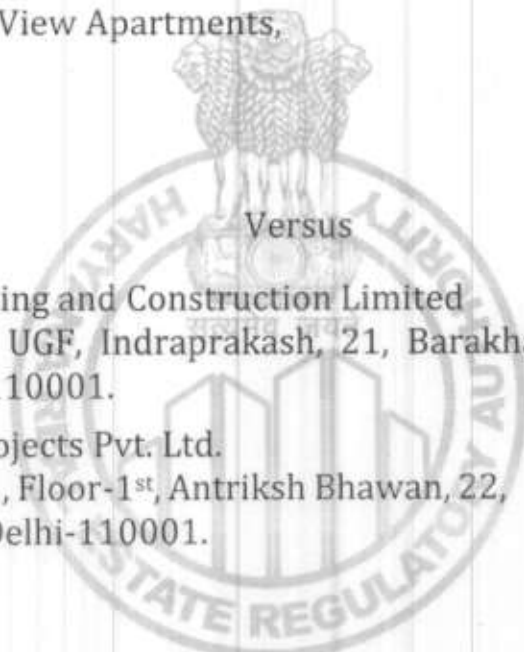


**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM****Complaint no.:** 4454 of 2024**Date of decision:-** 28.05.2025

Dheeraj Jindal  
**R/o:** - C 233, Golf View Apartments,  
Saket, New Delhi.

**Complainant**  
Versus

1. M/s. Ansal Housing and Construction Limited  
**Regd. office:** 15, UGF, Indraprakash, 21, Barakhamba  
Road, New Delhi-110001.
2. M/s. Samyak Projects Pvt. Ltd.  
**Regd. Office:** 111, Floor-1<sup>st</sup>, Antriksh Bhawan, 22,  
K.G. Marg, New Delhi-110001.

**Respondents****CORAM:**

Shri Ashok Sangwan

**Member****APPEARANCE:**

Naveen Single

**Complainant**

Amandeep Kadyan(R-1)

**Respondents**

Shankar Vij (R-2)

**ORDER**

1. The present complaint dated 18.09.2024 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Ansals Hub Boulevard 83 "
2.	Location of the project	Sector-83, Gurugram.
3.	Project area	2.80acres
4.	Nature of project	Commercial
5.	RERA registered	Lapsed project Registered vide registration no. 09 of 2018 dated-08.01.2018 Validity-31.12.2020
6.	DTCP License	License no. 71 of 2010 Dated-15.09.2010
7.	Allotment letter	Not on record
8.	Shop no.	G-053, type-Shop, Atrium facing (As on page no. 36 of complaint)

9.	Shop area	778sq.ft. [Sale Area] (As on page no. 36 of complaint)
10.	Builder Buyer Agreement	20.12.2014 (As on page no. 32 of complaint)
11.	Possession clause	<b>Clause 30</b> <i>The developer shall offer possession of the Unit any time, <b>within a period of 42 months from the date of execution or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later</b> subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 31. Further, there shall be a <b>grace period of 6 months</b> allowed to the Developer over and above the period of 42 months as above in offering the possession of the Unit.</i> [emphasis supplied] (As on page no. 43 of complaint)
12.	Due date of possession	20.12.2018 [Calculated 42 months from date of execution of agreement plus 6 months]
13.	Total sales consideration	Rs.1,13,89,352.06/- (As on page no. 36 of complaint)
14.	Amount paid by the complainant	Rs. 38,36,390/- (As alleged by the complainant)
15.	Public notice sent to allottee by R-2 to execute Addendum Agreement	04.05.2023 (As on page no. 64 of complaint) 26.05.2023 (As on page no. 69 of complaint)

16.	Cancellation letter	28.12.2023 [by samyak stating that they did not execute the addendum agreement]
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

**B. Facts of the complaint:**

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

I. That on 02.06.2014, the complainant booked a Shop by making a payment of Rs.5,00,000 in the project "ANSALS HUB 83 Boulevard" situated in Sector 83, Gurugram, being developed by the respondent no.1 i.e., M/s. Ansal Housing and Construction Ltd. Accordingly, the shop bearing unit no. G-053 having super area of 778 sq. ft. was allotted to the complainant.

