

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

<b>Complaint no.</b>	<b>:</b>	<b>4754 of 2023</b>
<b>Date of filing:</b>		<b>03.11.2023</b>
<b>Date of decision</b>	<b>:</b>	<b>15.04.2025</b>

Samir Kumar Shah <b>Regd. Address:</b> Hno. ¼, Block- 26, Shakti Nagar, Delhi	<b>Complainant</b>
Versus	
M/s Ansal Housing Ltd. (Formerly Known as M/s Ansal Housing & Construction Ltd.) <b>Regd. office:</b> 15 UGF, Indraprakash, 21, Barakhamba Road, New Delhi-110001 M/s Samyak Projects Pvt. Ltd. <b>Regd. Address:</b> 111, 1 <sup>st</sup> floor, Antriksh Bhawan, K.G. Marg, New Delhi-110001	<b>Respondents</b>

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairperson**  
**Member**  
**Member**

**APPEARANCE:**

Ms. Rima Shah (Advocate)  
Sh. Amandeep Kadyan (Advocate)  
Sh. Shanker Wig (Advocate)

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

**ORDER**

- The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia*



prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. No.	Particulars	Details
1.	Project name and location	Ansals Hub 83 Boulevard, Sector 83 Gurugram
2.	Project area	2.60acres
3.	Nature of project	Commercial Project
4.	RERA registered/not registered	Registered 09/2018 Dated 08.01.2018
5.	DTPC license no. & validity status	License No. 71 of 2010 dated 15.09.2010
6.	Date of execution of buyer agreement (R2 is the confirming party)	26.09.2015 (annexure 1)
7.	Unit No.	T-081 (annexure 1)
8.	Unit area admeasuring	262 sq. ft. (annexure 1)
9.	Possession clause	<b>Clause 30 of BBA</b> <i>The Developer shall offer 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 the required sanctions and approval necessary for commencement of construction, whichever is later, further there shall be a grace</i>



		<i>period 6 months allowed to the developer over and above the period of 42 months.</i>
10.	Due date of Possession	26.09.2019  (Calculated from the date of Execution of Agreement including grace period of 6 months)
11.	Sale consideration	₹18,33,554/-  (as per BBA)
12.	Total amount paid by the complainant	₹4,15,534/-  (as alleged by the complainant)
13.	Offer of Possession	NA
14.	Occupation Certificate	NA

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- That on 26.09.2015, the Complainant herein executed a Builder Buyer's Agreement between Ansal Housing & Construction Ltd. ("Respondent No. 1") And Sh. Samir Kumar Shah ("Complainant") for Unit No. T - 081 in the project - Ansals Hub 83, Boulevard, Gurgaon ("said Agreement") for a basic sale price amounting to Rs. 1833554.60/-.
  - According to the Payment Plants in the above-mentioned Agreement dated 26.09.2015, advanced payment amounting to a total of Rs. 4,15,534.55/- was made by the Complainant to the Respondent No. 1. The Respondent No. 1 also sent acknowledgment of receipt amount of ₹1,00,000/- dated 30.06.2015, receipt no. 611063, ₹48,823.55/-, dated 27.08.2015 receipt no. 614300 and ₹2,66,711/-, dated 27.08.2015 receipt no. 614301 received from by the Complainant.



- c. As per the Agreement the remaining amount was to be paid after Applying for Occupational Certificate and Offer of Possession. As per the Agreement, it was also agreed that the Developer (the Respondent No. 1 herein) shall offer possession of the Unit any time within the stipulated period of 42 months except influence by force majeure. When calculated from 26.09.2015 (the date on which the Agreement was executed) along with the grace period of 6 months, the said time period ended on 26.09.2019. Although the said deadline has long since been past, there has been no sign of the Respondent No. 1 being in a position to offer the unit for possession. Seeing no signs of the Respondent No. 1 handing over the possession of the Apartment, the Complainant tried to contact the Respondent No. 1 several times but to no avail.
- d. It is pertinent to mention herein that it was also stipulated in the said Agreement that in case of delay in offering possession of the unit, Respondent No. 1 would have to pay to the Complainant @₹5/- per Sq. ft. per month on Super Area. However, so such payment of interest has been received by the Complainant till date.
- e. Although the Complainant substantially complied with his obligations, the Respondent miserably failed to adhere to their obligations under the terms and conditions of the Agreement. After several ineffective follow ups to the Respondent No. 1 through phone calls, on 03.02.2022 the Complainant suddenly received an email from Respondent No. 2, stating that due to disputes arising between Respondent No. 1 and Respondent No. 2 and pursuant to Interim Order dated 31.08.2021 passed the Ld.

