



HARERA
GURUGRAM

Complaint No. 2327 of 2023 and
ors.

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

Date of decision: 15.04.2025

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/2327/2023	Sunita Lamba & anr. V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.	Sh. Manish Lamba Sh. Amandeep Kadyan for R1 Sh. Sanya Arora for R2
2.	CR/2942/2023	Devesh Gupta & anr. V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.	Ms. Shikha Sh. Amandeep Kadyan for R1 Sh. Sanya Arora for R2
3.	CR/5788/2023	Kuldeep Singh V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd	Sh. Himanshu Gautam Sh. Amandeep Kadyan for R1 Sh. Sanya Arora for R2

CORAM:

Shri. Arun Kumar

Shri Ashok Sangwan

Chairperson

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" (group housing colony) 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: 30			
<i>"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."</i>			
(Emphasis supplied)			
Occupation certificate: - Not obtained			
Complaint No.	CR/2327/2023	CR/2942/2023	CR/5788/2023
Unit no. and area admeasuring	F-124 admeasuring 306 sq. ft. [pg. 25 of complaint]	G-170 admeasuring 580 sq. ft. [pg. 24 of complaint]	G-064 admeasuring 460 sq. ft. [pg. 18 of complaint]
Date of builder buyer agreement	14.01.2015 [pg. 25 of complaint]	31.12.2014 [pg. 20 of complaint]	08.01.2015 [pg. 14 of complaint]



Date of transfer in favour of complainant			20.06.2019 [pg. 12 of complaint]
Due date of delivery of possession	14.01.2019	31.12.2018	08.01.2019
Sale Consideration (SC)	₹28,18,627/- [pg. 48 of complaint]	₹79,54,700/- [pg. 24 of complaint]	₹77,25,700/- [pg. 18 of complaint]
Total Amount paid by the complainant(s)(AP)	₹26,40,289/-	₹27,10,910/-	₹25,25,099/-
Offer of possession	Not offered	Not offered	Not offered
Relief sought	1. DPC. 2. Possession. 3. Litigation cost.	1. DPC. 2. Possession. 3. Refund of PLC 4. CD.	1. DPC. 2. Possession. 3. Litigation cost.

4. 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.
5. 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/2327/2023 Sunita Lamba & anr. 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/2327/2023 Sunita Lamba & anr. V/s Ansal Housing Limited and Samyak Projects Pvt. Ltd.

S. No.	Particulars	Details
1.	Project name and location	Ansal 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	14.01.2015 [pg. 25 of complaint]
7.	Unit No.	F-124 [pg. 27 of complaint]
8.	Unit area admeasuring	306 sq. ft. [pg. 27 of complaint]
9.	Possession clause	Clause 30 of BBA <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 period 6 months allowed to the developer over and above the period of 42 months.</i>
10.	Date of commencement of construction as per Customer	15.12.2014



	ledger dated 24.05.2015 at page 52 of complaint	
11.	Due date of Possession	14.01.2019 (Calculated from the date of Execution of Agreement being later) (Grace period of 6 months is allowed being unqualified).
12.	Sale consideration	₹ 29,91,768/- [As per customer ledger dated 24.05.2015 at pg. 52 of complaint]
13.	Total amount paid by the complainant	₹ 12,81,303/- Paid 42 % of the TSC [As per customer ledger dated 24.05.2015 at pg. 51 of complaint]
14.	Addendum executed between R2 & complainant	11.07.2023 [pg. 24 of short affidavit filed by R2]
15.	Offer of Possession	NA
16.	Occupation Certificate	NA

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -
- That the present complaint is being filed by the Complainants against the Respondents as the Respondents have, in a pre-planned manner, cheated and defrauded the Complainants of their hard-earned money and have rendered deficient services by not providing possession of the Unit No. F-124, measuring 306 Sq. Ft. in the project known as "Ansal Hub 83 Boulevard" Sector-83, Gurugram.
 - That the fact of the matter is that the Complainants were approached by the authorized marketing representatives /authorized real estate dealer of Respondents named Karan & Company, having its office at C-30, NDSE-1, New Delhi - 110049 and business agents of the Respondents to purchase



a commercial Unit from the Respondents. The representatives of the Respondents claimed that the Respondents had completed several real estate projects and that they were one of the most respected names in the real estate industry. They further stated that the Respondents had all the requisite permissions for this particular residential project, which had been launched under the name and style of "Ansal Hub 83 Boulevard" Sector-83, Gurugram. The representatives assured the Complainants that the Respondents had already commenced the construction of the above-mentioned project and that the Complainants could purchase a Shop/Unit to ensure that the Complainants get possession within 42 months excluding six months grace period as mentioned in the Agreement. Copy of Commercial Unit Buyers Agreement is annexed herewith.