II. That on 20.12.2014, the Builder Buyer Agreement was executed between the parties wherein the Payment Plan was provided under Schedule-C, the complainant had to make payments to respondent no. 1 as follows:

- (i) Rs.30,90,045.62/-, (Due Date 25.08.2014) On signing the agreement for sale,
- (ii) Rs. 5,44,621.19/- (30% of Car Park + 30% of ATRIUM + 30% of EDC/IDC), 100 days after instalment no. 1,
- (iii) Rs. 14,004.00/-, (Due Date 17.12.2014) on 100% of LCC,
- (iv) Rs. 84,80,889.21/- (70% of Basic + 70% of Car Park + 70% of ATRIUM + 70% of EDC/IDC), at the time of possession.

III. That the complainant has made all the payments on time as per the above-mentioned payment plan and has paid Rs.38,36,390/- in total to the respondent no. 1 till the present date and the balance amount was to be paid at the time of possession.

- IV. That as per the details available in "Form A-H" of the above said project, available on the official website of the Authority, the said project was to be completed by 20.12.2014 and thus possession was to be handed over by 20.12.2014. Even after a delay of 5 years and 9 months, the project has not yet been completed and the respondents are still not handing over the possession.
- V. That the complainant in January 2022, visited the site office of the respondent no. 1 to see the development of the project wherein, the respondent no. 2 i.e., M/s. Samyak projects Pvt. Ltd informed the complainant regarding the change of developer of the said project from respondent no.1 to respondent no.2.
- VI. That the complainant then visited the office of the respondent no. 1 to know the reality then, Ms. Harpreet Kaur, an employee of respondent no. 1 informed the complainants that some disputes had arisen between respondent no. 1 and respondent no. 2 and therefore arbitration proceedings has been initiated before Sole Arbitrator, Justice A. K. Sikri as per the provisions of the MoU and pursuant to that respondent no. 2 is allowed to enter the project to evaluate and complete the remaining construction work subject to final order/award of Hon'ble Arbitrator.
- VII. That the respondent no. 1 further assured the complainants that their rights in the project are irrevocable and respondent no.1 is not removed as developer from the project and respondent no. 2 is distorting the facts to mislead the allottees to get the No Objection Certificate (NOC) from the allottees in his favour. Respondent no. 1 also advised the complainants not to sign any NOC for change of developer.

- VIII. That vide Public Notice dated 04.05.2023, the respondent no. 2 informed the complainants that it is the legal owner of the project land and has granted development rights to the respondent no. 1 vide Memorandum of Understanding, dated 12.04.2013 ("MoU"), for the construction and development of a commercial complex over the project land.
- IX. The respondent no. 2 further claimed that it has terminated the said MoU with respondent no. 1 and got the possession as well as the right, by the competent authority, to sell the units/areas in the project and collect monies from the allottees apart from completing the construction of the project. Respondent no. 2 asked the complainants to submit the KYC documents and also threatened that his rights in the project would be deemed to have been forgone if KYC documents were not submitted by 20.05.2023.
- X. That on receiving the copy of the public notice dated 04.05.2023, the complainant submitted hardcopies of their KYC documents to the staff members of the respondent no. 2 at their office on the project site, but no acknowledgement regarding receipt of documents has been provided to the complainants by the respondent no. 2.
- XI. That after submitting KYC documents to respondent no. 2, the complainants 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 recognise 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 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.

- XII. That on 26.05.2023, respondent no. 2 sent a notice, requesting the complainant to execute the "Addendum Agreement" along with respondent no. 2. The complainant vide mail dated 11.06.2023, categorically raised objections in his detailed reply to the respondent no. 2 as the said specimen of addendum agreement was completely one sided, in the favor of respondent no. 2. The allotment of the unit was cancelled by the respondent no. 2 vide notice dated 28.12.2023. 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.

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

4. The complainant has sought following relief(s):-
- i. Direct the respondents to pay delayed possession charges at the prescribed rate of interest to the complainant from the due date of possession to the offer of possession along with interest.
  - ii. Restrain the respondent no. 2 from implementing the contents of letter dated 28.12.2023 and taking any adverse action against the interest of the complainants.
  - iii. Direct the respondents to handover possession of the unit along with Occupancy Certificate in favour of the complainants.
  - iv. Direct the respondents to execute and register the sale deed in favour of

the complainant.

