

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

Complaint no. : 517 of 2024
Date of filing : 12.02.2024
Date of decision : 01.07.2025

Jagat Singh

R/o: # 1187/21, Prem Nagar, Hafed Road, Street no.
8R, Rohtak, Haryana

Complainant

Versus

1. M/s Ansal Housing Ltd. (Formerly known as Ansal Housing & Construction Ltd.)
Regd. Office: 15 UGF, Indraprakash, 21, Barakhamba 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
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Sh. Rohan Agarwal (Advocate)
Sh. Amandeep Kadyan (Advocate)
Sh. Shanker Wig (Advocate)

**Counsel for Complainant
Counsel for Respondent no. 1
Counsel for Respondent no. 2**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name of the project	"Ansal Hub 83 Boulevard", Sector-83, Gurugram
2.	Total area of the project	2.60 acres
3.	Nature of the project	Commercial complex part of residential colony
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid up to and 71 of 2010 dated 15.09.20210 valid up to
5.	Name of licensee	Buzz Estate Pvt. Ltd. & others.
6.	Registered/not registered	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres Valid up to 31.12.2020
7.	Unit no.	F-011 [pg. 45 of complaint]
8.	Area of the unit	323 sq. ft. [pg. 45 of complaint]
9.	Date of execution of BBA	05.12.2014 [pg. 43 of complaint]
10.	Possession clause	Clause 30. <i>30. The Developer shall offer possession of the Unit any time within a period of 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 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.</i>

		(Emphasis supplied) [page 49 of complaint]
11.	Due date of possession	05.12.2018 (Note: 42 months from date of agreement i.e., 05.12.2014 + 6 months of grace period is allowed)
12.	Sale consideration	Rs.31,88,969/- (as per page 53 of complaint)
13.	Total amount paid by the complainant	Rs.23,07,790/- (as per receipts at page no 54-62 of complaint)
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That the complainant is a citizen of India and has invested in the Unit No. F-011, in the Respondent's Project namely Ansals Hub, 83 Boulevard, Sector 83, Gurgaon, Haryana (hereinafter referred to as "the project") being constructed by the Respondents.
 - b. That the respondent no. 1, a real estate major, in early 2013 approached the Complainant for investment in commercial Units in 'Ansals Hub' of approximately 323 sq. feet super area with 181.91 sq. ft. carpet area, and handed over to the Complainant prospectus/ brochure enticing the Complainant to invest in the project.
 - c. The Respondents assured the Complainant that the project will be completed in 1460 days and the Complainant will be handed over the possession of the project at the latest by March, 2017. The Respondent further assured that a Schedule of Construction Linked Payment Plan will be mutually agreed upon between the parties and the payments will



be paid in instalments upon the completion of the relative Stage of construction, which is reflect in the Builder Buyer Agreement.

- d. That only upon the abovesaid explicit assurances made by the Respondent, the Complainant invested in the project by way of making a down payment of ₹5,00,000/- as the first instalment by way of cheque number 084192 (SBI bank) drawn on 14.05.2013 payable to Respondent and the Respondent issued receipt for the said payment of booking amount. It is pertinent to note here that the Respondent took the payment dated 06.05.2016 fraudulently before the commencement of the relative stage of construction. It may be further noted that the said payment was scheduled to be due upon the commencement of construction of 1st floor Slab of the Project. However, the construction of 1st Floor Slab has not commenced till this date. When the Complainant came to know about this, he raised concerns and wrote his grievance to the Respondent. In order to avoid a Legal Action, the Respondent made a payment and adjusted an amount of ₹1,76,834/- in form of the next instalment dated 26.04.2018 and showed it as a payment made by the Complainant.
- e. That the Parties entered into the Builder Buyer Agreement dt. 05.12.2014 under which the Complainant was allotted with the Unit No. F-011 in the project for a total consideration of ₹32,00,872/-. That after entering into the Agreement also, the Complainant made all the payments duly, as and when called for, in compliance of the Agreement, as well as in advance.
- f. It is reiterated for emphasis that, it was specifically agreed amongst the parties that the Respondent will complete the project in the given time and the Complainant will be handed over with the possession of the unit by year 2017. It is further reiterated that the Complainant made all the



payments promptly, whenever called upon and sometimes even well in advance. The Complainant has made a total payment of ₹23,89,291/- i.e., around 75% of the total consideration value of the Unit allotted to the Complainant as per the Agreement, till the date of filing of this Complaint.