- c. That on believing the assurance given by the Respondents, the Complainants in their meeting with the representatives and authorized agents of the Respondents agreed to purchase Unit No. F-124, measuring 306 Sq. Ft. in the project known as "Ansal Hub 83 Boulevard" Sector-83, Gurugram @ Rs. 9595/- per sq. ft. Total cost of the Commercial Unit is Rs. 28,18,627.20/- after deducting the discount.
- d. That the Complainants along with Co-applicant Mr. Ravi Raj S/o Karan Singh entered into a Builder Buyer's Agreement on dated 14.01.2015 with the Respondents in respect of the above said commercial Unit. That the Complainants gradually came to realize that the promises of timely possession of the above Commercial Unit were nothing but false assurances and misrepresentations on the parts of the Respondents. There has been a situation where the Respondents have failed to deliver possession of the constructed Commercial Unit as per the schedule that

had been promised by the Respondents within 42 months excluding six months grace period.

- e. That it was at this stage that the Complainants again contacted the representatives of the Respondents to find out status of Commercial Unit handing over. The Complainants sought information on the tentative timeline for possession by way of a clear and firm assurance by the Respondents that they shall complete the project on time. Much to his dismay, the Respondents refused to provide any such assurance.
- f. That to provide an instance of the ground reality of the status of progress of construction at site, it is brought to the attention of this Hon'ble Authority that the Respondent's raised demands were all promptly paid by the Complainants as it reflected from the annexed receipts and other documents, which clearly shows that the Complainants have been making timely payments in good faith all along.
- g. That it is abundantly clear by the act and conduct of the Respondents that they have not only defrauded the Complainants, but also have violated the terms of the Builders buyer agreement by not offering possession within time framed. It is apparent that the Respondents have provided deficient services, is guilty of unfair trade practices, and has planned to fleece the Complainants of their hard-earned money in a well-directed and pre-planned manner.
- h. That the actions of the Respondents are violative of the principles of natural justice and the services rendered are deficient, malafide, unfair, unjust and illegal as have been shown in the preceding paragraphs. The said practices are against the tenants of ethical business and are liable to be severely deprecated by this Hon'ble Authority.



- i. That the Respondents have caused monetary losses to the Complainants and has denied her the right to enjoy the property. Even more damaging, they have caused immense mental agony, confusion, insecurity and pain to the Complainants.
- j. That the Complainants have also further incurred costs towards the legal/documentation and other expenses due to no fault of her own. That the Complainants have until date deposited Rs. 26,40,289.66/- in furtherance of the Commercial Unit agreement with the Respondents. However, the Respondents has failed to deliver/offer possession of his allotted Commercial Unit to the Complainants within the stipulated time.
- k. That the Respondents had already paid entire required sale consideration amounting to Rs. 26,40,289.66/- despite receiving the said amount, the Respondents has knowingly, intentionally and deliberately not delivered the possession of the said Unit and also not executing the Conveyance Deed of the said Unit.
- l. That the act and conduct of the Respondents amounts to grave deficiency in service and unfair trade practice of the highest degree. The Respondents has caused great mental agony and physical harassment to the Complainants. The Complainants has paid such a huge amount after collecting her life's savings for her future prospectus. That the Respondents are guilty of deficiency in service as per Act. The Complainants has suffered on account of deficiency in service by the Respondents by not deliver the possession of the Commercial Unit of the Complainants within time.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s): -



- a. To direct the Respondents to deliver the possession of Commercial Space with penalty for delaying the possession at the prevailing rate by the Authority.
 - b. To direct the respondents to execute the conveyance deed of the above said unit.
 - c. Cost of Litigation of Rs. 2,00,000/-.
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 complainants had approached the answering Respondent for booking a shop no. F-124 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 dated 14.01.2015 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 2022 and the cause of action accrue on 05.01.2019 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. 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 and upon 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 i.e M/s Samyak Projects Pvt. Ltd. to jointly promote, develop and market the proposed project being developed on the land as aforesaid."

- I. 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. 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).

- b. 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.
- c. 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.
- d. 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.
- e. 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.

- f. 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.
- g. 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.
- h. 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.
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 also taken on record. 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.

E. 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.

E. 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 complainants.

G.I. To direct the Respondents to deliver the possession of Commercial Space with penalty for delaying the possession at the prevailing rate by the Authority.

