

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

Complaint no. : 1127 of 2024
Date of filing : 04.04.2024
Date of decision : 06.05.2025

1. Jai Gopal
2. Meena Kumari

Both RR/o: Plot no. 30, 1st floor, street no. 4,
block F, Vatika India Next, Sector 82,
Gurugram

Complainant

Versus

1. M/S Ansal Housing Limited
Registered office at: 606, 6th floor,
Indraprakash, 21, Barakhambha road, New
Delhi-110001
2. Samyak Projects Pvt. Ltd.
Registered office at: 111, FF Antriksh
Bhawan 22 Kasturba Gandhi Marg New
Delhi

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Himanshu Gautam (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 complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation



and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Ansal Hub 83 Boulevard", Sector-83, Gurugram
2.	Total area of the project	2.60 acres
3.	Nature of the project	Commercial complex part of residential colony
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid up to and 71 of 2010 dated 15.09.2021 valid up to
5.	Name of licensee	Buzz Estate Pvt. Ltd. & others.
6.	Registered/not registered	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres. Valid up to 31.12.2020
7.	Unit no.	G-179 [pg. 20 of complaint]
8.	Area of the unit	145.85 sq. ft. [pg. 20 of complaint]
9.	Date of execution of BBA	25.10.2018 [pg. 16 of complaint]
10.	Possession clause	7.1 as given at the time of registration
11.	Due date of possession	31.12.2020 + 6 months grace period on account of covid-19 30.06.2021

12.	Basic sale consideration as per payment plan annexed with BBA at page 20 of complaint	₹30,57,559/-
13.	Total amount paid by the complainant as alleged in complaint at pg. 9	₹9,17,300/-
14.	Offer of possession	Not offered
15.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That on 01.08.2018, complainants Mr. Jai Gopal and Mrs. Meena Kumari booked a Shop by making a payment of ₹2,00,000/- vide cheque bearing number 086749 dated 29.07.2018 in the project named "Ansals HUB 83 Boulevard" situated in Sector 83, Gurugram. Accordingly, the Shop bearing unit no. G-179 having carpet area of 145.85 sq. ft. And super area of 298.98 sq. ft. in the project named "Ansals HUB 83 Boulevard" situated in Sector 83, Gurugram, was allotted to the complainants.
 - b. That on 25.10.2018, Builder Buyer Agreement (BBA) was entered into between the parties wherein as per Payment Plan provided under Schedule-C. That the complainants have made all the payments on time as per the above-mentioned payment plan and has paid ₹9,17,300/- in total to the Respondent No. 1 till the present date and the balance amount is to be paid at the time of possession.
 - c. That as per the details available in Form A-H of the above said project, namely "Ansals HUB 83 Boulevard", available on the official website of the Haryana Real Estate Regulatory Authority, Gurugram, the said project was to be completed by 31.12.2020 and thus

possession was also to be handed over by 31.12.2020, but even after a delay of almost 3 years and 2 months, the project has not yet been completed and the respondents are still not handing over the possession.

- d. That vide letter dated 20.01.2022, the respondent no. 2 informed the complainant regarding the change of developer of the said project from Ansal Housing Limited to Samyak Projects Private Limited and also asked the complainant to sign the enclosed No Objection Certificate within 10 days, which contained multiple unlawful terms and conditions.
- e. That vide email dated 02.02.2022, the respondent no. 2, claimed that they have terminated their MoU dated 12.04.2013, with respondent no. 1 and further development work of the project will be carried out by the respondent no. 2. Respondent no. 2
- f. That vide email dated 01.06.2022, Ms. Harpreet Kaur, an employee of Respondent no. 1 namely Ansal Housing Limited, informed the complainants that some disputes had arisen between Respondent no. 1 and Respondent no. 2 and therefore arbitration proceedings has been initiated before Sole Arbitrator, Justice A. K. Sikri as per the provisions of the MoU and pursuant to that Respondent no. 2 is allowed to enter the project to evaluate and complete the remaining construction work subject to final order/award of Hon'ble Arbitrator. Respondent no. 1 further assured to the complainants that their rights in the project are irrevocable and Ansal Housing Limited is not removed as developer from the project and respondent no. 2 is distorting the facts to mislead the allottees to get

the No Objection Certificate (NOC) from the allottees in his favour. Respondent no. 1 also advised the complainants not to sign any NOC for change of developer.