Tribunal, Respondent No. 2 has taken over the project and would require NOC from the allottees for the carrying forth the development of the said project.

- f. At this stage, it is also pertinent to mention that, the said Builder Buyer's Agreement dated 26.09.2015 clearly stated that in pursuance of the MOU dated 12.04.2013 between Respondent No. 1 and Respondent No.2, that Respondent No. 1 being the developer, if fully competent to undertake, market and sell the said project. Nowhere is the said agreement being it even mentioned that the allottees are required to take signatures of both Respondent No. 1 and Respondent No. 2.
- g. The Complainant in order to verify the claims of Respondent No. 2 tried to reach out to Respondent No. 1 vide email dated 29.03.2023, asking about the current status of the project but the Respondent No. 1 as usual did not respond to the said email.
- h. Notice dated 04.05.2023 through an email from Respondent No. 2 was sent to the Complainant stating that Respondent no. 2 has taken the possession of the said Project, which is on the verge of completion and that there is data which suggests that there are various fictitious allottees or dummy sales being made by the Respondent No. 1, for which it is important to do KYC for all the buyers/allottees. Further, the NOC Letter in furtherance of the verification has not been provided by the Respondent no. 2.
- i. On 25.05.2023, Respondent No. 2 extended an invitation to the complainant, stipulating the necessity for the complainant to execute an "Addendum Agreement" with them as a condition precedent to the continuation of their rights in the project. To the

complainant's profound astonishment, the Respondent No. 2 further laid down that a payment obligation of 95% of the total sum must be fulfilled by the Complainant till December 2023, which would be prior to the submission of application for the issuance of Occupational Certificate.

- j. It is pertinent to note that all these new conditions were imposed on the Complainant without any orally, without the backing of any legal document. At the stage, when the Complainant sought to obtain a copy of the aforementioned "Addendum Agreement" for their records and review, Respondent No. 2 very conveniently withheld the same until such time as the complainant had remitted an amount totalling two hundred thousand Rupees (INR 2,00,000).
- k. The Complainant herein being shocked at the complete Change of Terms and Conditions of the originally signed Agreement, found himself at a predicament. On 03.08.2023, the Complainant received another email from the Respondent No. 2 stating that if the Complaint does not sign the Addendum Agreement within 15 days, then it will result in cancellation of the allotment and the sale would be treated as dummy sales. Using pressure tactics to coerce the Complainant in signing the "Addendum Agreement" another email dated 11.09.2023 was sent by the Respondent No. as a reminder to sign the "Addendum Agreement" within 15 days or the transaction entered into by him would be considered a dummy sale and be cancelled without further notice.
- l. It is pertinent to mention that, the Complainant is unconvinced about the intentions of Respondent No. 2 and has been put at a



spot because of difference arising between Respondent No. 1 and Respondent No. 2. The sudden change in the Payment Plan is very difficult for the Complainant to adjust to.

- m. That as a last resort, the Complainant had also sent a legal notice dated 16.08.2023 wherein a demand for full refund for all amounts paid till date along with interest of @Rs. 5/- per Sq. ft. per month on Super Area was made. Despite a passage of 30 days from the dispatch of the said notice, the Respondent has failed to refund the amounts paid along with the interest.

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

4. The complainant has sought following relief(s).
- a. Direct the respondent to refund a sum of ₹4,15,534/- along with interest.
  - b. Direct the respondent to pay a sum of ₹50,000/- for harassment faced by the complainants.
  - c. Direct the respondent to pay a sum of ₹50,000/- as litigation cost.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent no. 1.**

6. The respondent no. 1 has contested the complaint on the following grounds.
- a. That the complainants had approached the answering Respondent for booking a shop no. T-081 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 26.09.2015 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 2015. 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 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.
- d. That even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2023 and the cause of action accrue on 26.09.2019 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.
- e. 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. ft. 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.

- f. That 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.
- g. 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.

- h. 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.
- i. 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.
- j. That admittedly, the Complainant had signed and agreed on Builder Buyer Agreement dated 26.09.2015. 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.
- k. 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."