**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 respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR with a well-established reputation earned over years of consistent customer satisfaction.
  - II. That the complainants approached the respondent for booking a shop in its project "Ansal Boulevard", Sector 83, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. a shop bearing unit no. G-053 was allotted to him and the Buyer's Agreement was executed on 20.12.2014.
  - III. 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.
  - IV. 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 as the same is barred by limitation.



- V. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that 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.
- VI. That the delay has been occasioned on account of things beyond the control of the respondent. 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.
- VII. That the 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.
- VIII. That the respondent has clearly provided in clause 31 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.

- IX. That the complainant had signed and agreed on Builder Buyer Agreement dated 27.04.2015. That perusal of the said agreement would show that it is a Tripartite Agreement wherein M/s Samyak Projects Pvt. Ltd is also a party to the said agreement.
- X. 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 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."*
- XI. 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.
- XII. That in an 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.

I.

**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 the respondent no.2 i.e., Samyak Projects Pvt. Ltd. (Landowner) and respondent no.1 i.e., Ansal Housing Construction Ltd. (Developer/ AHL) entered into a Memorandum of Understanding dated 12.04.2013 (hereinafter referred to as "MoU") in respect of construction and development of a project known as "ANSAL BOULEVARD 83" situated on a land admeasuring 2.60 acres 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.
- II. As per the said MoU, the respondent no.1 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.
- III. 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 project is being developed. That the operating lines ("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.

- IV. As respondent no.1 failed to fulfill its obligation under the said MoU and construction of the project was substantially delayed. Therefore, due to the failure of respondent no.1 to perform its obligations under the said MoU and to construct the project, the respondent no.2 being left with no other option, terminated the said MoU vide Termination Notice dated 10.11.2020.
- V. That 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.
- VI. The respondent no.1 challenged the termination of the 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.
- VII. That 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 the project on 14.10.2021 to respondent no.2 for taking over the balance construction of the 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.
- VIII. 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, 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.

- IX. That the respondent no.2 came to know that respondent no.1 has done several dummy transactions by creating fake profiles of allottees. Thus, it issued Notice dated 04.05.2023 to the complainant for verification of the complainant and the legitimacy of the transactions undertaken by respondent no.1.
- X. That a notice dated 04.05.2023 was sent to the complainants in order to comply with the verification process. It was specifically mentioned that, in case no response is received on or before 20.05.2023 from the allottees, then the allotment of the said unit bearing no. G-053 shall stand 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.
- XI. Since respondent no.1 is registered as 'Promoter' in respect of the project with the Authority, respondent no.2 requires a "No Objection Certificate" from the allottees for the purpose of carrying forth the development of the project and obtain necessary permission from the Authority. Therefore, in order to change the developer of said project, the respondent no.2 required written consent of the allottees of project. In this regard, respondent no.2 issued Notice dated 01.06.2023 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.



- XII. That more than 175 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 they 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. The relevant extract of Clause 9 and 10 of the said Addendum Agreement is reproduced herein below for the sake of reference:

*"9. The Buyer confirms that he shall not stake/ make any claim, of any nature whatsoever, on Samyak or the said Project till expiry of period for which the relevant authorities grant permission to Samyak to complete the Project (Permitted Period)" and if the Unit in the said Project is not offered for fit-out possession on or before expiry of such Permitted Period, the Buyer shall be entitled to delay compensation as may be applicable for period in delay of handover of possession for fit outs beyond the Permitted Period only if any.*

*10. The Buyer further agrees that he or any of his legal heirs, assignees, administrators, or any other person shall not initiate any civil, criminal or legal proceeding of any nature whatsoever before the expiry of the Permitted Period before any court of law or before any authority pertaining to Unit in present or in future and Samyak shall reserve its right to contest any/all such complaint/suit etc."*

- XIII. That the issuance of the Addendum Agreement is a lawful measure undertaken by respondent no. 2 to ensure transparency and authenticity in allotments. Due to the complainant's failure to comply with this request, despite repeated reminders and notices, has led to the cancellation of the allotment of the unit. The complainants intentionally and with malafide intention did not execute the Addendum Agreement with respondent no.2 and tried to hamper the project. As respondent



no.2 was not a party to the "Builder Buyer Agreement" and the same was executed with respondent no.1. The present complaint is liable to be dismissed against respondent no.2.

