

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

Date of decision: 01.04.2025

NAME OF THE BUILDER		ANSAL HOUSING LIMITED (FORMERLY KNOWN AS ANSAL HOUSING & CONSTRUCTION LTD.) AND SAMYAK PROJECTS PVT. LTD.	
PROJECT NAME		ANSAL HUB 83 BOULEVARD	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/1919/2022	Mr Gajendra Singh V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.	Sh. Gaurav Rawat Sh. Amandeep Kadyan for R1 Sh. Shanker Wig for R2
2.	CR/4563/2022	Mr Kapil Bhagi & Mr VMP Bhagi V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd	Sh. Gaurav Rawat Sh. Amandeep Kadyan for R1 Sh. Shanker Wig for R2
3.	CR/5528/2022	Mr Tilak Yadav V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd	Sh. Sunil Kumar Sh. Amandeep Kadyan for R1 Sh. Shanker Wig for R2
4.	CR/6859/2022	Mr Raj Kumar V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd	Sh. Harshit Batra Sh. Amandeep Kadyan for R1 Sh. Shanker Wig for R2

CORAM:

Shri. Arun Kumar
Shri. Vijay Kumar Goyal
Shri Ashok Sangwan

Chairperson
Member
Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and

Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ansal Hub 83 Boulevard" (commercial complex) being developed by the same respondent/promoter i.e., M/s Ansal Housing Limited and Samyak Projects Pvt. Ltd. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with interest.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"ANSAL HUB 83 BOULEVARD " Sector-83, Gurugram.			
Possession clause	Possession clause 30: <i>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.</i>			
Occupation certificate	Not obtained			
Complaint No.	CR/1919/2022	CR/4563/2022	CR/5528/2022	CR/6859/2022
Unit no.	G-010	G-062	G-020	G-155

	(Pg. 21 of complaint)	(pg. 33 of complaint)	(pg. 59 of complaint)	(pg. 24 of complaint)
BBA	31.12.2014 with original allottee (Pg. 31 of complaint)	07.01.2015 (pg. 33 of complaint)	31.12.2014 (pg. 55 of complaint)	14.05.2015 (pg. 20 of complaint)
Date endorsement of favor in of complainant	13.04.2015 (Pg. 21 of complaint)	NA	NA	NA
Due date of possession	31.12.2018	07.01.2019	31.12.2018	14.05.2019
Sale consideration	₹35,24,128/- (pg. 35 of complaint)	₹72,28,690/- (pg. 46 of complaint)	₹37,59,030/- (pg. 59 of complaint)	₹65,24,870/- (pg. 24 of complaint)
Amount paid	₹33,00,063/-	₹75,16,474/- (pg. 25 of complaint)	₹28,67,144/-	₹66,65,371/-
Offer of possession	Not offered	Not offered	Not offered	Not offered
Relief sought	<ul style="list-style-type: none"> • DPC • possession • Quash one sided clause • Quash unilateral charges • GST 	<ul style="list-style-type: none"> • DPC • possession • Quash one sided clause • Quash unilateral charges • GST 	<ul style="list-style-type: none"> • DPC • CD • AR 	<ul style="list-style-type: none"> • DPC • Possession • Refund the discount given by the respondent

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges along with interest.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1919/2022 Mr Gajendra Singh V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Project and unit related details

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

CR/1919/2022 Mr Gajendra Singh V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Hub 83 Boulevard", Sector-83, Gurugram
2.	Total area of the project	2.60 acres
3.	Nature of the project	Commercial complex part of residential colony
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid up to and 71 of 2010 dated 15.09.20210 valid up to
5.	Name of licensee	Buzz Estate Pvt. Ltd. & others.
6.	Registered/not registered	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres. Valid up to 31.12.2020

