

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

Complaint no.	:	483 of 2024
Date of filing:		12.02.2024
Date of decision	:	15.04.2025

Krishan Kumar Bishnoi through SPA holder Manmohan Singh Regd. Address: 395A, Sector 15A, Hisar	Complainant
Versus	
M/s Ansal Housing Ltd. (Formerly Known as M/s Ansal Housing & Construction Ltd.) Regd. office: 15 UGF, Indraprakash, 21, Barakhamba Road, New Delhi-110001 M/s Samyak Projects Pvt. Ltd. Regd. Address: 111, 1 st floor, Antriksh Bhawan, K.G. Marg, New Delhi-110001	Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Sh. Prashant Vashisht (Advocate)
Sh. Amandeep Kadyan (Advocate)
Sh. Shanker Wig (Advocate)

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

ORDER

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



responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Hub 83 Boulevard" in Sector 83, Manesar, Gurgaon.
2.	Nature of the project	Commercial
3.	Project area	2.60 acres
4.	RERA Registered/ not registered	Registered vide no. 09 of 2018 dated 08.01.2018 valid up to 31.12.2020
5.	DTCP License No.	113 of 2008 dated 01.06.2008 valid up to 31.05.2018
6.	Name of licensee	Browz Technologies Pvt. Ltd and 4 others
7.	Unit no.	T-50 [pg. 29 of complaint]
8.	Unit admeasuring	313 sq. ft.
9.	Date of builder buyer agreement	08.04.2015 [proof not placed incomplete BBA attached in the file]
10.	Possession clause	30 <i>The developer shall offer possession of the unit anytime within 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 subject to timely payment of all the dues by buyer and subject to force major</i>

		<i>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>
11.	Due date of delivery of possession	08.04.2019 [due date calculated from the date of BBA as the date of start of construction is not known. Grace period of 6 months allowed.]
12.	Total sale consideration	₹21,39,433/- [as per BBA at pg. 29 of complaint]
13.	Total amount paid by the complainant	₹9,61,725/- [alleged by complainant at pg. 7 of complaint] *60% to be paid on offer of possession as per payment plan.
14.	Occupation certificate	NA
15.	Offer of possession	NA

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That the complainant Krishan Kumar, is a law-abiding and peace-loving citizen (hereinafter called the Complainant / Petitioner) and as he is living out of India so he is giving Special Power of attorney duly attested by the oath Commissioner of Pennsylvania on the name of his father-in-law Manmohan Singh on dated 04.10.2023.
 - b. That the Respondent Party Ansal Housing & Construction Limited is a company incorporated under the Companies Act, 1956 having Registered Office at Admn. office: At 606, 6th Floor, Indra Prakash Building, 21, Barakhamba Road, New Delhi-110001 (hereinafter called the Developer/Promoter/Builder/ Respondent), and the project in question is known as "Ansal Hub 83 Boulevard, Sector 83 Gurgaon" . (Hereinafter called the Project/freehold land). That as



per Sec 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said act, and is under the territorial jurisdiction of this Hon'ble Regulatory Authority.

- c. The Complainant/Petitioner/Allottee, Krishan Kumar, received a marketing call from a real estate agent who represents himself as an authorized agent of the Respondent/promoter and marketed for booking in Commercial Project namely "ANSALS HUB 83 BOULEVARD, Situated at Sector 83, Gurgaon-122004. The Complainant visited the sales office of the Respondent along with the real estate agent and consulted with the marketing staff/office bearers of the Respondent. The marketing staff showed a rosy picture of the project through glitzy advertisements and colourful brochures, proposing to develop an Exclusive Commercial Space promoted on freehold land at the prime location of Gurgaon, claiming the same to be an oasis of convenience. The marketing staff of the Respondent claimed that ANSALS HUB 83 BOULEVARD is an A-Grade Commercial Complex with direct access from NH-08.
- d. That being impressed by the Respondents, Krishan Kumar (Complainant) applied for Shop and has been allotted the Shop having unit No. T-050 with a carpet area of 313 sq. ft. at the rate of Rs.7195/- per sq. ft. and the Agreement was executed between the parties on 08.04.2015. That the total price fixed for the unit is Rs.23,16,534.91/- with the Payment plan 40% advance and 60% at the time of possession and the Complainant has paid a total amount of Rs.9,61,725.88/- to the Opposite Party No.1.