- XIV. That the delay in completion of the project is caused due to the malfeasance and negligence of the respondent no.1 and not on part of the respondent no.2, because the construction and development of the said project was undertaken by respondent no.1.
- XV. That even after fully understanding that respondent no. 2 is a land owner and have its limited liabilities to the extent of the land only and as a confirming party and signed the Builder Buyer Agreement without having any obligation towards completion of construction and financial liability in the project and Builder Buyer Agreement.
- XVI. That the complainant has mischievously impleaded the respondent no.2 as one of the respondents in the present complainant and the possibility of some foul play on the part of the complainant cannot be ruled out.
- XVII. 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 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 respondent no. 1. 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 favour of the complainant as against respondent no 2.
- XVIII. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The

cancellation of the allotment is in accordance with legal provision. The respondent no.2 has acted diligently and transparently throughout this process and interest in the project, and any actions taken are well within the framework of the law.

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. I 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;*

11. 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**

12. 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 20.12.2014. As per clause 30 of the Agreement dated 20.12.2014, the due date for offer of possession of the unit was within a

period of 42 months from the date of execution of this agreement or 42 months from the date of obtaining all the required sanctions and approvals necessary for construction, whichever is later. As the date of obtaining all the required sanctions and approvals necessary for commencement of construction is not available, the due date is calculated 42 months from the date of execution of the agreement. A grace period of six months over and above the said period was agreed between the parties, the same being unqualified is granted to the respondents. Thus, the due date of possession comes out to be 20.12.2018.

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. The respondent no.1 has further stated that due to the outbreak of Covid-19 the project was stalled. The Authority is of the view that the Authority through notification no. **9/3-2020 dated 26.05.2020**, had already provided a six months extension for projects with completion dates on or after 25.05.2020 , the due date of possession in the present case is much before the above mentioned timeline. Thus, no relief in lieu

of covid-19 is granted to the respondents. Therefore, the due date of handing over possession was 20.12.2018.

**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 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 a confirming party to the said agreement. As per the Agreement, respondent no. 2(land owner) and respondent no. 1(developer) entered into a MoU dated 12.04.2013 whereby the development, marketing and selling of the project was to be done by the respondent no. 1 in terms of the license/permissions granted by the DTCP, Haryana. The respondent no.1 and respondent no.2 entered into a separate MoU whereby they agreed mutually on certain terms including but not restricted to the profit sharing percentage in respect of the project. Though respondent no.2 did not receive any consideration directly from the complainant but have received the same through a channel whereby respondent no.1 collected the amount from the complainant and the same was shared in the proportionate as was agreed between both the respondents. Thus, it cannot be said that the respondent



no.2 is not a confirming party to the Builder Buyer Agreement and the contention of the respondent regarding no privity of contract and consideration between the respondent no.2 and complainant is hereby rejected.

**H. Findings on the relief sought by the complainants.**

**H.I Direct the respondents to pay delayed possession charges at the prescribed rate of interest to the complainants from the due date of possession to the offer of possession along with interest.**

**H.II Restrain the respondent no. 2 from implementing the contents of letter dated 28.12.2023 and taking any adverse action against the interest of the complainants.**

**H.III Direct the respondents to handover possession of the unit along with Occupancy Certificate in favour of the complainants.**

**H.III Direct the respondents to execute and register the sale deed in favour of the complainants.**

14. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainant booked a shop bearing no. G-053, Atrium Facing, in the project "Ansal Hub 83 Boulevard" situated in Sector 83 of the respondents for a sale consideration of Rs.1,13,89,352.06/- and he has paid a sum of Rs.38,36,390/- till date. The Builder Buyer Agreement dated 20.12.2014 was executed between the complainant and respondent no. 1 wherein respondent no. 2 was the confirming party. As per clause 30 of the Agreement dated 20.12.2014, respondent no. 1 was obligated to complete the construction of the project and hand over possession of the subject unit within a period of 42 months from the date of execution of the agreement or 42 months from the date of obtaining all the required



sanctions and approvals for commencement of construction, whichever is later, alongwith a grace period of six months. Thus, the due date of possession comes out to be 20.12.2018. The occupation certificate for the project has not yet been obtained by the respondents from the competent authority.