		[Note: the registration branch may take necessary action as per the provisions of the Act, 2016]
7.	Unit no.	G-010 [pg. 21 of complaint]
8.	Area of the unit	244 sq. ft. [pg. 21 of complaint]
9.	Date of execution of BBA with original allottee	31.12.2014 [pg. 31 of complaint]
10.	Date of transfer of unit in name of complainant	13.04.2015 [pg. 21 of complaint]
11.	Possession clause	30 <i>The developer shall offer possession of the unit any time, within a period of 42 months from the or 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 the dues by buyer & subject to force majeure circumstances as described in clause 31. Further there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.</i> (Emphasis supplied) [page 42 of complaint]
12.	Due date of possession	31.12.2018 (Note: 42 months from date of agreement i.e., 31.12.2014 as the date of commencement of construction is not

		known. Grace period allowed being unqualified)
13.	Basic sale consideration as per BBA at page 35 of complaint	₹ 35,24,128/-
14.	Total amount paid by the complainant as per sum of receipts	₹ 33,00,063/-
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

- a. That the previous allottees approached to the respondent for booking Commercial Unit admeasuring 244 sq. ft., in the Commercial Project Commercial Unit No. G-010, "Ansal Hub 83 Boulevard", Sector 83, Gurugram, Haryana. The initial booking amount of Rs 200000/- was paid through Chq. Receipt No. 545414, dated 26.06.2013. (more than 9 years back) and legally endorse to in the name of complainant.
- b. That the respondent to dupe the previous Allottees in their nefarious net even executed Buyer's Agreement Signed Between Mr Mohit Khirbat and M/S Ansal Housing Ltd. M/S Samyak Projects Pvt. Ltd. on dated 31.12.2014, after that finally Respondent endorsed to the said agreement in favor of complainant (Mr Gajendra Singh) on dated 25.03.2015. By the said endorsement, complainant became legal allottee and purchaser of the said property. Respondent create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.

- c. It is submitted that as per clause 23 of the Developer buyer agreement the buyer was charged very high interest rate i.e. 24% per annum, compounded quarterly. Furthermore, according to clause 24 of agreement if buyer fails to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature.
- d. The complainants further submit that as per clause 34, the developer/ respondent had very cleverly and specifically accepted a meagre liability to pay Rs. 5/- per sq. ft. per month on the super area for the delay in offering of possession.
- e. That the total cost of the said Commercial Unit is Rs 3662188/- and a sum of Rs 3300063/- was Paid by the complainant in time bound manner. This amount constituted more than 90% of the total sum taken from the Complainant within 4 years. This amount was taken by the Respondent through fraudulent means by erecting a bare structure within 2017. The Respondent declined to complete the Project after collecting money and there has been little progress in construction from 2016 onwards.
- f. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) Complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the Complainant herein is not in breach of any of its terms of the Agreement.
- g. That Complainant has paid all the instalments timely and deposited Rs 3300063/- that respondent in an endeavour to extract money from Allottees devised a payment plan under which respondent linked more than 35 % amount of total paid against as advance. Rest 60% amount linked with the construction of super structure only of the total sale

consideration to the time lines, which is not depended or co-related to the finishing of Commercial Unit and Internal development of facilities amenities and after taking the same respondent have not bothered to any development on the project till date as a whole project not more than 50 % and in term of particular Tower just built a super structure only. Extracted the huge amount and not spend the money in project is illegal and arbitrary and matter of investigation.

- h. That complainant's booked a Commercial Unit dated 26.06.2013 (more than 9 years ago) and as per Developer Buyer Agreement, Respondents/ Builder are liable to offer possession on before 30.12.2018 so far (DBA Clause no.30).
- i. Complainant visited the several times in the Respondent office and project site regarding possession of the unit and delay interest however respondent did not reply till date.
- j. That the builder started construction work more than 9 year back and quickly erected a bare structure with the sole intention of taking money from buyer on construction-linked installments. Respondents/Builder are not completing the Project and intend to delay for undefined times to complete the project. The long period has made adverse effect on construction quality of project.
- k. That the complainants communicate with respondent and asked for delayed possession respondent show problem of financial crunch other side builder extracted huge amount from complainants and given loan to others, and project development abundant create suspicion on builder intentions.
- l. That due to the malafide intentions of the respondent and non-delivery of the Commercial unit the complainants have accrued huge losses on