- g. That when the complainants visited the project site to know the construction status of the project, the Respondent no. 2 asked the complainants to submit their KYC documents to prove that they are genuine allottees of the shop under the said project. Accordingly, on 02.05.2023, the complainants submitted hardcopies of their KYC documents to the staff members of the Respondent no. 2 at their office on the project site, but no acknowledgement regarding receipt of documents has been provided to the complainants by the respondent no. 2.
- h. That again vide Public Notice dated **04.05.2023**, the respondent no. 2 namely Samyak Projects Private Limited, informed the complainants that he is the legal owner of the project land and has granted development rights to the respondent no. 1 namely Ansal Housing Limited vide Memorandum of Understanding, dated 12.04.2013 ("**MoU**"), for the construction and development of a commercial complex over the Project Land. The respondent no. 2 further claimed that he has terminated the said MoU with respondent no. 1 and got the possession as well as the right, by the competent authority, to sell the units/areas in the Project and collect monies from the allottees apart from completing the construction of the Project namely Ansals HUB 83 Boulevard. Respondent No. 2 asked the complainants to submit their KYC documents and also



- threatened that his rights in the Project would be deemed to have been forgone if KYC documents were not submitted by 20.05.2023.
- i. That after submitting KYC documents to respondent no. 2, the complainants asked the respondent no. 2 to provide them receipt acknowledgement of the KYC documents. But instead of providing any acknowledgment respondent no. 2 refused to recognise the complainant's rights as allottees on grounds that respondent no. 2 is not a confirming party in their Builder Buyer Agreement. This matter has been put before the Sole Arbitrator Justice A. K. Sikri for his consideration and vide order dated 11.10.2022, the Hon'ble Sole Arbitrator directed the respondents to sit together to resolve the dispute between them and also directed respondent no. 2 not to create further interest in respect of the shops sold by the respondent no. 1.
 - j. That vide email dated 06.05.2023, the complainants asked the respondent no. 2 to share the acknowledgement receipt of the KYC documents submitted by him on 02.05.2023 but the respondent no. 2 didn't even bother to reply to the email of the complainants. That despite repeated calls and meetings with the respondents, no definite commitment was shown for timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainants.
 - k. That repeated calls, meetings and correspondences with the respondents and multiple visits to know the actual construction status not only caused loss to the complainants in terms of time, money and energy but also caused mental agony to him.

1. 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 complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondents to pay Interest for every month of delay the prescribed rate since 31.12.2020 (due date of possession) as per section 18(1) of Real Estate (Regulation and Development) Act, 2016.
 - b. Restrain the respondent no.2 from implementing the contents of letter dated 04.05.2023 and taking any adverse action against the interest of the complainants.
 - c. Direct the respondents to complete the project in expeditious manner and offer the possession of the shop bearing no. G-179 in Project HUB 83 Boulevard located in Sector 83, Gurgaon along with all the promised amenities and facilities and to the satisfaction of the Complainants.
 - d. Direct the respondents to execute the conveyance deed in favour of the complainant with respect to the said shop bearing unit no. G-179 in Project HUB 83 Boulevard located in Sector 83, Gurgaon.

- e. Direct the respondents to commit a date for offering the possession by submitting an affidavit before the Hon'ble Authority.
- 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 respondents have contested the complaint on the following grounds.
 - a. That the complainants had booked shop bearing no. G-179 in their own name in project Ansal HUB-83 Boulevard, Sector 83, Gurugram of the answering Respondent Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. a Builder Buyer Agreement was entered dated 25.10.2018 was signed between the parties as per claim of the complainant.
 - b. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2018 without coercion or any duress cannot be called in question today. It is submitted that the clause 7.6 of the builder buyer agreement provides for compensation in the event of a delay in giving possession. However, the same clause also provides for the exception that the vendor shall not be liable to pay compensation in case of occurrence of "Force Majeure" and the present project is delayed due to force majeure and not because of the default of the respondent.
 - c. 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.

- d. 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.
- e. 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 7.6 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 due to force majeure.

- f. That the answering Respondent has clearly provided in 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. That the Complainant had signed and agreed on Builder Buyer Agreement dated 25.10.2018. 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.
- g. 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. and 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 saying in the present project.
- h. Samyak approached Ansal for development of a commercial project to be developed over the said parcel of land, and pursuant to several discussions, negotiations and after bargain, Ansal entered into a Memorandum of Understanding (Hereinafter to be referred as "MoU") with Samyak on 12.04.2013, for the purpose of development and construction of a commercial complex on a the afore said parcel of land (Hereinafter to be referred as 'said parcel of land'). At the time of execution of the MoU i.e., in April 2013, Ansal also paid a Non-

Refundable Security Deposit of Rs.4,00,00,000/- to the Samyak, as per the understanding of the parties under Clause 13 of the said MoU, receipt of which was acknowledged by Samyak.

