



**HARERA**  
**GURUGRAM**

Complaint No. 5894 of 2023 and  
anr.

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

**Date of decision: 15.04.2025**

NAME OF THE BUILDER		ANSAL HOUSING LIMITED SAMYAK PROJECTS PVT. LTD.	
PROJECT NAME		ANSAL HEIGHTS 86	
S. No.	Case No.	Case title	APPEARANCE
1	CR/5894/2023	Sunil Kumar Yadav V/s Ansal Housing Ltd. Formerly known as Ansal Housing & Construction Ltd. & Samyak Projects Pvt. Ltd.	Sh. Himanshu Gautam Sh. Amandeep Kadyan for R1 Sh. Sanya Arora for R2
2	CR/6087/2023	Manish Kakkar & anr. V/s Ansal Housing Ltd. Formerly known as Ansal Housing & Construction Ltd. & 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 Heights 86" (group housing colony) being developed by the same respondent/promoter i.e., M/s Ansal Housing Limited. 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 HEIGHTS 86" Sector-86, Gurugram.	
Possession Clause: 31		
<i>"31. The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."</i>		
(Emphasis supplied)		
Occupation certificate: - Not obtained		
Complaint No.	CR/5894/2023	CR/6087/2023
Unit no. and area admeasuring	E-1202 admeasuring 1690 sq. ft.  [pg. 31 of complaint]	V-02 admeasuring 4410 sq. ft.  [pg. 37 of complaint]
Date of builder buyer agreement (signed by R1 & R2)	20.12.2012  [pg. 28 of complaint]	05.04.2013  [pg. 15 of complaint]
Due date of delivery of possession	20.12.2016	01.10.2017  *due date calculated from date of commencement of construction i.e., 01.10.2013 being later



<b>Sale Consideration (SC)</b>	₹62,47,168/- [pg. 31 of complaint]	₹1,61,25,000/- [pg. 18 of complaint]
<b>Total Amount paid by the complainant(s)(AP)</b>	₹ 69,19,258/- [pg. 44 of complaint]	₹1,88,29,420/- [ SOA dated 04.08.2023]
<b>Offer of possession</b>	Not offered	Not offered
<b>Relief sought</b>	1. Possession 2. DPC	1. DPC 2. Possession 3. Litigation cost- ₹1,00,000/-

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/6087/2023 Manish Kakkar & anr. V/s Ansal Housing Ltd. Formerly known as Ansal Housing & Construction Ltd. & 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/6087/2023 Manish Kakkar & anr. V/s Ansal Housing Ltd. Formerly known as Ansal Housing & Construction Ltd. & Samyak Projects Pvt. Ltd.**



S. No.	Particulars	Details
1.	Name and location of the project	"Ansal Heights 86", Sector 86, Gurugram.
2.	Nature of the project	Group housing colony
3.	Project area	12.843 acres
4.	DTCP license no.	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	V-05 (As per page no. 18 of the complaint)
7.	Unit area admeasuring	4300 sq. ft. (As per page no. 18 of the complaint)
8.	Revised unit number and area as per letter dated 15.11.2013	V-02 4410 sq. ft. (as per page no. 37 of complaint)
9.	Date of Villa buyer agreement	05.04.2013 (As per page no. 15 of the complaint)
10.	Possession clause	31. <i>the Developer shall offer possession of the Unit any time, 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</i> subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. 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 (As per page no. 23 of the complaint)



11.	Due date of possession	05.04.2017 (calculated from the date of buyer's agreement including grace period)
12.	Total sale consideration	Rs.1,76,83,500/- (As per payment plan on page no. 31 of the complaint)
13.	Amount paid by the complainant	Rs.1,88,29,420.41/- [as alleged by the complainant vide application dated 23.05.2024 without proof]
14.	Occupation Certificate	Not obtained
15.	Offer of possession	Not offered

**B. Facts of the complaint**

8. The complainants have made the following submissions in the complaint: -
- That on 17.03.2012, the first buyer Mr. Narender Kumar booked a villa bearing unit no. V-002 (earlier V-005) admeasuring 4300 sq. ft. in the project named "Ansal Heights 86" in Sector 86, Gurugram.
  - On 07.09.2012, the first buyer transferred all the rights and liabilities in respect of such allotment to the complainant Mr. Manish Kakkar and Mrs. Meenakshi Kakkar with due permission of respondent no. 1. Accordingly, the villa bearing unit no. V-002 (earlier V-005) admeasuring 4300 sq. ft. in the project named "Ansal Heights 86" in Sector 86, Gurugram, was allotted to the complainants.
  - That on 05.04.2013, builder buyer agreement (BBA) was entered into between the parties wherein as per clause 30, the developer should offer possession of unit within 48 months (42 months + 6 months as grace period) from date of execution of allotment letter or the date of obtaining all the required sanctions and approval necessary for the commencement of construction, whichever is later.