account of the future of the complainants and their family are rendered dark as the planning with which the complainants invested his hard earned monies have resulted in sub-zero results and borne thorns instead of bearing fare fruits. Due to delay in possession complainants have incurring huge financial and mental harassment month after month Complainants visited respondent's office several times and requested for possession but the respondent did not bother to respond till date.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s)
 - a. Direct the respondent to pay delay interest on paid amount of ₹3300063/- of 24% till the handing over the physical possession.
 - b. Direct the respondent to complete the project immediately and hand over the possession of the commercial unit with all basic amenities which mention in brochure,
 - c. Direct the respondent to quash all unilateral charges and mis-calculate amount which will be imposed at the time of offer of possession.
 - d. Direct the respondent to quash the one-sided clauses from developer buyer agreement.
 - e. Pass an order for payment of GST amount levied upon the Complainant and taken the benefit of input credit by builder.
10. 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.

11. The respondent has contested the complaint on the following grounds:
 - a. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable



before this Hon'ble Authority, as the complainant has admitted that he has not paid the full amount. The complainant has filed the present complaint seeking interest. The present complaint is liable to be dismissed on this ground alone.

- b. That even otherwise, the complainant has no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the allotment letter/buyer's agreement dated 08.12.2014, which is evidentiary from the submissions made in the following paragraphs of the present reply.
- c. That the original allottee approached the respondent sometime in the year 2014 for the purchase of an independent unit in its upcoming residential project "ANSAL HUBS" (hereinafter be referred to as the "project") situated in Sector-83, District Gurgaon (Haryana). It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was being fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same and the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner.
- d. That thereafter the complainant applied to the respondent for provisional allotment of a unit in the project on 26.06.2013. The complainant, in pursuant to the application, was allotted shop/office space bearing no. G-010 in the project "Ansal Hub" situated at Sector 83, District Gurgaon, Haryana. The complainant consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the



unit in question and further represented to the respondent that the complainant should remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant.

- e. It is further submitted that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within the prescribed time period as given by the respondent to the authority.
- f. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing Air Quality Index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the major factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent unable to cope with the labor pressure. However, the respondent is carrying its

business in letter and spirit of the Builder Buyer Agreement as well as in compliance of other local bodies of Haryana Government.

- g. That the respondent is carrying his business in letter and spirit of the Builder Buyer Agreement but due to COVID"19 the lockdown was imposed throughout the country in March 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- h. That similar lockdown was imposed in the year 2021 which extended to the year 2022 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the ongoing construction of the project.
- i. That it is submitted that the complaint is not maintainable or tenable under the eyes of law as the Complainant has not approached this Hon'ble Authority with clean hands and has not disclosed the true and material facts related to this case of complaint. The Complainant, thus, has approached the Hon'ble Authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1 in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the Hon'ble

Authority and subsequently the same view was taken before Hon'ble National Commission in case titled as *Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012* decided on 25.09.2013.

- j. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking refund, interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the builder buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the builder buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in a case titled as *Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India* published in 2018(1) RCR (C) 298, the liberty to the promoter/developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para no.86 and 119 of the above said citations are very much relevant in this regard.
- k. That the respondent reserves its right to file additional reply and documents, if required, assisting the Hon'ble Authority in deciding the

present complaint at the later stage. That it is submitted that several allottees have defaulted in timely remittance of payment of installment which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effect on the operation and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite the default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. The construction of the project is completed and ready for delivery, awaiting occupancy certificate which is likely to be completed by the year 2022.

1. The Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the builder buyer's agreement, vide which complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainant further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.

