

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM****Date of order: 08.05.2025**

Laxmi Narain  
**R/o:** VPO village Sikanderpur  
Ghosi, Gurugram, Haryana

**Complainant****Versus**

Samyak Projects Pvt. Ltd.  
**Regd. Office:** 111, 1<sup>st</sup> floor, Antriksh  
Bhawan, 22, KG Marg, New Delhi  
110001

**Respondent**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Shri Akash Gupta (Advocate)  
Shri Shankar Wig (Advocate)

**Complainant  
Respondent****ORDER**

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

**A. Project and unit related details.**

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



Sr. No.	Particulars	Details
1.	Name of the project	"The Market Square", Sector 67, Gurugram.
2.	Total area of the project	1.75 acres (178.412 acres)
3.	Nature of the project	Commercial project part of residential colony
4.	DTCP license no.	18 of 2010 dated 10.03.2010 valid up to 09.03.2018 21 of 2011 dated 24.03.2011 valid up to 23.03.2019 26 of 2012 dated 30.03.2012 valid up to 26.03.2018
5.	Name of licensee	M/s Sukh Dham Coloniser Pvt. Ltd. c/c Ansal Properties Infrastructure Pvt. Ltd.
6.	Registered/not registered	Not Registered
7.	Registration form for expression of interest	14.02.2014 (page 16 of complaint)
8.	Unit no.	10, ground floor (page 16 of complaint)
9.	Area of the unit	452.09 sq. ft. (page 16 of complaint)
10.	Date of execution of buyer's agreement	Not executed
11.	Possession clause	NA
12.	Due date of possession	14.02.2017 (Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC)</i> ; <i>MANU /SC /0253 /2018</i> from the date of Registration form for expression of interest)
13.	Basic sale consideration	NA
14.	Total amount paid by the complainant	Rs.20,57,010/- (as per receipts issued by respondent page 11-13 of complaint)
15.	Legal notice by complainant to refund the paid-up amount	18.03.2021 (page 18 of complaint)
16.	Offer of possession	Not offered
17.	Occupation Certificate	Not obtained

**B. Facts of the complaint.**

3. The complainant has made following submissions in the complaint:
- i. That the respondent approached the complainant to invest in their real estate project located at "MARKET SQUARE", Sector 67, Gurgaon. The complainant made complete verification of the entire project and the background of the company. The complainant booked a commercial shop having shop no. 10 on ground floor admeasuring super area 452.09 sq. ft. in the project of the respondent by making a payment of Rs.9,00,000/- vide cheque no. 522180, dated 14.02.2014 which was duly acknowledged by the respondent through the provisional booking application form which was signed by the complainant on 14.02.2012.
  - ii. That the complainant further made a payment of Rs.5,87,717/-vide cheque no. 528095 dated 09.04.2014 and payment of Rs.5,69,293/- vide cheque no. 479330 dated 14.07.2014, duly acknowledged by the respondent. The complainant made a payment of the total amount of Rs.20,57,010/- to the respondent which was duly acknowledged by the respondent by issuing receipts bearing no. 295/2013-14 dated 21.02.2014, 002/2014-15 dated 16.04.2014 and 038/2014/15 dated 16.07.2014.
  - iii. That except the said provisional booking application form, no other formal document has been signed or executed by or between the complainant and respondent. The respondent assured the complainant that the delivery of the said unit shall be handed over to the complainant within three years from the date of booking of the unit. But till date the construction of the said project has not been started.
  - iv. That when the complainant visited the registered office of the respondent to know the reason as to why the construction of the said projects has not been started, the respondent replied that the construction shall soon be started but no satisfactory reply was given to the complainant.

- v. That after waiting of so many years for delivery of the unit in the said project, at last the complainant sent a legal notice to the respondent company to refund the entire consideration amount of Rs.20,57,010/- with an interest @18% to the complainant but the respondent company did not pay any heed to the request of the complainant.
- vi. That till the date of delivery of the said legal notice, the construction of the said projects was not started. The complainant has tried every possible way to take refund the entire consideration amount paid to the respondent. But the respondent has bad intention to grab the hard-earned money of the complainant by giving vague excuses. The act and conduct of the respondent have caused a lot of physical harassment, mental agony and huge financial loss to the complainant and further the act of respondent, forced the complainant to file the present complaint, for refund of the entire consideration amount of the complaint, against the respondent,

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

4. The complainant has sought the following relief(s):

- I. Direct the respondent to refund the paid-up amount along with interest.
- II. Direct the respondent to pay litigation cost of Rs.1,00,000/-.

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.**

6. The present complaint was filed on 09.09.2022 in the Authority. The respondent was granted several opportunities to put in appearance and file reply. However, despite specific opportunities respondent failed to file reply. In view of the same respondent defence was struck off and the matter was proceeded ex-parte against the respondent vide order dated 08.02.2024. Further, the respondent during proceedings dated 21.11.2024 requested to file reply/written submissions. The said request was allowed and the



respondent filed the reply on 02.01.2025 and has contested the complaint on the following grounds.