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- d. That vide Letter dated 15.11.2013, The respondent no. 1, informed the complainants that their unit no. has been revised to V-002 from V-005 and area of the unit also increased Fromm 4300 sq. ft. to 4410 sq. ft. and demanded Rs. 18,43,408.44/- from the complainants. It is pertinent to note here that even after executing BBA, the respondent no. 1 unilaterally revised the layout plan and changed, the unit no. and area of the unit and put additional financial burden on the complainants by increasing the area of the allotted unit without their consent.
- e. That out of the total cost of the said unit a sum of Rs. 49,78,675 /- has been paid by the complainants to the respondent no. 1 till now as per the payment plan. That as per the BBA, the committed date of offering the possession was 05.04.2017 but even after a delay of almost 6 years and 5 months, the project has not yet been completed and the respondents are still not offering physical possession of the said villa, which is a clear violation of provisions of BBA and amounts to breach of BBA on the part of the respondents.
- f. That the cause of action arose in favour of the complainants and against the respondents from the date of booking of the said unit and it further arose when respondents failed/neglected to deliver possession of the said units within a stipulated time period. The cause of action further arose when the respondents has not completed the said project with the assured facilities and amenities. It further arose and it is continuing and is still subsisting on day-to-day basis as the respondents has still not rectified his defects and not fulfilled their obligations as per the builder buyer's agreement.

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

9. The complainants have sought following relief(s)



- a. Direct the respondent to handover the physical possession along with the delayed possession charges along with compound interest @ 24% per annum to the complainant.

10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

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

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

- a. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority, as the complainant has admitted that he has not paid the full amount. The Complainant has filed the present complaint seeking interest. The present complaint is liable to be dismissed on this ground alone.
- b. That even otherwise, the Complainant has no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Allotment Letter/Buyer's Agreement dated 05.04.2013, which is evidentiary from the submissions made in the following paragraphs of the present reply.
- c. That the Complainant approached the Respondent sometime in the year 2011 for the purchase of an independent unit in its upcoming residential project "ANSAL HEIGHTS" (hereinafter be referred to as the "project") situated in Sector-86, District Gurgaon (Haryana). It is submitted that the Complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the Complainant was being fully satisfied



with regard to all aspects of the project, including but not limited to the capacity of the Respondent to undertake development of the same and the Complainant took an independent and informed decision to purchase the unit, un-influenced in any manner.

- d. That thereafter the Complainant applied to the Respondent for provisional allotment of a unit in the project. The Complainant, in pursuant to the application, was allotted VILLA bearing No. V 002 in the project "ANSAL HEIGHTS" situated at Sector 86, District Gurgaon, Haryana. The Complainant consciously and wilfully opted for a Construction Linked Plan for remittance of the sale consideration for the unit in question and further represented to the Respondent that the Complainant should remit every instalment on time as per the payment schedule. The Respondent had no reason to suspect the bonafide of the Complainant.
- e. It is further submitted that despite there being a number of defaulters in the project, the Respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within the prescribed time period as given by the respondent to the authority.
- f. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the Complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly





passed in Civil Writ Petition No.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing Air Quality Index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the major factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the Builder Buyer Agreement as well as in compliance of other local bodies of Haryana Government.

- g. That the respondent is carrying his business in letter and spirit of the Builder Buyer Agreement but due to COVID"19 the lockdown was imposed throughout the country in March, 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent. That similar lockdown was imposed in the year 2021 which extended to the year 2022 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- h. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the ongoing construction of the project.



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



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

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

**E. Reply by the respondent no. 2**

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

- a. It is submitted that the Respondent No. 2 i.e. Samyak Projects Private Limited, having acquired the rights to develop the land on which the present Project was to be constructed, entered into a Memorandum of



Understanding "MOU" dated 06.09.2011 with Respondent No.1 i.e. Ansal Housing Limited with respect to the construction and development of the present Project under the name and style of "Ansal Heights-86" with respect to the land admeasuring 102 kanals 15 marlas (12.843 acres) falling in Rect. No. 14, 15 & 19, situated in the revenue estate of village Nawada Fatehpur, Tehsil and District Gurgaon, Haryana which is presently part of residential Sector 86 of Gurgaon Manesar Urban Plan 2021 ("Scheduled Land") for the development of group housing society. However, superseding the said MOU, the Respondent No. 1 & 2 entered into a Joint Venture Agreement "JVA" dated 24.05.2013.