E. Short affidavit filed by respondent no. 2

12. The respondent has contested the complaint on the following grounds:

- a. Respondent No.2 i.e., Samyak Projects Pvt. Ltd. (Landowner) and Respondent No.1 i.e., ANSAL Housing Contructions 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 (hereinafter referred to as "said Project"), situated on a land admeasuring 2.60 acres (equivalent to 20 Kanal 16 Marlas), situated in Village Sihi, Tehsil & District Gurgaon in Sector- 83 of Gurgaon, Manesar forming a part of License No. 113 of 2008 dated 01.06.2008 and License No. 71 of 2010 dated 15.09.2010. As per the said MoU, the Respondent No.1 being the Developer, made sales of various Units to the Allottee(s), executed Builder Buyer Agreement(s) with Allottee(s) and also received sale consideration amount from the Allottee(s). The Respondent No.2 was not a party to any Builder Buyer Agreement executed between Respondent No.1 and the Complainant and for the same Respondent No. 2 i.e. Samyak Projects Pvt. Ltd. have filed an application under Order 7 Rule 11 under CPC for Rejection of Plaint as a Party in this complaint.
- b. That the perusal of the Builder Buyer Agreement at page 3 ("Clause D") would show that M/s Samyak Projects Pvt. Ltd possesses all the rights and unfettered ownership of the said land whereupon the projects namely boulevard 83, Sector 83 Gurgaon, Haryana is being developed. That the operating lines at page 3 ("Clause D") of the Builder Buyer Agreement are as follows: "The Developer has entered into an agreement with the confirming party i.e M/s Samyak Projects Pvt. Ltd.
- c. As Respondent No.1 failed to fulfill its obligation under the said MoU and construction of the said Project was substantially delayed. Therefore, due to abject failure of Respondent No.1 to perform its obligations under the



said MoU and to construct the said Project, the Respondent No.2 being left with no other option, terminated the said MoU vide Termination Notice dated 10.11.2020.

- d. The Respondent No.2 also published a Public Notice in the newspaper dated 16.12.2020 informing the public at large about the termination of said MoU by Respondent No.2 due to breach of the terms of MoU by the Respondent No.1.
- e. The Respondent No.1 challenged the termination of MoU before the Hon'ble High Court of Delhi in OMP (I) (COMM) No.431 of 2020 in the matter titled as "Ansal Housing Limited vs. Samyak Projects Private Limited" under Section 9 of the Arbitration and Conciliation Act, 1996. The Hon'ble High Court of Delhi was pleased to refer the matter to Arbitration and appointed Justice A.K Sikri, (Retired Judge of Supreme Court) as the Sole Arbitrator and appointed Local Commissioner.
- f. The Learned Arbitrator rejected the prayer of Respondent No.1 for stay on the termination of MoU and directed the Respondent No.1 to handover the possession of said Project on 14.10.2021 to Respondent No.2 for taking over the balance construction of the said Project. The Learned Arbitrator vide Order dated 02.09.2022 held that Respondent No.2 shall also be free to approach the allottees and demand and/or collect monies from them in respect of their Units.
- g. That the answering respondent acting in good faith and in the interest of public at large, in benefit/interest of the allottees of the aforementioned project, the answering respondent sought to authenticate and verify the veracity of the agreements/allotments made by AHL and urged the allottees including the complainants vide various Emails to come forward

for KYC process and show bona fide by paying the balance amounts payable due as the project stood on the verge of completion.