15. 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.

16. 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.

17. The respondent no.2 has unlawfully cancelled the allotment of the complainant's unit on the ground that the complainant did not come forward to execute the "Addendum Agreement" sent by the respondent no.2. The Authority is of the view that the respondent no.2 have acted arbitrarily and the cancellation dated 28.12.2023 is bad in the eyes of law and thus, is hereby set aside.
18. The Authority is of the view that the Builder Buyer Agreement dated 20.12.2014 was signed by the complainant and the respondent no. 1. The respondent no. 2 is a confirming party to that Agreement. In the Agreement dated 20.12.2014 it was specifically mentioned that respondent no. 2(land owner) and respondent no. 1(developer) entered into separate agreements 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 sub judice 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*

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartmets, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
- (ii) 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*
- (iii) xxxxxxxx*

18. Further, the Authority observes that the occupation certificate for the project is yet to be received and the project was transferred to the respondent no. 2 who was responsible to complete the same. As per order of the Learned Sole Arbitrator dated 02.09.2022, the respondent no.2 was obligated to complete the construction of the project within a period of nine months i.e., by the end of June 2023, the said period has lapsed and the project is not yet complete.

19. 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 both the respondents jointly and severally and the liability to handover the unit shall also lie with the respondents.
20. The complainants 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)*

**21. Due date of possession and admissibility of grace period:** As per clause

5 of the agreement dated 25.06.2018, 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 respondents 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.

**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]***

***(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.***

**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., 07.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

25. The definition of term 'interest' as defined under section 2(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:

*"(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—*

- (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;"*

26. 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.



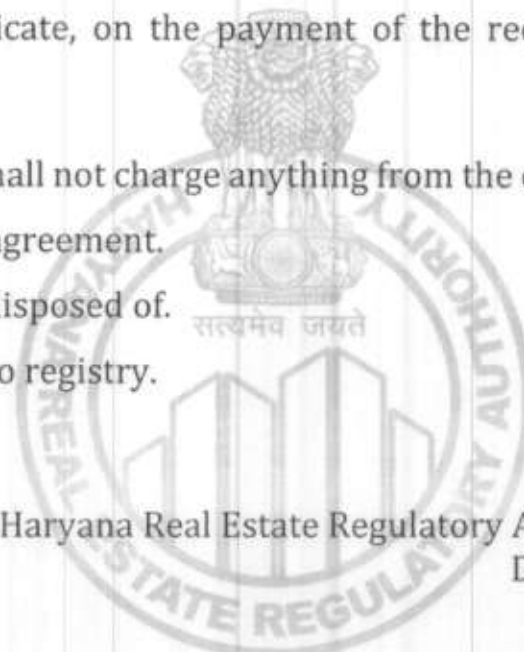
27. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the agreement dated 20.12.2014, the possession of the subject unit was to be delivered within stipulated time schedule i.e., by 20.12.2018. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the complainants till date.
28. The Authority is of considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainants as per the terms and conditions of the agreement dated 25.06.2018. Accordingly, it is the failure of the respondents/promoters to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents/promoters is established. As such, the allottee shall be paid by the promoters interest for every month of delay from the due date of possession i.e., 20.12.2018 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.

**I. Directions of the authority**

30. 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 cancellation dated 28.12.2023 is hereby set aside.
  - ii. 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., 20.12.2018 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.
  - iii. The respondent no.2 is directed to hand over the actual physical possession of the unit to the complainant within 2 months after obtaining occupation certificate
  - iv. 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 20.12.2018 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 respondents are 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 respondents shall not charge anything from the complainant which is not the part of the agreement.
31. Complaint stands disposed of.
32. File be consigned to registry.



**Ashok Sangwan**  
**(Member)**  
Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 28.05.2025

**HARERA**  
GURUGRAM