- e. That as per the above Para, the Promoters/Respondents assure to hand over possession of the commercial space/ Unit within 42 months from the date of execution of Agreement, that would be December 2018 but still they are not ready with possession due to their own dispute with respondent No. 2. That despite promising several times and despite the written Commitments made in the Agreement, The Respondents failed to deliver the possession as promised and a new date for delivery of the Unit was informed to the complainants whenever the Complainants visited their office.
- f. That it was the bounden duty of the Respondents to give the possession within 42 from the date of execution as per the Agreement. The Act of the Respondents is tantamount to cheating, firstly to promise one thing and doesn't do the same thing within time. Mutual and free consent is Sine Qua Non (Essential Ingredient of the Agreement). The Agreement of the opposite respondents' smacks high-handedness, Despotism, Arrogance and Arbitrariness. That the Complainant received a mail on dated 03.08.2023 from respondent No. 2 with background of the project and other relevant details such as respondent No. 2 is now owner of the project.
- g. That the Complainant has also received an email dated 27.10.2022 from Respondent No. 1 confirming the amount received by them and also informed that as per the order of Arbitration Tribunal, M/S Samyak Projects shall execute the balance construction and complete the construction of the project by end of June 2023. That the respondent No. 2 has sent an email to the Complainant on dated 19.08.2023 and 11.09.2023 for executing addendum Agreement and also to make the balance payment, to which the Complainant replied by way of an email dated 15.09.2023 and showed his



willingness to sign the addendum Agreement but on the same terms and conditions and clarified that he has already paid 40% as per the Agreement and the rest 60% will be paid at the time of possession only.

- h. That the main grievance of the Complainants in the present complaint is that despite the Complainants having paid the amount as per Agreement dated 08.04.2015 i.e., Rs.9,61,725.88/-, on time, the Respondent party has miserably failed to deliver the possession of the unit no. T-050. That the facts and circumstances as enumerated above would lead to the irrefutable conclusion that the Respondent party has been deficient in services.
- i. That due to the above acts of the respondent and the unfair terms and conditions of the Buyer agreement, the Complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the Complainant on account of the aforesaid act of unfair trade practice. There is a prima facie case in favour of the Complainant and against the Respondent for not meeting its obligations under the Agreement and the Real Estate (Regulation and Development) Act, 2016, which makes them liable to answer to this Hon'ble Authority.
- j. That there is an apprehension in the mind of the Complainant that the Respondent Party has not disclosed all the facts and the situation, with the intention of deceiving and defrauding the Complainant and their hard-earned money. A probe needs to be initiated to determine malicious practices adopted by the Respondent.
- k. That for the first-time cause of action for the present complaint arose in October 2018 i.e., when the possession should be handed

over to the Complainant and when the sale Agreement containing unfair and unreasonable terms was, for the first time, forced upon the Allottee and also not offered possession despite a written commitment of 42 months due to their own disputes. The cause of action further arose 11.09.2023, when the Respondent Party forced the Complainant to sign the addendum Agreement and also forcing the Complainant to make the pending payment. Further, the cause of action again arose on various occasions and on many times till date, when the protests were lodged with the Respondent Party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this restrains the Respondent Party by an order of injunction and/or passes the necessary orders.

- l. That the Complainant is an aggrieved person filing the present complaint under section 31 with the Authority for violation/contravention of provisions of this Act as mentioned in the preceding paragraph. That as per section 18 of the RERA Act, 2016, the promoter is liable to pay interest on delayed possession or return of the amount and to pay compensation to the allottees of an apartment, building, or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.
- m. That the Complainant wants to withdraw from the project. The Promoter has not fulfilled its obligation therefore as per obligations on the promoter under section 12, 11 (4), and 19(4), therefore the promoters obligated to refund the paid amount along with interest at the prescribed rate i.e. 12% per annum.

C. Relief sought by the complainant:



4. The complainant has sought following relief(s).
- To get a refund of the paid money along with prescribed interest from the date of payment till date of refund (as per section 11 (4), 12, 18 & 19(4) of the Real Estate (Regulation and Development) Act, 2016).
 - To get compensation of Rs. 10,00,000/- for mental agony, harassment, discomfort, and undue hardship.
 - To get the litigation cost of Rs. 1,00,000/-.
 - The complainant is entitled to get an order in his favour to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the sale Agreement.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 1.

6. The respondent no. 1 has contested the complaint on the following grounds.
- That the complainants had approached the answering Respondent for booking a shop no. T-050 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 08.04.2015 was signed between the parties.
 - 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 2024 and the cause of action accrue on 08.04.2019 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 dated 06.01.2015. That perusal of the said agreement would show that it is a Tripartite Agreement wherein M/s Samyak Projects Pvt. Ltd is also a party to the said agreement.
- k. That the perusal of the Builder Buyer Agreement at page 3 would show that M/s Samyak Projects Pvt. Ltd not only possesses all the rights and unfettered ownership of the said land whereupon the project namely Ansal boulevard, Sector 83 is being developed, but also is a developer in the said project. That the operating lines at page 3 of the Builder Buyer Agreement are as follow: "The Developer has entered into an agreement with the Confirming Party 3 i.e M/s Samyak Projects Pvt. Ltd to jointly promote, develop and market the proposed project being developed on the land as aforesaid."
- l. The said M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the said project well within time as was agreed and given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd. That in an arbitral proceeding before the Ld. Arbitrator Justice A.K Sikri, M/s



Samyak Project Pvt. has taken over the present project the answering Respondent for completion of the project and the Respondent has no locus or say in the present project.