- h. It came to the knowledge of Respondent No.2 that Respondent No.1 has done several dummy transactions by creating fake profiles of allottees. Thus, the Respondent No.2 issued Notice dated 04.05.2023 to the Complainant for verification of the Complainant and legitimacy of the transaction undertaken by Respondent No.1.
- i. Notice dated 04.05.2023 to the Complainants in order to comply with the verification process. It was specifically mentioned that, in case no response is received on or before 20.05.2023 from the allottees, then the allotment of the said Unit Bearing No. G-010 shall stand forfeited/cancelled. Despite numerous attempts to engage with the Addressees of the Complainants, no satisfactory response or compliance was received, leading to the cancellation of the allotment of said Unit Bearing No. G-010 in question.
- j. Since Respondent No.1 is registered as 'Promoter' in respect of the said Project with the Real Estate Regulatory Authority ("RERA"), Respondent No.2 requires a No Objection Certificate from the Allottees for the purpose of carrying forth the development of the said Project and obtain necessary permission from the RERA. Therefore, in order to change the Developer of said Project, the Respondent No.2 required written consent of the allottees of said Project. In this regard, Respondent No.2 issued Notice dated 26.05.2023 and 03.08.2023 requesting the Complainant to sign the Addendum Agreement with Respondent No.2 to accept and acknowledge Respondent No.2 as the new Developer.
- k. That more than 135 satisfied allottees after all the verification process executed the Addendum Agreement with the Respondent No.2 wherein it was agreed that the allottees will not make any claim against Respondent

No.2 till the expiry of Permitted Period of completion of said Project as granted by the relevant authorities. It was further agreed by the allottees that allottees will not initiate any civil, criminal or legal proceedings of any nature whatsoever against Respondent No.2 before the expiry of the Permitted Period of completion of said Project.

- l. That said Ansal Housing Ltd in terms of its BBA dated 31-12-2014 with the Complainant. It is pertinent to note that the delay in completion of the Project is caused due to the malfeasance and negligence of the M/s Ansal Housing Ltd. Not on the part Respondent No.2, because the construction and development of the said project was undertaken by M/s Ansal Housing Ltd.
- m. Respondent No.2 has proceeded to commission experts who are in the process of determining the status of the construction and the further steps / construction necessary to complete the Project, Respondent No.2 is making its best endeavours to ensure that the progress of the said Project can be fast tracked. However, the pace of development of said Project is being affected by frivolous and premature challenged being made against the efforts of Respondent No.2.
- n. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the Complaint does not disclose any cause of action in favor of the Complainant and the present Complaint has been filed with malafide intention to blackmail the Respondent No.2 with this frivolous Complaint and hampering the Project.
- o. That 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. That the captioned Complaint is liable to be dismissed against Respondent No.2.

p. It is crystal clear that all the obligation towards the completion, construction and financial obligation under the Builder Buyer Agreement is responsible AHL alone.

13. 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.
14. The written submissions filed by the parties are taken on record and the authority has considered the same while deliberating upon the relief sought by the complainants.

F. Jurisdiction of the authority

15. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

16. 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

17. 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.

18. 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 complainant.

G.I. DPC.

19. In the present matter the complainant was allotted unit no. G-010, admeasuring 244 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder for a sale consideration of ₹35,24,128/- and they have paid a sum of ₹33,00,063/-. A buyer's agreement dated 31.12.2014 was executed between the original allottee and respondent no. 1 wherein respondent no. 2 was the confirming party. The unit was transferred in the name of the complainant on 13.04.2015. As per clause 30 of the BBA, respondent no. 1 was obligated to complete the construction of the project and hand over the possession of the subject unit within 42 months from obtaining all the required sanctions and

approval sanctions and approval necessary for commencement of construction, whichever is later. The period of 42 months expired on 31.06.2018. 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 31.12.2018. The occupation certificate for the project has not yet been obtained from the competent authority.

20. 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.
21. 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.

22. The authority is of the view that the builder buyer agreement dated 31.12.2014 was signed by the complainant and the respondent no. 1. The respondent no. 2 is a confirming party to that BBA. In the builder buyer agreement dated 31.12.2014 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

(i) 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

(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

23. 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).
24. 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.
25. 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)

26. 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."

27. **Due date of possession and admissibility of grace period:** As per clause 30 of the agreement dated 31.12.2014, 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., 31.12.2014.