- b. As per the clauses of the JVA, the entire scheme of development of the proposed Project on the said Scheduled Property was to be carried out by Respondent No.1 i.e. Ansal Housing Limited, at its own cost and expense including development of internal development services, commercial areas and other related developments, after taking all necessary approvals, sanctions/ permissions etc. It is pertinent to mention that as per the MOU it was the sole responsibility of the Respondent No.1 to develop the project and handover the possession to the allottees. It is also submitted that it was the Respondent No.1 who received the consideration amount from all the allottees.
- c. That the bare perusal of the clause 9.2 of the MOU clearly reflects that it is the sole responsibility / obligation of the Respondent No.1 towards the buyers / allottees. It is pertinent to mention that as per the MOU it was the sole responsibility of the Respondent No.1 to develop the project and handover the possession to the allottees. It is also submitted that it was the Respondent No.1 who received the consideration amount from all the allottees.

- d. That it is also submitted that the Hon'ble Authority in various cases pertaining to the same project has already decided that it is the responsibility of the Respondent No.1 towards the allottees. That it is also submitted that the Hon'ble RERA Authority in 73 cases has decided that the sole responsibility to return the amount paid by the allottees lies upon the Respondent No.1 i.e. Ansal. Moreover, the Authority through Hon'ble members Sh. Sanjeev Arora, Sh. Ashok Sangwan and Sh. Vijay Kumar Goyal in the matter of ***Mr Krishnendu Ghosh Dastidar And Mrs Ananya Ghosh Dastidar V/S Ms Ansal Housing And Construction Limited (2032/2018)*** vide its order dated 13.09.2022 which disposed of 42 other cases with respect to the project namely "Ansal Heights-86", clearly stated that the payments against the allotted units were received by M/s Ansal Housing & Constructions Ltd. and Samyak Projects Pvt. Ltd. was not party to the BBA's and therefore Samyak Projects Pvt. Ltd. cannot be held responsible. Also, it was held that the sole responsibility to return the amount paid by the allottees lies upon the Respondent no.1/No.1 i.e. Ansal.
- e. The Authority has in its various decisions have observed that M/s Samyak Projects is not the primary party, neither has direct nexus in respect of the consideration of the unit with the decree holder. Moreover, it is important to mention that it is the obligation of the party who has been benefitted by the amount of consideration. Hence, it shall prejudice the interest Respondent No.2 i.e. M/s Samyak Projects Pvt. Ltd who has not received any amount toward the completion of the said project by the Respondent No. 1.
- f. Moreover, it is further submitted that Arbitration proceedings with respect to the said Project are pending before the sole Arbitrator Hon'ble Justice A.K. Sikri. It is equally important to bring to the knowledge of this





Hon'ble Tribunal that a status quo has been maintained on the project by the Sole Arbitrator vide interim order dated 31.08.2021 till the final award is passed.

g. That there is no privity of contract between the Respondent No.2 and Complainant as it was the sole responsibility of the Respondent No.1 to deliver the units to the allottees. Moreover, a status quo has been imposed by the learned Arbitrator on the project, the unit cannot be handed over to the Complainant.

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. In complaint bearing no. 5894/2023 the respondent no. 2 has not filed the reply till date. The notice for hearing was duly served to respondent no. 2. However, despite providing enough opportunity for filing the reply, no written reply has been filed by the respondent no. 2. Thus, keeping in view the opportunity given, respondent no. 2 have failed to file the reply in the registry. Therefore, in view of the above-mentioned fact, the defence of the respondent no. 2 is hereby struck off by the Authority.

**F. Jurisdiction of the authority**

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

**F.I Territorial jurisdiction**

16. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this

authority has complete territorial jurisdiction to deal with the present complaint.

## **F. II Subject matter jurisdiction**

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

### **Section 11**

.....

(4) The promoter shall-

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

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

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

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

## **G. Findings on objections raised by the respondent.**

### **G.I. Objection regarding there is no privity of contract between the complainant and respondent no.2.**

19. The respondent no.2 i.e., M/s. Samyak Projects Pvt Ltd has raised an objection that there is no privity of contract between the complainant and respondent no.2 as it was the sole responsibility of respondent no. 1 to construct and handover the units to the allottees. The respondent no.2 further submitted that as per clause 9.2 of the MOU executed between the respondent no.1 and

respondent no.2, it was the sole responsibility/obligation of the respondent no.1 towards the allottees to develop the project and handover the possession and all the consideration amount has been received by respondent no.1 from the allottees.

