



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

<b>Complaint no.</b>	<b>:</b>	<b>6366 of 2022</b>
<b>Date of filing:</b>		<b>03.10.2022</b>
<b>Date of decision</b>	<b>:</b>	<b>13.05.2025</b>

<b>Udham Singh</b> <b>Regd. Address:</b> VPO Hayatpur, P.O. Garhi Harsaru, Gurugram	<b>Complainant</b>
<b>Versus</b>	
M/s Ansal Housing Ltd. (Formerly Known as M/s Ansal Housing & Construction Ltd.) <b>Regd. office:</b> 15 UGF, Indraprakash, 21, Barakhamba Road, New Delhi-110001 M/s Samyak Projects Pvt. Ltd. <b>Regd. Address:</b> 111, 1 <sup>st</sup> floor, Antriksh Bhawan, K.G. Marg, New Delhi-110001	<b>Respondents</b>

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairperson**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Vinit Kumar Yadav (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:

S. No.	Particulars	Details
1.	Project name and location	Ansals 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 with original allottee	04.02.2015 (R2 is the confirming party) (page no 44 of complaint)
7.	MoU with R1 and Original Allottee w.r.t AR	15.10.2013
8.	AR clause	The second party immediately after investing total amount of ₹25,05,000/- shall be entitled to receive a return of rupees ₹25,025/- per month from 14.08.2013 till 08.10.2013, ₹25,050/- per month from 09.10.2013 till 13.08.2016 and ₹20,875/- per month from 14.08.2016 till 13.08.2019 or till the



		date the said unit if any allotted is leased out whichever date is earlier.
9.	Unit No.	T-061 (Page no. 48 of complaint)
10.	Unit area admeasuring	334 sq. ft. (Page no 48 of complaint)
11.	Date of transfer of unit in name of complainant	14.04.2016 (pg. 68 of complaint)
12.	Possession clause	<b>Clause 30 of BBA</b> <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>
13.	Due date of Possession	04.02.2019 (Calculated from the date of Execution of Agreement as the date of commencement of construction is not placed on record) (grace period of 6 months allowed being unqualified)
14.	Basic Sale consideration	₹ 25,05,000/- (pg. no 64 of complaint)
15.	Total amount paid by the complainant	₹ 26,61,620/-  (As per SOA dated 25.03.2016 at pg. 73 of complaint)
16.	Offer of Possession	NA
17.	Occupation Certificate	NA

**B. Facts of the complaint**





3. The complainants have made the following submissions in the complaint:

- a. That respondent No. 1 & 2 promoted a commercial project named "Ansals Hub 83 Boulevard" having commercial shops in Sector 83 of Gurugram in 2013. That both respondents No. 1 & 2 represented that the project was being constructed upon a "Commercial piece of land" admeasuring about 2.6 Acres. The project was promoted to be a part of residential colony namely "Vatika India next" being developed by M/s Vatika Ltd. in terms of License no. 113 of 2008 dated 01.06.2008 and License no. 71 of 2010 dated 15.09.2010.
- b. That Respondents No. 1 & 2 represented that M/s Vatika Ltd. had transferred its complete rights, title and interest in the project land to one M/s Abhash Developers Pvt. Ltd. vide agreement dated 21.01.2013. That Respondents No. 1 & 2 further represented that vide agreement dated 01.04.2013 M/s Abhash Developers Pvt. Ltd. had further transferred its complete rights, title and interest in the project land to the respondent No. 2, M/s Samyak Projects Pvt. Ltd. That respondent No. 2 further represented that it had entered into an MOU dated 12.04.2013 with the respondent no. 1, M/s Ansal Housing & Construction Ltd., whereby the respondent no. 1 would be developing the above-mentioned project in terms of license/ permissions granted by the authorities/ DGTCP, Haryana.
- c. The project was represented to be very profitable as it would be a commercial project surrounded by a residential projects and it was further promised as per Clause 30 of the Builder Buyer

Agreement executed between both the respondents no. 1 & 2 and the complainant which inter-alia stated that; "The Developer shall offer possession of unit at 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. Further there shall be 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.