- i. As far as the revenue sharing between the parties was concerned, it was mutually agreed between the parties that revenue generated from this project will be at **55:45** between Ansal and Samyak, respectively. The sharing ratio in the MoU was also framed/designed in such a manner, that for the first 75 crores received as sale consideration, Samyak shall get 75% of the same and merely 25% comes to Ansal, as per Clause 15 of the MoU. The final sharing ratio was 45% to Samyak and 55% to Ansal, hence Ansal was entitled to receive a substantial amount at the later stage of the construction.
- j. Ansal also had financially assisted Samyak to the tune of Rs. 32.5 crores, to get abovementioned parcel of land transferred from the erstwhile owner in its own (Samyak's) name. When Samyak had enough of the share from the sale proceeds, in order to arm twist Ansal sent a notice for termination dated 10.11.2020, and terminated the MoU dated 12.04.2013.
- k. Pursuant to the illegal termination, Ansal approached the Hon'ble Delhi High Court u/S 9 of the Arbitration & Conciliation Act 1996, and sought an interim direction to restrain Samyak from creating any third-party interest. Parallely, Ansal invoked the dispute resolution clause of the MoU and approached the Hon'ble High Court for appointment of a Sole Arbitrator, and wherein the Hon'ble High Court, appointed Justice Arjan Kumar Sikri, Former Judge, Supreme Court of India, as a Sole Arbitrator.

- l. That vide order dated 31.08.2021, the Arbitral Tribunal dismissed the application of Ansal, and refused to stay the notice of termination. In Para 57 and 58 of the Order dated 31.08.2021, the Arbitral Tribunal referred about the proposals submitted by both the parties, proposing their action plan for completion of the balance construction work in relation to Ansal Boulevard, Sector 83, Gurugram. Although, Ansal itself was competent enough to complete the project on its own within a period of fifteen months, as assured by it through its proposed plan of action, but since Samyak had proposed to complete the balance construction within a period of 10 months, Ansal, without prejudice to its legal rights, remedies and claims, consented (by filing an application) to the proposal submitted by the Respondent for completion of the balance construction work of project, in the interest of project, and to ensure that the dispute between the promoters must not hamper the interest of the project.
- m. A perusal of the Order dated 11.10.2022, makes it abundantly clear, that the Arbitral Tribunal, had explicitly directed Samyak to not create any third-party rights over any unit, until and unless this issue of bilateral agreement is resolved. Furthermore, on 04.05.2023, in order to resolve the abovementioned, it was further directed by the Arbitral Tribunal to Samyak to visit the office of Ansal on 08.05.2023 at 11:00 am, and to satisfy itself with the genuineness of all bilateral builder buyer agreement. On the directions of the Arbitral Tribunal, the Representatives of the Samyak also visited the Office of Ansal on 17.05.2023; however, despite verifying all the documents, neither

any clarity was given by Samyak, nor Samyak desisted from its mala fide actions.

- n. The Arbitral tribunal in its Order dated 02.09.2022, has made it clear, that Samyak shall communicate with the existing allottees only to the extent of collecting sale considerations from them. The act of Samyak to execute addendum agreement with the allottees goes completely against the Order(s) and undertaking given to the Arbitral Tribunal.
- o. Furthermore, it is also important to mention, that on 14.10.2023, when the project site was handed over to Samyak for the balance construction work, Samyak was obligated to raise its own funds for the said purpose, and shall not dependent upon the sale receivables of the allottees. Furthermore, the scope of the entrusting the balance work to Samyak was very limited, and it does not entitle the Samyak to issue cancellation letters to the allottees. By issuing these cancellation letters to the allottees, Samyak has violated the Order dated 02.09.2022 of the Arbitral Tribunal
- p. Cancelling allotments are nowhere aiding the pace of construction, and is only not creating havoc amongst the allottees. Samyak was obligated to only complete the construction, and the project has not been handed over to Samyak; however, Samyak being the flagbearer of contemptuous acts, is deeming the subject project as its own project and is flouting the order(s) of the Arbitral Tribunal, as the order(s) doesn't matter at all.

E. Reply by the respondent no. 2

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

- a. It is pertinent to mention that the no builder buyer agreement was executed between the respondent no.2 and the complainant and there is no privity of contract between the complainant and respondent no. 2.
- b. It is further submitted that a bogus agreement to sell was executed between respondent no.1 and the complainant wherein the respondent no. 2 was neither a party to the agreement to sell nor the same was executed in the presence of respondent no. 2. Hence, no cause of action accrued in the favour of complainant as against the respondent no.2.
- c. It is further submitted that no consideration and communication has ever been received by the respondent no.2 from the complainant and the same were received by the respondent no.1 at all times. Moreover, it is a settled proposition of law that without consideration an agreement is Nudum Pactum i.e., void ab initio.
- d. That it is submitted that the respondent is not even a confirming party to the agreement that is pressed into service by the complainant. More so, the complainant has approached this Hon'ble Authority with unclean hands and has impleaded the respondent no. 2 without any cause of action.
- e. That it is submitted that it is a bogus transaction and so-called payments made by the complainant is nothing but a fictitious entry with the sole intention to mislead the Hon'ble Court. The same has been earmarked by the respondent no.2.
- f. That it is also submitted that the only motive of showing this fictitious entry by the erstwhile directors of the respondent no.1