E. Written submissions filed by respondent no. 2

- a. That the present complaint has been filed by the complainant regarding a unit no. T-050 in the project "Boulevard 83", Gurugram, Haryana. That it is pertinent to mention here that the said unit was being constructed and developed by Respondent No. 1 (Ansal Housing and Construction Ltd.).
- b. That Respondent No.1 was solely responsible for the construction and development of the project but failed to fulfil its obligations towards the complainant, other allottees, and Respondent No.2 (Samyak Projects Pvt. Ltd.).
- c. That due to the failure of the Respondent no.1 to complete the timely construction of the project, the Memorandum of understanding dated 12.04.2013 between the Respondent No.1 and Respondent No.2 was terminated and arbitration proceedings were initiated.
- d. That, pursuant to the Arbitration Tribunal's order dated 02.09.2022, the project was handed over to Respondent No.2 (Samyak Projects Pvt. Ltd.) for completion of construction. That the present written submission is being filed on behalf of Respondent No. 2 as per the order of the Hon'ble Authority vide its order 04.03.2025.
- e. That the relief sought by the Complainant is for refund of the amount of Rs. 9,61,725/- paid by the Complainant to Respondent No.1 which comprises of only 40% of the total sale consideration for the allotted unit. It is pertinent to mention here that all the



payments with respect to the unit mentioned in the complaint were Paid by the Complainant to Respondent No. 1 (i.e., Ansal Housing ltd.) being the primary party.

- f. That the Respondent No. 2 has never received any amount of consideration/payment from the complainant in respect of the unit allotted. Moreover, the authority in various orders has already held that Respondent No. 1 (i.e., Ansal Housing Ltd.) responsible to refund the amount taken by them. It is pertinent to mention here that the Hon'ble Authority has observed and passed detailed orders with respect to the payment of refund and interest on Delayed Possession in similar matters having the Complaint Nos.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

F. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject-matter jurisdiction



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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings on the relief sought by the complainants.

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

12. In the present matter the complainant was allotted unit bearing no. T-050, admeasuring 313 sq. ft. respectively in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder. A buyer's agreement was executed between the complainant and respondent no. 1 wherein respondent no. 2 was the confirming party on 08.04.2015. As per clause 30 of both the BBA, respondent no. 1 was obligated to complete the construction of the project and hand over the possession of the subject unit within 42 months from obtaining all the required sanctions and



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

13. As per the BBA, respondent no. 2 (land owner) and respondent no. 1 (developer) entered into a MoU dated 12.04.2013 whereby the development and marketing of the project was to be done by the respondent no. 1 in terms of the license/permissions granted by the DTCP, Haryana. Upon failure of respondent no. 1 to perform its obligations as per MoU and complete the construction of the project within the agreed timeline, respondent no. 2 terminated the said MoU vide notice dated 10.11.2020 and issued a public notice in newspaper for termination of the MoU. The matter pursuant to the dispute was referred to the Delhi High Court under section 9 of the Arbitration & Conciliation Act, 1996 and vide order dated 22.01.2021 Hon'ble High Court of Delhi appointed the Hon'ble Justice A.K. Sikri, former Judge of the Hon'ble Supreme Court of India as a sole arbitrator of Arbitral Tribunal.
14. The complainant i.e., Ansal Housing Pvt. Ltd. in the petition sought various reliefs including to stay the operation of the termination letter dated 10.11.2020 and the public notice dated 16.12.2020 till the final arbitral award is given. The Arbitral Tribunal vide order dated 31.08.2021 granted no stay on termination notice dated 10.11.2020 and no restraining order in this regard was passed against the M/s Samyak Projects Pvt. Ltd. Further, vide order dated 13.10.2021 of the sole arbitrator respondent no. 1 was directed to handover the aforementioned project to the respondent no. 2. Following the directive outlined in the order dated 13.10.2021 of the sole arbitrator, respondent no. 1 handed over the project to respondent no. 2 via a



possession letter dated 14.10.2021, for the purpose of undertaking the remaining construction tasks. Subsequently, on 02.09.2022, the Sole Arbitrator directed respondent no. 2 to finalize the project within the stipulated timeline, specifically by the conclusion of June 2023 and to collect funds from the allottees with a condition that the amount so collected shall be put in escrow account.