- d. That lured by the claims of the respondents No. 1 & 2, predecessor in interest/ father of the complainant Sh. Ram Kishan S/o Late Sh. Umrao Singh made a payment of Rs. 25,95,507/- vide cheque bearing No. 000085 dated to 13.08.2013 to the Respondent No. 1 towards booking of Shop bearing No. T-061 admeasuring about 334 Sq. Ft. on third floor of abovesaid project. That on subsequent demands of the respondent no. 1 towards advance registration, Labour + EDC/IDC cess, further payments of Rs. 2378 & Rs. 63735 were made to Respondent No. 1 on 09.10.2013 & 10.04.2015 respectively. That entire sale consideration of Rs. 26,61,620/- is paid to the respondent no. 1 for purchase of Shop bearing No. T-061. That a MOU was executed between the respondent No. 1 and father of complainant on 15.10.2013 stating that allotment of above-mentioned Shop No. T-061 would be made on receipt of all sanctions and approvals for development of above-said commercial project.
- e. That both the respondents No. 1 & 2 on 04.02.2015 executed the Builder-Buyer agreement with the father of the complainant. That



the father of the complainant made an application dated 14.03.2016 to the respondent no. 1 for transfer of Above-mentioned shop in favour of the complainant. That vide letter dated 14.04.2016, respondent No. 1 transferred the above-mentioned shop in favour of complainant. That a Demand letter was raised by the respondent No. 1 to the complainant on 05.05.2017, the amount of which was paid by the complainant on 18.05.2017 vide receipt dated 18.05.2017.

- f. That one Sh. Ajay Kumar Mehta had booked shop bearing No. G-25 in the above-mentioned project of the respondents. That predecessor in interest/ father of complainant had vide agreement dated 16.09.2013 purchased all rights/interest of above-said Sh. Ajay Kumar Mehta and paid Rs. 2,00,000/- to Sh. Ajay Kumar Mehta, i.e. the sum so far paid by Sh. Ajay Kumar Mehta to the respondents. That as the respondents had not yet executed Builder-Buyer agreement with Sh. Ajay Kumar Mehta, he could not transfer title over above-said shop to the father of the complainant. That thereafter, all payment of instalments towards purchase price of above-said shop was made by the father of the complainant directly to the respondents.
- g. That on 11.12.2014, Builder-Buyer agreement was executed by the respondents with Sh. Ajay Kumar Mehta. That shortly thereafter, as per terms of above-said agreement between Sh. Ajay Kumar Mehta and father of complainant, the above-mentioned shop bearing no. G-25 was transferred in the name of father of the complainant on 05.01.2015. That subsequently, father of the complainant transferred his right over above-mentioned shop

bearing No. G-25 in favour of the complainant, the transfer was confirmed by the Respondent No. 1 vide letter dated 19.03.2016. That a total amount of ₹18,39,261/- has been paid by the complainant to the respondents.

- h. That in January 2020 complainant received two letters (one for each shop of the complainant) from Respondent No. 1 demanding a no-objection letter from the complainant and further stating that the complainant is not liable to any compensation from the respondent No. 1 till 31.03.2023. The letter also arbitrarily increased the date of delivery till 31.03.2023, taking away the right of the complainant to seek any remedy.
- i. That as long time had passed and as no construction work was ongoing on the project, Complainant went to the project site, finding no officials of either Respondent No. 1 or 2 there, complainant called officials of respondent No. 2 namely Sh. Ajay Jain & Sh. Sanjay Jain on 08.07.2022 from the project site, enquiring about the status of the construction and the timeline by which the shops will be delivered. The complainant also requested to be granted a copy of the sanctioned plan, layout plan of the project along with stage-wise schedule of completion of the project. That complainant also asked for a copy of updated ledger for both the shops. That on this demand Sh. Sanjay Jain got angry with the complainant and threatened to cancel the allotment of the complainant in the above-mentioned project. Sh. Sanjay Jain also refused to provide any details about the project and asked the complainant to do whatever he can about it.