In the present matter the complainant was allotted unit no. F-124, admeasuring 306 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder for a total sale consideration of ₹28,18,627/- and they have paid a sum of ₹26,40,289/-. A buyer's agreement dated 14.01.2015 was executed between the complainant and respondent no. 1 wherein respondent no. 2 was the confirming party. 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 is calculated from the date of agreement i.e., 14.01.2015 as the date of commencement of construction is not known. The period of 42 months expired on 14.07.2018. 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 14.01.2019. The occupation certificate for the project has not yet been obtained from the competent authority.

19. 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.
20. 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.

21. The authority is of the view that the builder buyer agreement dated 14.01.2015 was 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 dated 14.01.2015 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

22. 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 develop 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).

23. The Authority further observes that the Occupation Certificate for the project has not yet been obtained and that the project has since been transferred to Respondent No. 2, who now assumes the responsibility for its completion. In light of the fact that the project is currently the subject of arbitral proceedings and the final arbitral award has not yet been rendered, it is not feasible at this stage to ascertain the precise apportionment of financial liability among the respondents. Accordingly, in view of the foregoing, the liability arising under Section 18(1) of the Act and the applicable Rules, as read with the terms of the Builder-Buyer Agreement, shall be borne by Respondent No. 1 and Respondent No. 2 jointly and severally. The responsibility for handing over possession of the unit shall rest solely with Respondent No. 2.
24. 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)

25. 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."

26. **Due date of possession and admissibility of grace period:** As per clause 30 of the agreement dated 14.01.2015, 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., 14.01.2015. Hence, the due date comes out to be 14.01.2019 including grace period of 6

months as it is unqualified. 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:

CR no.	Period for which the complainants are entitled to DPC
CR/2327/2023	W.e.f. 14.01.2019 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.
CR/2942/2023	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.
CR/5788/2023	W.e.f. 20.06.2019 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

27. **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.

28. 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.
29. 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%**.
30. 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;"
31. 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.
32. 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 14.01.2019. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.

33. 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 14.01.2015. 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.
34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents/promoters is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 14.01.2019 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
35. As per section 17(2) of the Act of 2016, the promoter is under an obligation to handover the physical possession of the said unit to the complainant. In view of the above, the respondents are directed to handover possession of the flat/unit to the complainant in terms of section 17(2) of the Act of 2016, within a period of 2 months after obtaining occupation certificate from the competent authority.

F.II. Conveyance deed

36. 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. As per the interim order of the sole Arbitrator the said project has now been physically handed over to the respondent no. 2 and there is nothing on the record to show that the said respondent has applied for occupation certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent no. 2 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.

F.III. Direct the respondent to pay legal expenses of ₹1,00,000/- incurred by the complainants.

37. The complainants in the above reliefs are seeking litigation expenses & monthly rent reimbursement. 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. Therefore, the complainants may approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority:

38. 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 i.e., 14.01.2019 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- b. The respondent no. 2 is further directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate upon payment of outstanding dues, if any after adjustment of interest for the delayed period and thereafter 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.
- 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 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.

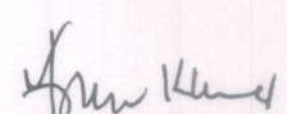


HARERA
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Complaint No. 2327 of 2023 and
ors.

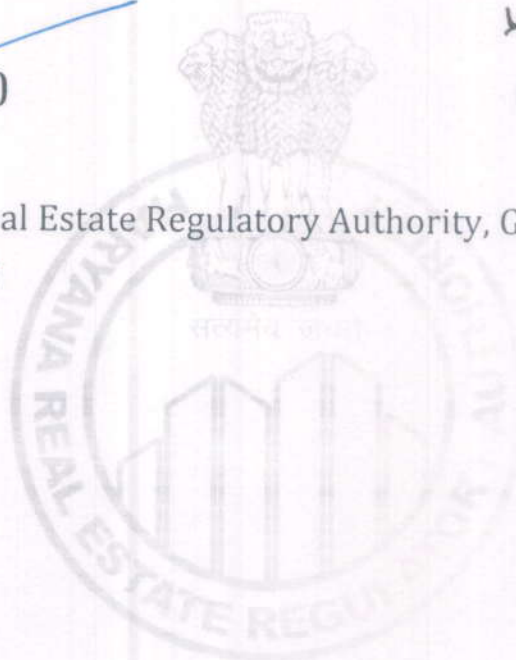
39. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
40. The complaints stand disposed of.
41. Files be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.04.2025



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