construed from the above that the said payment receipts were mere adjustments and no actual money was paid by the complainant. So there arises no question of holding respondent no.2 responsible for something that has been done without its involvement in it, here the services were offered to respondent no.1 and in furtherance of the services, the subject unit was allotted to the complainant by respondent no.1.

21. In view of the above facts and circumstances as well as the fact that the arbitration proceedings between respondent no.1 and respondent no.2 are still ongoing, the Authority is of the considered view that the liability under provisions of Section 18(1) of the Act & Rules read with builder buyer agreement shall be borne by respondent no.1 and the liability to handover the unit shall also lie with the respondent no.1.
22. The complainant intend to continue with the project and are seeking delay possession charges interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

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

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

23. Due date of possession and admissibility of grace period: As per clause 5 of the agreement dated 23.10.2019, the possession of the allotted unit was supposed to be offered within a stipulated timeframe that has been disclosed at the Authority's website i.e., 31.12.2020. Further, a unqualified grace period of 6 months is granted to the respondent over and above 31.12.2020. Hence, the due date comes out to be 30.06.2021 including grace period of 6 months on account of Covid-19.

24. 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]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

25. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases. 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., 23.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

26. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

27. Therefore, interest on the delay payments from the complainant 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.
28. 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 respondents are 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 5 of the agreement dated 23.10.2019, the possession of the subject unit was to be delivered within stipulated time schedule i.e., by 31.06.2021. However, till date no occupation certificate has been received by respondent and neither possession has been handed over to the complainant till date.
29. The Authority is of considered view that there is delay on the part of the respondent no.1 to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement dated 23.10.2019. Accordingly, it is the failure of the respondent no.1 to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
30. 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 no.1 is established. As such, the allottee shall be paid by the respondent no.1 interest for every month of delay from the due date of possession i.e., 31.06.2021 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.,

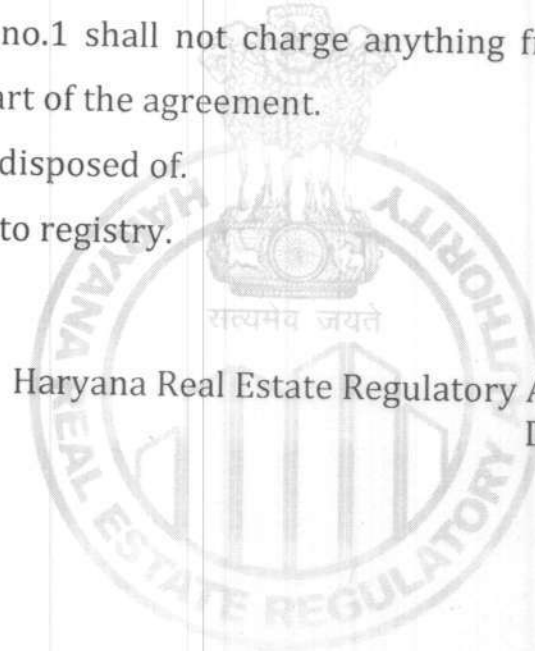
11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

I. Directions of the authority

31. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent no.1 is 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., 31.06.2021 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.
 - ii. The respondent no.1 is directed to hand over the actual physical possession of the unit to the complainant within 2 months after obtaining occupation certificate
 - iii. The rate of interest chargeable from the allottee 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.
 - v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - vi. The arrears of such interest accrued from 31.06.2021 till the date of order by the Authority shall be paid by the promoter to the allottee within a

period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules..

- vii. The respondent no.1 is directed to execute Conveyance Deed in favour of the complainant within a period of three months after obtaining the Occupation Certificate, on the payment of the requisite stamp duty, charges etc.
- viii. The respondent no.1 shall not charge anything from the complainant which is not the part of the agreement.
32. Complaint stands disposed of.
33. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.07.2025

HARERA
GURUGRAM