- i. That the complainant filed the above-mentioned complaint against the respondent i.e., M/s Samyak Projects Pvt. Ltd with respect to the unit no. 10 in the project namely "Market Square", sector-86, Gurgaon.
- ii. That there has been no construction carried out at the project site till date due to the pending litigation between the State of Haryana and the Ansal Properties and Infrastructure Limited and Ansal Township and Infrastructure Limited. and other associate company before the Hon'ble High Court of Punjab and Haryana.
- iii. That the respondent got the project registered with the RERA in the year 2018 however, the dispute between the parties arose and because of which no construction could be carried out on the said land. That the non-development of the project on the said land was beyond the control of the respondent.
- iv. That the RERA registration of the respondent has also lapsed. The respondent has approached the complainant to settle the pending dispute with an aim to resolve the matter amicably. To the utter shock of the respondent, the complainant initially agreed to the settlement talks but later refused and approached RERA with an intention to extort money from the respondent.
- v. That the respondent with bonafide intention was willing to develop the project and, in this regard, applied for the RERA registration and received the same. The respondent was fully compliant to develop the project. But the litigation that arose on the said land was beyond the control of the respondent and the respondent was forced not to carry out any construction work on the land.

vi. That it was not the delay on part of the respondent that the project was not developed and the same should not be held liable for the same. The project cannot be developed till the pendency of the litigation in the Hon'ble High Court of Punjab and Haryana.

7. All other averments made in the complainant were denied in toto.

8. Copies of all the relevant documents have been filed and placed on the 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.

**E. Jurisdiction of the authority.**

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

**E.I Territorial jurisdiction**

10. 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.

**E.II Subject matter jurisdiction**

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

**Section 11**

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**(4) The promoter shall-**

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

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

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

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)** and 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** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act, if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to

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entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainant.**

**F.I Direct the respondent to refund the entire paid-up amount along with interest.**

15. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for 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, -***

***(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,***

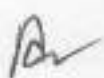
***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed 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)***

16. The complainant was allotted a unit no. 10 on ground floor as evident from the Registration form for expression of interest submitted by complainant as Annexure C/3 and the receipts dated 21.02.2014, 16.04.2014 and 16.07.2014 issued by the respondent-builder in favor of complainant against the subject unit i.e. GF-10 amounting to Rs.20,57,010/- In the present matter, neither any allotment letter nor any agreement to sell was executed between the parties, hence no due date of possession could be ascertained.

17. There, are certain cases where no possession clause is provided and due date of handing over of possession cannot be ascertained. So, the Authority relying upon the judgement of the Hon'ble Supreme Court ***Fortune Infrastructure***





***and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** where it was observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."*

18. In view of the above-mentioned reasoning, the date of Registration form for expression of interest i.e. 14.02.2014 is to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 14.02.2017.

19. Before coming to the facts of the case, it is to be seen as to the payments receipts issued by the respondent in favor complainant for the subject unit against the submission of registration form for expression of interest from the complainant on 14.02.2014 falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

*"Every promise and every set of promise forming the consideration for each other is an agreement."*

20. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

*"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."*

21. There are large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the existing or in its upcoming project at Gurugram. Neither any allotment letter is being issued by the





respondent nor any builder buyer's agreement was executed. This position existed in Pre-RERA cases as after Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.

22. The document or receipt issued in favor of a person can be considered as an agreement for sale, which may provide for grounds to approach the RERA Authority and make the developer fulfil its obligations towards the allottees to whom such receipt or allotment is being issued. Hereby it makes the promoter duty bound to explain the reasons for which such a huge amount had been retained by it for so long considering the fact that the promoter company is not a bank or non- banking financial company (NBFC).

23. **Admissibility of refund along with prescribed rate of interest:** Section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund the amount paid by the allottee 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]***

(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.*

24. 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.

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25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 08.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

26. 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—*

- (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;"*

27. The authority after considering the facts stated by the complainant and the documents placed on record is of the view that the complainant is well within his right for seeking refund under section 18(1)(b) of the Act, 2016.

28. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.

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 allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of provisional allotment letter 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)(b) 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 him 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*.

**F.II Direct the respondent to pay litigation cost of Rs.1,00,000/-.**

31. The complainant is seeking relief in the nature of compensation. The Hon'ble Supreme Court of India, in *M/s Newtech Promoters and Developers Pvt. Ltd. v. State of UP & Ors. (Civil Appeal Nos. 6745-6749 of 2021)*, has held that the Adjudicating Officer as per section 71 has exclusive jurisdiction to decide matters relating to compensation under Sections 12, 14, 18, and 19 of the Act. Accordingly, the complainant may approach the Adjudicating Officer for redressal of his grievances pertaining to relief of compensation and legal expenses.

**G. 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):

- I. The respondent/promoter is directed to refund the amount received by it i.e. Rs.20,57,010/- from the complainant along with interest at the rate of 11.10% p.a. 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 deposited amount.
  - II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
33. The complaints stand disposed of.
34. Files be consigned to registry.

**Dated: 08.05.2025**

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram**HARERA**  
**GURUGRAM**