- j. That now, complainant has come to know about the pendency of Arbitration proceeding pending between respondent No. 1 & 2. That the complainant has also acquired a copy of order dated 31.08.2021 passed by Hon'ble Justice A K Sikri, Former Judge, Supreme Court of India, upon the perusal of above-said order the complainant has come to know about the fact.
- k. That respondent No. 1 & 2 have carried out only marginal development at the site despite expiry of nine years and that both the respondents No. 1 & 2 in connivance with each other and under conspiracy with others have committed cheating, criminal breach of trust and dishonest misappropriation of Rs. 45,00,881/- (Rs. Forty Five Lacs eight hundred eighty one). Respondents never had any intention to give shop to complainant; it only induced deponent to commit cheating and misappropriation. Respondents with this modus operandi have cheated hundreds of people and the total cheating thus committed is more than 100 Crores of rupees.
- l. The Respondents were not having any license in respect of the project at the time it took money from the complainant and others and launched advance registration of its project. That respondents have without obtaining a license under section 3 of 'The Haryana Development and Regulation of Urban Areas Act, 1975' agreed to transfer shops, make an advertisement and received money in respect thereof. This is done by the respondents in violation of section 7 of 'The Haryana Development and Regulation of Urban Areas Act, 1975' and the respondents are liable to be punished and penalized for the same.



- m. That the respondents have collected EDC/IDC from the complainant and others, but this EDC/IDC is not deposited by the respondents with the competent authority, this is also evident from the data released by Town and Country planning Department, Haryana on its website. That EDC dues against the respondent No. 1 are Rs 4,454 lacs and IDC dues against the respondent No. 1 are Rs 1,003 lacs.
- n. That even after expiry of more than 9 years, respondents are still claiming that they have only completed part of the project which itself establishes the admission on the part of the respondents that there is undue delay and deficiency in service on the part of respondents.

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

- 4. The complainants have sought following relief(s).
  - a. Direct the respondent to pay delay penalty as prescribed under RERA w.e.f 09.10.2013 from the date of each individual payment for shop bearing No. T-061 till the date of actual delivery of possession @ 24 % p.a. compounded quarterly.
  - b. Direct the respondent for quashing/ cancellation of letter dated January 2020 issued by Respondent No. 2.
  - c. Direct the respondent not to charge other administrative charges.
  - d. Direct the Respondent to deliver the possession of both the above-mentioned shops complete in all respects along with OC and CC within set time-frame.
  - e. Direct the respondents not to levy Holding charges till the outcome of this complaint.
- 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.

- 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 11.12.2014 and 04.02.2015, which is evidentiary from the submissions made in the following paragraphs of the present reply.
- c. That the original allottee approached the respondent sometime in the year 2014 for the purchase of an independent unit in its upcoming residential project "ANSAL HUBS" (hereinafter be referred to as the "project") situated in Sector-83, District Gurgaon (Haryana). It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after



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

- d. That thereafter the complainant applied to the respondent for provisional allotment of a unit in the project in the year 2015. The complainant, in pursuant to the application, was allotted shop/office space bearing no. G-002 in the project "ANSAL HUB" situated at Sector 83, 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 bona-fide 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.
- h. That similar lockdown was imposed in the year 2021 which extended to the year 2022 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the



respondent. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the ongoing construction of the project.

- i. That it is submitted that the complaint is not maintainable or tenable under the eyes of law as the Complainant has not approached this Hon'ble Authority with clean hands and has not disclosed the true and material facts related to this case of complaint. The Complainant, thus, has approached the Hon'ble Authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1 in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the Hon'ble Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.
- j. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms

of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking refund, interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the builder buyer's agreement. It is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the builder buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in a case titled as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298, the liberty to the promoter/developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para no.86 and 119 of the above said citations are very much relevant in this regard.

- k. That the respondent reserves its right to file additional reply and documents, if required, assisting the Hon'ble Authority in deciding the present complaint at the later stage.
- l. That it is submitted that several allottees have defaulted in timely remittance of payment of installment which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when



the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effect on the operation and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite the default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. The construction of the project is completed and ready for delivery, awaiting occupancy certificate which is likely to be completed by the year 2022.

- m. 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. Written submissions filed by respondent no. 2**

- a. That the Complainant had booked a unit bearing no. T-061 in the project "Ansal Hub 83 Boulevard", Sector-83, Gurugram, Haryana which was being developed by the respondent no.1 i.e. Ansal Housing Ltd. That the respondent no.1 miserably failed to develop

the project. That due to the incompetence of the respondent no.1 to develop and deliver the project, the MOU between the respondent no. 1 and respondent no.2 i.e., Samyak Projects Pvt. Ltd. was terminated.