1. 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. Written submissions filed by respondent no. 2**

- a. That it is pertinent to mention here that the project was handed over to Respondent No.2 i.e. Samyak Projects Private Limited as per the above-mentioned orders for completion of the project vide order dated 02.09.2022 and Samyak was also directed by the Hon'ble Arbitrator to collect the funds from the genuine allottees and further persuading them to sign the Addendum agreement. It is also pertinent to mention here that the format of the addendum agreement was validated by the arbitral tribunal in the order dated 14 June 2024.
- b. It is also pertinent to mention that as Respondent No.2 is only land owner and the development rights as well as the registration certificate was in the name of Respondent No. 1 i.e., Ansal. A

complaint regarding this and further various representations have already been submitted by the respondent number two before the authority.

- c. That Samyak (R2) has already given an affidavit to the Arbitrator stating the date of completion of the project. Moreover, is not liable for the delay possession charges for the delay caused by the respondent number one in completion of the project.
  - d. That it is submitted that the Id. authority has passed several orders in which the sole liability to comply with the orders rest on the shoulders of respondent number one that is Ansal Housing and construction.
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 has complete territorial and 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, 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**

10. 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.

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 the relief sought by the complainants.**

**G. I. Direct the respondent to refund a sum of ₹4,15,534/- along with interest.**

12. In the present matter the complainant was allotted unit bearing no. T-081, admeasuring 262 sq. ft. respectively in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder. A buyer's agreement was executed between the complainant and respondent no. 1 wherein respondent no. 2 was the confirming party on 26.09.2015. As per clause 30 of both the BBA, respondent no. 1 was obligated to complete the construction of the project and hand over the possession of the subject unit within 42 months from obtaining all the required



sanctions and approval necessary for commencement of construction, whichever is later. The occupation certificate for the project has not yet been obtained from the competent authority.

13. 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.
14. 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.

15. The authority is of the view that the builder buyer's agreement were signed by the complainants and the respondent no. 1. The respondent no. 2 is a confirming party to that BBA. 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*

*XXXXXXXX*

16. 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).
17. 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 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.
18. The complainant intends to withdraw from the project and is seeking refund of the amount paid along with interest on the amount paid. Section 18 is produced below for the ready reference:

***"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)*

19. Clause 30 of the builder buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

***"30. The Developer shall offer possession of the Unit within 42 months from the obtaining all the required sanctions and approval sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by the Buyer and subject to force majeure circumstances as described in clause 31. Further there shall be a grace period of 6 months allowed to developer over and above the period of 42 months as above in offering the possession of the unit."***

20. **Due date of possession and admissibility of grace period:** As per clause 30 of the agreement, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 42 months from obtaining all required sanctions and approvals necessary for commencement of construction, whichever is later. Further, grace period of 6 months is sought. The date of start of construction is not known. Therefore, the due date is calculated from date of execution of builder buyer agreement i.e., 26.09.2015. The period of 42 months

ends on 26.03.2019. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 26.09.2019.

21. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate 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]*

*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."*

22. 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.
23. 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., 15.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by

the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

The relevant section is reproduced below:

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

*Explanation. —For the purpose of this clause—*

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

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

25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of 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 agreement executed between the parties on 26.09.2015, the respondent was obligated to deliver the subject unit within 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. Therefore, the due date of handing over possession comes out to be 26.09.2019.
26. It is pertinent to mention over here that even after a passage of more than 5 years neither the occupation certificate is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable





amount of money towards the sale consideration. Further, the authority observes that till date the respondent has not obtained occupation certificate/part occupation certificate from the competent authority. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

27. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.

*".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

28. Further, the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) 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. 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"*

29. 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 allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is 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 he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @11.10% p.a. (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.

**G.II. Direct the respondent to pay a sum of ₹50,000/- for harassment faced by the complainants**

**G.III. Direct the respondent to pay a sum of ₹50,000/- as litigation cost**



31. The complainant is also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**H. Directions of the authority**

32. 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):
- The respondents/promoters jointly and severally are directed to refund the amount of ₹4,15,534/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount.
  - A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
  - The respondents are further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the

receivable shall be first utilized for clearing dues of allottee-complainants.

33. Complaint stands disposed of.

34. File be consigned to registry.

(Ashok Sangwan)  
Member

  
(Arun Kumar)  
Chairperson

V.1   
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.04.2025

**HARERA**  
**GURUGRAM**