- g. That the Respondent took the payments on 06.05.2016 and again 26.04.2018, which were to be given on the Commencement of 1st Floor and 2nd Floor Roof Slab. That the Respondent misrepresented that the construction of 2nd Floor Roof slab had begun, however, it was a blatant deception in order to get the money as the construction of even the 1st floor roof slab had not commenced.
- h. That, further, the Respondent even issued Receipts of payment as well as the Copy of Customer Ledger maintained by the Respondent No. 2 in the name of the Complainant, which correspond and re-affirm the receipt of payment by the Respondent. That even after receiving prompt and timely payments by the Complainant, Respondent failed to comply with his obligations under the Agreement. The Respondent failed to complete the construction of the Project within the agreed time and therefore Complainant suffered losses including loss of opportunity to establish a shop/business in his allotted unit. It is pertinent to note here that the Respondent had promised for a penal interest over the deposited amount, in case of delay in handing over the possession of the Unit. The Ledger maintained by the Respondent No. 1 clearly shows the entries of Adjustment Interest, which further corroborates Complainant's averment. However, the Respondent suddenly stopped paying the penal interest in Dec, 2020 and started raising unlawful demands from the Complainant. A sum of ₹1,23,000/- (approximately) had been accrued upon the Respondent.



- i. The Complainant wrote many Mails and Representations addressing the concerns over delay in handing over of the allotted unit and regarding the pending penal interest, however the Respondent did not heed over it. The Complainant even sent Legal Notices to the Respondent, however, they remain unanswered. The Respondent replied to the same only after issuance of multiple Reminder Notices.
- j. In October 2021, Complainant came to know that the Respondent No. 1 has declared that he will not be able to complete the project and that the Respondent No. 1 will step in the shoes of the Promoter and will undertake the obligation to complete the project now. After that, the Complainant was asked by the Respondent No. 2 to issue a NOC certifying that the Complainant has no objection with the Respondent No. 2 taking over the development of the project and further demanded the payment of all the remaining balance amount of the total consideration. The Respondent No. 2 also requested for furnishing of all the documents/data in relation to the purchase of the Unit in order to do the requisite KYC process.
- k. That the Complainant refused to make any further payments as he has already paid in excess to the amount that was actually due according to the stage of construction, and also since no penal interest was paid to the Complainant on account of the delay in handover of possession. However, to show the bona-fide Complainant duly submitted all the documents as were sought, to show his bona-fide and further to assert that he has already paid around 75% money. The Complainant submitted that his Original Agreement was with the Respondent No. 1 and the payment schedule as agreed upon, clearly stated that next instalment will be due only upon completion of the relative stage of construction. He further stated that he shall not issue a NOC, as sought,



until the Respondent No. 2 gives the new date of completion of project and the date of handing over of the possession of unit.

- l. That the Complainant refused to accept the unilateral changes in the Agreement made by the Respondents, Respondent No. 2 issued a Legal Notice dated 12.12.2023 against the Complainant cancelling the Allotment of his unit and threatening to create a third party right over the unit. The Complainant was shocked and surprised by this act robbing the complainant by the Respondent.
- m. That the Complainant duly replied to the said Legal Notice vide his Reply Notice dt. 23.12.2023 mentioning the illegalities in the unilateral Cancellation of the Allotment and thereby submitting that the Cancellation Notice is bad in law and does not hold any value in the eyes of law.
- n. That the Complainant finds it rather shocking that after having paid an amount of ₹23,89,291/-, i.e. around 75% of the total consideration as per the agreed terms and understanding, the Respondents are abusing their dominant position as a developer and are unilaterally seeking to coerce the Complainants to sign NOC without assuring the date of completion of project and are demanding the full payment without handing over the possession, under threat of cancellation of their Unit.
- o. That the Respondents wish to shy away from their liabilities under the Executed Builder Buyer Agreement in order to deprive the Complainant of the allotted unit and the money he paid for the same and, therefore, the Respondents have been forcing the investors to issue a NOC in favour of the Respondents.
- p. That, as the Complainant has refused to bow down to the unilateral demands of the Respondents, Respondent No. 2 has issued the Cancellation Letter against the rights of the Complainant. The



Complainant apprehends that the Respondent can create a third-party interest upon the allotted unit in the project, and thereby deprive the Complainant of his rights.