Hence, the due date comes out to be 31.12.2018 including grace period of 6 months as it is unqualified.

28. **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.

29. 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.
30. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 01.04.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
31. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall

be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

(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;"

32. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
33. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 31.12.2018. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.
34. 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 buyer's agreement dated 31.12.2014. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

35. 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/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 31.12.2018 till the date of 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.
36. The following table concludes the time period for which the complainants-allottees are entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:

S.no.	Complaint no.	Due date of possession	Offer of possession	Period for which the complainants are entitled to DPC
1.	CR/1919/2022	31.12.2018	Not offered	W.e.f. 31.12.2018 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier.
2.	CR/4563/2022	07.01.2019	Not offered	W.e.f. 07.01.2019 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier.
3.	CR/5528/2022	31.12.2018	Not offered	W.e.f. 31.12.2018 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or

				actual handing over of possession, whichever is earlier
4.	CR/6859/2022	14.05.2019	Not offered	W.e.f. 14.05.2019 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier

GII. Direct the respondent to quash the one-sided clauses from developer buyer agreement.

37. No specific clause has been mentioned by the complainant in its complaint nor has been argued during the course of hearing. Accordingly, the Authority shall not deliberate upon the said relief.

G.III. Direct the respondent to quash all unilateral charges and mis-calculate amount which will be imposed at the time of offer of possession

38. The cause of action in relation to the aforementioned relief has not yet arisen; therefore, the Authority lacks the jurisdiction to adjudicate upon the same at this stage.

G.IV. Pass an order for payment of GST amount levied upon the Complainant and taken the benefit of input credit by builder.

39. It is pleaded that the liability to pay GST is on the builder and not on the allottee. But the version of respondents is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively. It is important to note that the possession of the subject unit was required to be delivered by 31.12.2018 and the incidence of GST came into operation thereafter on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees **where the same was leviable**, at the

applicable rate, if they have not opted for composition scheme subject to furnishing of such proof of payments and relevant details.

G.V. Direct the respondent no 2 to execute and register the sale deed in the concerned sub registrar office in favour of complainants of the booked unit.

G.VI. Direct the respondent to handover the possession of the subject unit to the complainant.

40. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the respondent has applied for occupation certificate or what is the status of the development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the flat/unit and execute conveyance deed in favor of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.
41. In Complaint No. 5528/2022, the complainant has sought the relief of assured returns. However, such relief has neither been specifically pleaded in the submissions nor supported by any documentary proof establishing the respondent's obligation to provide assured returns. Furthermore, no arguments were advanced in this regard during the course of the hearing. In view of the foregoing, the said relief cannot be considered or adjudicated upon.
42. In Complaint No. 6859/2022, the complainant is seeking a refund of the discount amounting to ₹1,95,746/-, which was extended by the respondent on the basic sale price of the unit. The Authority is of the view that the grant of such

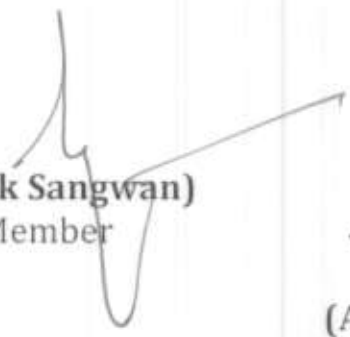
a discount falls within the exclusive discretion of the respondent and, as such, cannot be enforced as a matter of right.

H. Directions of the authority:

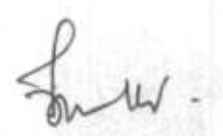
43. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondents/promoters jointly and severally are directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession till the date of offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- b. The respondent no. 2 is directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate
- c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- d. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- e. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- m. The respondent shall not charge anything which is not the part of BBA.

44. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
45. The complaints stand disposed of.
46. Files be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson



(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.04.2025



HARERA
GURUGRAM