company was only to accommodate the complainant for certain ulterior motives

- g. It is also submitted that the complainant and respondent no.1 are acting in connivance with each other for the fulfilment of their ulterior motives and harm the reputation of the respondent no.2 for the reasons best known to the respondent no.1 and complainant.
- h. It is also important to mention that the said unit bearing no. G-179 is empty shop in the inventory of the respondent no.2. That it is submitted that as per the inventory made by the respondent no.2 the suit property i.e. G-179 is an empty unit in the possession of the applicant.
- i. It is a settled position of law that one who seeks equity must do equity. That the complainant has approached this Hon'ble Authority with bogus and fraudulent document with the sole intention to mislead the Authority by filing false and frivolous documents. There being no privity of contract between the complainant and respondent no.2 the application shall be dismissed.
- j. It is important to bring before the notice of this Hon'ble Authority that respondent no.1 entered into 143 bogus agreements to sell during the period of 2017 to 2021 and collected huge amount of money against the same from the public at large. Thereafter the respondent no.1 fraudulently offloaded data on the HRERA portal in the year 2023. That a complaint against the frivolous conduct of the respondent no.1 has already been filed before the HRERA Authority.
- k. That it is humbly submitted that the current fraudulent sale conducted by respondent no.1 i.e. Ansal was discovered by

respondent no. 2 and a complaint has already lodged with the RERA authority, asserting that Ansal obtained RERA registration through fraudulent means. Despite this, no significant action has been taken, and we have urged immediate intervention to investigate the matter and Authority should take appropriate legal action against Ansal i.e. respondent no.1.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

F. Jurisdiction of the authority

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

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 allottees as per agreement for sale. Section 11(4) (a) is reproduced as hereunder:

Section 11(4) (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) 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 complainant.

G.I. Direct the respondent to pay delay possession charges on the amount paid by the complainant at the prescribed rate of interest till the actual handing over of possession.

G.II. b. Restrain the respondent no.2 from implementing the contents of letter dated 04.05.2023 and taking any adverse action against the interest of the complainants.

G.III. Direct the respondents to complete the project in expeditious manner and offer the possession of the shop bearing no. G-179 in Project HUB 83 Boulevard located in Sector 83, Gurgaon along with all the promised amenities and facilities and to the satisfaction of the Complainants.

G.IV. Direct the respondents to commit a date for offering the possession by submitting an affidavit before the Hon'ble Authority.

13. In the present matter the complainant was allotted unit no. G-179, admeasuring 145.85 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder for a total sale consideration of ₹30,57,559/- and they have paid a sum of ₹9,71,300/-. A buyer's agreement dated 25.10.2018 was executed between the allottee and

respondent no. 1 wherein respondent no. 2 was the confirming party. As per clause 7.1 of the BBA, respondent no. 1 was obligated to complete the construction of the project as given at the time of registration. 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 agreement dated 25.10.2018 was signed by the complainants and the respondent no. 1. The respondent no. 2 is not a confirming party to that BBA. But in the builder buyer agreement dated 25.10.2018 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

XXXXXXXX

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. 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)

20. Clause 7.1 of the BBA provides for handing over of possession.

21. **Due date of possession and admissibility of grace period:** As per clause 7.1 of the BBA, the possession of the allotted unit was supposed to be handed over as given at the time of registration i.e., 31.12.2020. A grace period of 6 months is allowed on account of COVID-19. Accordingly, the due date of possession comes out to be 31.06.2021. The occupation certificate for the project has not yet been obtained from the competent authority.
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., 06.05.2025 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(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;"

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 7.1 of the buyer's

agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 31.06.2021. 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 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.
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 i.e., 31.06.2021 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.

G.V. Conveyance deed

30. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. As per the interim order of the sole Arbitrator the said project has now been physically handed over to

the respondent no. 2 and there is nothing on the record to show that the said respondent has applied for occupation certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent no. 2 is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

H. Directions of the authority

31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
 - a. The respondents/promoters jointly and severally are directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 31.06.2021 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - b. The respondent no. 2 is further directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate upon payment of outstanding dues, if any after adjustment of interest for the delayed period and thereafter execute conveyance deed in favour of the complainant in



terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

- c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - d. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
 - e. The respondent shall not charge anything which is not the part of BBA.
32. Complaint stands disposed of.
33. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.05.2025