- q. That it is submitted that the Complainant is constrained to file this present Complaint to secure his rights over the allotted unit and/or ensure that his payment of ₹23,82,642/- is not illegally forfeited by the Respondents. In view of the aforesaid facts and circumstances, the Complainants are left with no other alternative but to file the present complaint.
- r. That the cause of action for filing of this Complaint had firstly arisen in early 2013, when the Respondent No. 1 approached the Complainant for the first time and induced the Complainant to invest in the Project, by making false promises to him. Cause of Action also arose on 05.12.2014 when the Respondent No. 1 fraudulently entered into the Builder Buyer Agreement with the Complainant, on false pretexts. Cause of Action also arose when the Unit was allotted to the Complainant vide the Builder Buyer Agreement. Further Cause of Action arose when Respondent No. 1 started deceptively charging instalments from the Complainant, and Complainant paid the said instalments, even before the Completion of relative stage of construction started. Cause of Action arose on every occasion when the Respondent failed to pay the Penal Interest to the Complainant imposed upon complainant for not delivering the possession of the Unit in due time.
- s. That the Cause of Action also arose on each and every date when the Complainant mailed or sent his Representation, Legal Notice or Reminder Notice to the Respondent, stating his grievances. Cause of Action further arose in Oct, 2021 when the Respondent No. 1 declared that he will not be able to complete the project and unilaterally



appointed Respondent No. 2 to step in the shoes of the Promoter and undertake the obligation to complete the project now.

- t. Thereafter, cause of action has arisen on every day when the respondent no. 2 has issued any communication, representation or legal notice, in capacity of a promoter. The cause of action also arose when the respondent no. 2, unlawfully cancelled the allotment of the unit allotted to the complainant, for the sole reason that the complainant refused to bow down to the unlawful monetary demands of the respondent no. 2. The cause of action has also arisen when the respondent omitted to comply with the complainant's reply notice dated 23.12.2023. Further, the cause of action is still continuing against the respondent, hence the instant complaint.

C. Relief sought by the complainants

4. The complainant has sought the following reliefs:
 - a. Direct respondent to give delay possession charges from the due date of offer of possession till the actual handing over of physical possession.
 - b. Refrain the respondent from cancelling the unit of the complainant.
 - c. Restrain the respondent from creating third party rights.
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 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 2024 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 05.12.2014. That perusal of the said agreement



would show that it is a Tripartite Agreement wherein M/s Samyak Projects Pvt. Ltd. is also a party to the said agreement.

- j. That the perusal of the Builder Buyer Agreement at page 3 would show that M/s Samyak Projects Pvt. Ltd. not only possesses all the rights and unfettered ownership of the said land whereupon the project namely Ansal boulevard, Sector 83 is being developed, but also is a developer in the said project. That the operating lines at page 3 of the Builder Buyer Agreement are as follow: "The Developer has entered into an agreement with the Confirming Party 3 i.e., M/s Samyak Projects Pvt. Ltd. to jointly promote, develop and market the proposed project being developed on the land as aforesaid."
- k. The said M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the said project well within time as was agreed and given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd. That in an arbitral proceeding before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. has taken over the present project the answering Respondent for completion of the project and the Respondent has no locus or say in the present project.

E. 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. F-011 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. F-011 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 handing 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. Direct respondent to give delay possession charges from the due date of offer of possession till the actual handing over of physical possession.

G.II. Refrain the respondent from cancelling the unit of the complainant.

G.III. Restrain the respondent from creating third party rights.

13. In the present matter the complainant was allotted unit no. F-011, admeasuring 323 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder vide BBA dated 05.12.2014 wherein the respondent no. 2 was the confirming party for sale consideration of Rs.31,88,969/- and they have paid a sum of Rs.23,07,790/-. As per clause 30 of the BBA, respondent no. 1 was obligated to complete the construction of the project and hand over the possession of the subject unit within a period of 42 months from the date of obtaining all the required sanctions and approval necessary

for commencement of construction, whichever is later. The due date of possession is calculated from date of execution of BBA i.e., 05.12.2014. 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. Hence 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.

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 apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

xxxxxxx"

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 both the respondents. 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 a period of 42 months from the date of execution of agreement or 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 42 months from date of BBA i.e., 05.12.2014. The due date of possession comes out to be 05.12.2018 including grace period of 6 months. 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., 01.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
25. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
27. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 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. 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.
28. 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 respondents/promoters 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.


29. 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(2) of the Act of 2016, within two months after obtaining occupation certificate from the competent authority

H. Directions of the authority

30. 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.
- 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.
31. Complaint stands disposed of.
32. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.07.2025