

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

Complaint no. : 4588 of 2024  
Complaint filed on : 11.10.2023  
Order pronounced on: 08.05.2025

**Ashok Kumar**

R/o: D-176, Freedom Fighter Enclave NEB Sarai,  
New Delhi-110030

**Complainant****Versus****M/s Ansal Housing and Construction Ltd**

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

**Respondent****CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Shri Anuruddha Singh (Advocate)  
Shri Amandeep Kadyan (Advocate)

**Complainant  
Respondent****ORDER**

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

**A. Unit and Project-related details:**

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

S. N.	Particulars	Details
1.	Name of the project	Ansal Heights, 86
2.	Project location	Sector 86, Gurugram, Haryana
3.	Project area	12.843 acres
4.	Nature of the project	Group Housing Colony
5.	DTCP license no. and validity status	48 of 2011 dated 29.05.2011 valid up to 28.05.2017
6.	Name of licensee	Resolve Estate Pvt. Ltd.
7.	RERA registration details	Not registered
8.	Unit no.	A-0403 [Page no. 25 of the complaint]
9.	Unit area admeasuring	2740 sq. ft. (super area) [As stated by the complainant at page no. 07 of the complaint]
10.	Date of execution of flat buyer agreement	14.11.2013 [Page no. 16 of complaint]
11.	Possession clause	<b>31.</b> <i>The developer shall offer possession of the unit any time, <b>within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction,</b></i>

		<p><i>whichever is later</i> subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be <b>a grace period of 6 months allowed to the developer over and above the period of 42 months</b> as above in offering the possession of the unit."</p> <p>(Emphasis supplied)</p> <p>[Page no. 20 of complaint]</p>
12.	Date of commencement of construction	01.10.2013 [As per customer ledger dated 12.02.2019 at pg. 52 of complaint]
13.	Due date of possession	01.10.2017 [ <b>Note:</b> Due date calculated from date of commencement of construction i.e., 01.10.2013 being later. Grace period allowed being unconditional]
14.	Sale consideration	Rs.1,17,28,440/- [as per payment plan annexed with the buyer's agreement at page no. 24 of the complaint]
15.	Amount paid by the complainant	Rs. 71,42,952/- [As per receipts at page 25-31 of complaint.]
16.	Occupation certificate	Not yet obtained

### B. Facts of the complaint:

- The complainants booked the unit bearing number unit no. A-0403, 4BHK super area admeasuring 2780 sq. ft. in the project named "Ansal Heights 86, Gurgaon" on 25.01.2013 under construction linked plan and a booking

application form has been submitted by the complainants which is duly accepted by the respondent and accordingly a booking payment of Rs. 15,47,000/- has been made by the complainant to the respondent.

3. That till date the complainant has paid a total sum of Rs. 71,42,952/- duly as per payment plan by august 2014 but seeing the conduct of the respondent in respect of completion of the project which is delay delaying and not as per payment plan, the complainant stopped making payment to the respondent. It has been more than nine years that the respondent is misleading the complainant and other allottees of the project and providing several milestones to complete the project.
4. The complainant has tried to contact various times to the respondent in respect of knowing the status of the project as by and when the respondent will be able to obtain the OC/CC for the Project "Ansal Heights 86, Gurgaon" from the competent authority. As the banker of the complainant asked to produce the OC/CC of the project if he wishes to get loan disbursement as the construction of this project was stayed and left abandoned for more than 3-4 years and since date it has not been able to complete the construction of the project and obtain the requisite certificates. Accordingly, the complainant tried to contact the respondent through calls and physical visits and also mailed on 24.02.2023 which has been forwarded many times requesting to the respondent to raise the demands in the instalments as the banks have denied to make any disbursement of loan amount without OC/CC of this project, so it would be easier for the complainant to make the payment into easy instalments towards the unit but the respondent has even after this much of huge delay didn't paid any heed to the grievance of the complainant.
5. The complainant has deposited their hard-earned money in this flat only due to belief in the respondent and paid the entire amount. That after waiting for more than 8 years, the project in which the flat of the complainant is located is



still not in deliverable condition. The respondent left the project incomplete and barren for years during 2014 to 2018 and stop doing any development and only few workers and building material were there at site for years.

6. The respondent has shattered the dreams of the complainants and the complainants is now very much financially stressed. It is respondent who is solely responsible to put the complainants in such financial complexities by not delivering the flat on time.
7. As per Section 13 of the Real Estate (Regulations and Development) Act, 2016 and the Haryana Real Estate Regulatory Authority, Gurugram (Registration of Projects). Regulations, 2018, the promoters cannot charge more than 10% of the cost of the apartment as earnest money without signing the agreement whereas the respondent has demanded 20% of the price of unit from the complainant as the earnest money. Therefore, the respondent has clearly violated the provisions & regulations of the Real Estate (Regulation and Development) Act, 2016 and HRERA.
8. The complainant after being aggrieved with the behavior of the respondent has decided to proceed before the Hon'ble Authority through complaint under section 31 of the Act, 2016.

**C. Relief sought by the complainant:**

9. The complainants have sought the following relief(s):
  - i. Direct to refund the total amount of Rs. 71,42,952/- along with MCLR+2% interest p. a. till the date of payment to the complainant.
  - ii. Direct the respondent not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to complainant.
10. On the date of hearing, the authority explained to the respondent/ promoter about the contravention as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.