15. The authority is of the view that the builder buyer's agreement were signed by the complainants and the respondent no. 1. The respondent no. 2 is a confirming party to that BBA. In the builder buyer agreement it was specifically mentioned that respondent no. 2(land owner) and respondent no. 1(developer) entered into a MoU dated 12.04.2013 whereby the development and marketing of the project was to be done by the respondent no. 1 in terms of the license/permissions granted by the DTCP, Haryana. Although the respondent no.2 i.e., Samyak Projects Pvt. Ltd. cancelled the agreement vide termination notice dated 10.11.2020 and the matter is subjudice before the arbitral tribunal appointed by Delhi High Court vide order dated 22.01.2021. It is relevant to refer the definition of the term 'Promoter' under the section 2(zk) of the Real Estate (Regulation and Development) Act, 2016.

"2. Definitions.-

(zk) "promoter" means

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

xxxxxxx"



16. The authority observes that landowner is covered by the definition of promoter under sub clause (i) or (ii) of section 2(zk). A person who constructs or causes to be constructed a building or apartments is a promoter if such building or apartments are meant for the purpose of selling to other persons. Similarly, a person who develops land into a project i.e., land into plots is a promoter in respect of the fact that whether or not the person also constructs structures on any of the plots. It is clear that a person develops land into plots or constructs building or apartment for the purpose of sale is a promoter. The words, "causes to be constructed" in definition of promoter is capable of covering the landowner, in respect of construction of apartments and buildings. There may be a situation where the landowner may not himself develops land into plots or constructs building or apartment himself, but he causes it to be constructed or developed through someone else. Hence, the landowner is expressly covered under the definition of promoter under Section 2 (zk) sub clause (i) and (ii).
17. Further, the authority observes that the occupation certificate for the project is yet to be received and the project stands transferred to the respondent no. 2 who is now responsible to complete the same. In view of the above, the liability under provisions of Section 18(1) of the Act & Rules read with builder buyer agreement shall be borne by both the respondents jointly and severally and the liability to handover the unit shall lie with respondent no. 2.
18. The complainant intends to withdraw from the project and is seeking refund of the amount paid along with interest on the amount paid. Section 18 is produced below for the ready reference:

"Section 18: - Return of amount and compensation
18(1). If the promoter fails to complete or is unable to give
possession of an apartment, plot, or building. -



in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

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

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

20. **Due date of possession and admissibility of grace period:** As per clause 30 of the agreement, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 42 months from obtaining all required sanctions and approvals necessary for commencement of construction, whichever is later. Further, grace period of 6 months is sought. The date of start of construction is not known. Therefore, the due date is calculated from date of execution of builder buyer agreement i.e., 08.04.2015. The period of 42 months ends on 08.10.2018. 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 08.04.2019.

21. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 15.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. The definition of term 'interest' as defined under section 2(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—

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

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

25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the agreement executed between the parties on 08.04.2015, the respondent was obligated to deliver the subject unit within 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. Therefore, the due date of handing over possession comes out to be 08.04.2019.
26. It is pertinent to mention over here that even after a passage of more than 5 years neither the occupation certificate is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority



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

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

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

28. Further, the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by



the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed"

29. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
- G.II. The complainant is entitled to get an order in his favour to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the sale Agreement**
31. In view of the findings above the said relief stands redundant.
- G.III. Direct the respondent to pay a sum of ₹10,00,000/- for mental agony, harassment, discomfort, and undue hardship.**
- G.IV. Direct the respondent to pay a sum of ₹1,00,000/- as litigation cost.**



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

H. Directions of the authority

33. 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 refund the amount of ₹9,61,725/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount.
 - b. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
 - c. The respondents are further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the



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

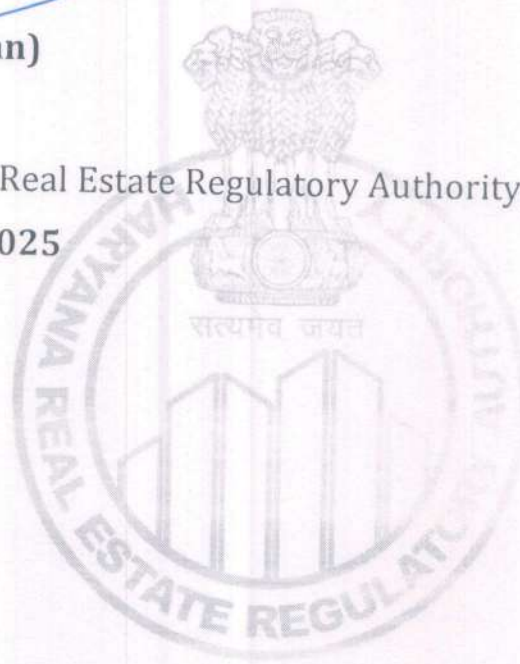
34. Complaint stands disposed of.
35. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.04.2025



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