20. The Authority observes that the flat buyer agreement dated 05.04.2013 was duly executed between the complainants and respondent no.1, with respondent no.2, M/s Samyak Projects Pvt. Ltd., being a confirming party to the said agreement. It is further observed, based on the submissions of respondent no.2, that it had earlier entered into a Memorandum of Understanding (MoU) dated 06.09.2011 with respondent no.1, which was subsequently superseded by a Joint Venture Agreement (JVA) dated 24.05.2013. As per the terms of the JVA, the entire development of the project, including internal development works, commercial areas, and other ancillary developments, was to be undertaken by respondent no.1 at its own cost, and after obtaining all requisite approvals, sanctions, and permissions.
21. Importantly, both the MoU and the JVA were agreements executed exclusively between respondent no.1 and respondent no.2 and the complainants were neither a party to these agreements nor was the arrangement disclosed to the complainants, nor did the complainants have any role in its execution. The document establishing the legal relationship between the complainant and the respondents remains the flat buyer agreement dated 05.04.2013, to which respondent no.2 is a confirming party. Therefore, the objection raised by respondent no.2 regarding the absence of privity of contract with the complainants is without merit and is accordingly rejected.

**G.II. Objection raised by the respondent no. 2 in its written submissions regarding status quo being imposed by the Learned Arbitrator on the project.**

22. The respondent no.2 has raised an objection that since the arbitration proceedings are going on between the respondent no.1 and respondent no.2, status quo has been imposed by the Learned Arbitrator on the project and thus the unit cannot be handed over to the complainant.
23. The Authority observes that the respondent no.2 terminated the MOU and the JVA that was executed between the respondents vide notice dated 02.02.2021 and issued a public notice in respect of the termination of the MOU. The matter pursuant to the dispute was referred to the Hon'ble Delhi High Court under Section 9 of the Arbitration and Conciliation Act, 1996 and vide order dated 22.01.2021, Hon'ble Justice A. K. Sikri, former judge of the Hon'ble Supreme Court of India has been appointed as a sole arbitrator of the Arbitral Tribunal by the Hon'ble Delhi High Court. As per the order dated 31.08.2021, the Hon'ble Tribunal observed that the construction of the project is almost complete and the respondent no.1 has applied for occupancy certificate. As per the present status of the project, it would be apt that the respondent no.2 also does not deal with the project by entering into any arrangement with third parties during the pendency of these proceedings and/or till further orders.
24. The Authority is of the view that the order dated 31.08.2021 is limited to the extent of the dispute inter se the respondents and does not bar the jurisdiction of this Authority to grant relief to the complainant under the provisions of the Act, 2016.
- H. Findings on the relief sought by the complainants.**
- H.I. Direct the respondent to handover the physical possession along with the delayed possession charges along with compound interest @ 24% per annum to the complainant.**
25. In the present matter the complainant was initially allotted villa no. V-05, admeasuring 4300 sq. ft. in the project "Ansal Heights 86" Sector 86 by the

respondent-builder for a sale consideration of ₹1,61,25,000/-. A buyer's agreement was executed with the complainant on 05.04.2013. As per the BBA, landowners assigned their entire rights, entitlements and interest in the land and the resultant FSI of the entire project to respondent no. 2 i.e., Samyak Projects Pvt. Ltd. Further, respondent no. 1 entered into an arrangement with respondent no. 2 to jointly develop and market the said project.

26. The authority is of the view that the builder buyer agreement dated 05.04.2013 was signed by the complainants and the respondent no. 1. The respondent no. 2 was the confirming party to that BBA. In the builder buyer agreement, it was specifically mentioned that respondent no. 1 and respondent no. 2 entered into an agreement whereby the development and marketing of the project was to be done jointly by the respondent no. 1 & 2 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 02.02.2021 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*

27. 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).

28. 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 the respondent. The complainant intends 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. -*

*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)*

29. Clause 31 of the BBA provides for handing over of possession and is reproduced below:

**"Clause 31**

*The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. 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."*

30. **Due date of possession and admissibility of grace period:** As per clause 31 of the BBA, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The period of 42 months is calculated from the date of commencement of construction i.e., 01.10.2013 being later. As far as grace period of 6 months is concerned the same is allowed being unqualified. The occupation certificate for the project has not yet been obtained from the competent authority. 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/5894/2023	W.e.f. 20.12.2016 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/6087/2023	W.e.f. 01.10.2017 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.

31. **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] 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.

32. 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.

33. 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%**.

34. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

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

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

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

35. 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.
36. 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 31 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.

37. 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 allotment letter. 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.
38. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession 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.
39. 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.
- H.II. Litigation Cost- ₹1,00,000/-.**
40. The complainant is also seeking relief w.r.t. litigation expense. It is observed that the 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.* 2021-2022(1) RCR(c),357 has held that an allottee is entitled to claim compensation 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 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.

**I. Directions of the authority:**

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

- a. The respondents/promoters jointly and severally are directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession till the date of 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 respondents are directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate
- c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- d. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- e. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- f. The respondents shall not charge anything which is not the part of BBA.




**HARERA**  
**GURUGRAM**

Complaint No. 5894 of 2023 and  
anr.

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

  
**(Ashok Sangwan)**  
Member

  
**(Arun Kumar)**  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 15.04.2025**



**HARERA**  
**GURUGRAM**