**D. Reply by the respondent:**

11. The complainants had approached the answering respondent for booking a Flat no. A-0403 in an upcoming project Ansal Heights, sector 86, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 14.11.2013 was signed between the parties.
12. 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 2012. 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.
13. The complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong.
14. Even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2023 and the cause of action accrue on 14.11.2017 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.
15. Even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2012 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 37 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 31 of the agreement. Therefore, the complainant will be entitled to invoke the

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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 10 years after it was agreed upon by both parties.

16. The complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint.
17. The respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. 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.
18. 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.

19. 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 32 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.
20. The answering respondent has clearly provided in clause 37 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.
21. Admittedly, the complainant had signed and agreed on builder buyer agreement dated 14.11.2013. 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.
22. Upon perusal of the builder buyer agreement at page 3 would show that the proposed party to be impleaded i.e., M/s Samyak Projects Pvt. Ltd not only possesses all the rights and unfettered ownership of the said land whereupon the project namely Ansal Heights, Sector 86 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.
23. While filing the present complaint, the complainant has not arrayed M/s Samyak Project Pvt. Ltd. having its Registered Office at 153, Okhla Industrial Estate, Phase-III, New Delhi - 110020 as a party to the complaint. That M/s



Samyak Projects Pvt. Ltd is a very necessary and proper party to be arrayed to the Complaint for proper, fair and transparent disposal of the present case.

24. 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.

**E. Jurisdiction of the Authority:**

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

**E. I Territorial jurisdiction**

26. 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 the entire Gurugram District for all purposes 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.

**E. II Subject-matter jurisdiction**

35. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the the allottee as per the agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common*

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

**Section 34-Functions of the Authority:**

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

27. Hence, given 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.

**F. Findings on the objections raised by the respondent:**

**F.1 Objections regarding Force Majeure.**

37. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by 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, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and demonetization. In the present matter the buyer's agreement was executed on dated 14.11.2013 and as per the possession clause 31 of the buyer's agreement the respondent-developer proposes to handover the possession of the allotted unit within a period of 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. Further there shall be a grace period of 6 months above the period of 42 months. In the present case, the date of commencement of construction is 01.10.2013 therefore, due date is calculated from the date of commencement of construction i.e., 01.10.2013 so, the due date of subject unit comes out to be 01.10.2017 including the grace period of 6 months. The events such as various orders by Punjab and Haryana High Court were prior to execution of agreement and NGT ban and demonetization were for a shorter

duration of time and were not continuous as there is a delay of more than 6 years. Even today no occupation certificate has been received by the respondent. Therefore, said plea of the respondent is devoid of merit.

38. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown came into effect on 23.03.2020 whereas the due date of handing over of possession was (01.10.2017) much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession. Hence, the plea taken by the respondent stands rejected.

**G. Findings on relief sought by the complainant:**

- G.I Direct the respondent to refund the amount of Rs. 71,18,301/- received by the promoter in respect of the allotted unit with interest at the prescribed rate.**

39. The complainant was allotted a unit in the project of respondent "Ansal Heights" at sector 86, Gurugram, Haryana vide buyer's agreement dated 14.11.2013 for a total sum of Rs. 1,17,28,440/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 71,42,952/- /-. The complainant intend to withdraw from the project and is seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

**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 of 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."*

40. As per clause 31 of the agreement provides for handing over of possession and is reproduced below:

*The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. 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.*

41. On consideration of the abovementioned clause, 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 31 of the draft agreement, the possession of the subject unit was to be delivered within a period of 48 months with an additional grace period of 6 months from the date of execution of the agreement or date of obtaining all licenses or approvals. The due date of the above project is calculated 42 months from date of commencement of construction i.e., 01.10.2013. Accordingly, the due date of possession comes out to be 01.10.2017 (calculated from commencement of construction + 42 months as per clause 31 of buyer's agreement + 6 months of grace period is allowed unconditionally) and there is a delay of more than 6 years on the date of filing of complaint to handover the possession of the allotted unit.
42. The occupation certificate of the buildings/towers where allotted unit of the complainants is situated is still not received till date. The complainant is seeking refund of the amount received by the promoter on failure of promoter

to complete or unable to give possession of the unit in accordance with the terms of the buyer's agreement, wished to withdraw from the project.

43. Keeping in view the fact that the allottees/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.

44. **Admissibility of refund at prescribed rate of interest:** The complainants intend to withdraw from the project seeking refund amount on the amount already paid by them in respect of the subject unit at the prescribed rate of interest as provided 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.

45. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rule, 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.

46. 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., 08.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

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

*"(z) '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;"*

48. Further in the judgement of Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. It was observed as under:

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

49. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by them in respect of the unit with interest at such rate as may be prescribed.
50. The authority hereby directs the promoter to return the amount received by it i.e., Rs.71,42,952/- with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

#### **H. Directions issued by the Authority:**

51. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:
- I. The respondent is directed to refund the entire amount of Rs. 71,42,952/- paid by the complainant along with prescribed rate of interest @ 11.10% p.a. from the date of each payment till the actual date of refund of the deposited amount as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
  - II. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

III. The respondent is further directed to not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottees-complainants.

52. Complaint stands disposed of.

53. File be consigned to the Registry.

**Dated: 08.05.2025**



V.I.   
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
**GURUGRAM**