- b. That it is pertinent to mention here that the project was handed over to Respondent No.2 i.e. Samyak Projects Private Limited as per the above-mentioned orders for completion of the project vide order dated 02.09.2022 and Samyak was also directed by the Hon'ble Arbitrator to collect the funds from the genuine allottees and further persuading them to sign the Addendum agreement. It is also pertinent to mention here that the format of the addendum agreement was validated by the arbitral tribunal in the order dated 14 June 2024.
- c. That it is also submitted that Samyak is willing to handover the fit-out possession to the genuine allottees only upon executing the addendum agreement and upon payment of the balance amount of consideration.
- d. Moreover, the only purpose to get the addendum agreement executed which is nothing but demand of KYC and statement of accounts of the Allottee and genuineness of the booking regarding the said unit.
- e. It is also pertinent to mention that as Respondent No.2 is only land owner and the development rights as well as the registration certificate was in the name of Respondent No. 1 i.e., Ansal who had the sole responsibility to complete the project, however Ansal has wrongfully enjoyed the hard-earned money of the allottees and failed to deliver the project within stipulated timelines.



- f. That the intentions of Samyak are bona-fide and are willing to complete the project with the support of the authority. That Samyak (R2) has already given an affidavit to the Arbitrator stating the date of completion of the project.
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.
8. Initially the complaint was filed for two unit. On 18.05.2023 it was observed by the Authority that the present complaint has been filed against two units. On 04.04.2024 the complainant during the court hearing requests for continuing the present complaint in respect of one unit i.e., T-061 and filed an application dated 23.10.2023 for withdrawing the complaint for second unit i.e., G-025 with a liberty to file separate complaint for second unit.

**F. Jurisdiction of the authority**

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

**F.I Territorial jurisdiction**

10. 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**

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

**Section 11**

.....

**(4) The promoter shall-**

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

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

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

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

**G. Findings on the relief sought by the complainants.**

**G. I. Direct the respondent to pay delay penalty as prescribed under RERA w.e.f 09.10.2013 from the date of each individual payment for shop bearing No. T-061 till the date of actual delivery of possession @ 24 % p.a. compounded quarterly.**

**G.II.Direct the Respondent to deliver the possession of both the above-mentioned shops complete in all respects along with OC and CC within set time-frame.**

13. In the present matter the complainant was allotted unit bearing no. T-061, admeasuring 334 sq. ft. respectively in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder. A buyer's agreement



was executed between the original allottee and respondent no. 1 wherein respondent no. 2 was the confirming party. The same were endorsed in name of the complainant on 14.04.2016. 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 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. The occupation certificate for the project has not yet been obtained from the competent authority.

14. 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.
15. 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.

16. The authority is of the view that the builder buyer's agreement 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 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 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 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*

*XXXXXXXXX"*

17. 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).
18. 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.

19. 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. -*

*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)*

20. 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 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 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."*

21. **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 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, 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., 04.02.2015. Hence, the due date comes out to be 04.02.2019 including grace period of 6 months as it is unqualified.
22. **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.*

23. 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.
24. 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., 13.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
25. 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:

*"(z) "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;"*

26. 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.
27. 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 42 months including grace period of 6 months. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.

28. 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. 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.
29. 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.
30. 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. 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 is 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.

**G.IV. Direct the respondent for quashing/ cancellation of letter dated January 2020 issued by Respondent No. 2**

**G.V. Direct the respondent not to charge other administrative charges.**

31. On 25.07.2024 the respondent no. 2 stated that the said unit is not cancelled and the same shall not be effected accordingly, in view of the above the said relief stands redundant.

**G.VI. Direct the respondents not to levy Holding charges till the outcome of this complaint**

32. The respondent shall not charge anything which is not the part of BBA.

#### **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 pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession 04.02.2019 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 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 respondent shall not charge anything which is not the part of BBA.
34. Complaint stands disposed of.
35. File be consigned to registry.

(Ashok Sangwan)  
Member

(Vijay Kumar Goyal)  
Member

(Arun Kumar)  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.05.2025