



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

Complaint no. : 1649 of 2022
Date of filing : 13.04.2022
Date of decision : 13.05.2025

Kunal Vashisht

R/O: H no. 1291 Sector 15 part II Gurugram

Complainant

Versus

1. M/S Ansal Housing Limited
Registered office at: 15 UGF,
Indraprakash, 21, Barakhambha road, New
Delhi-110001
2. Kushagr Ansal
Registered office at: 15 UGF,
Indraprakash, 21, Barakhambha road, New
Delhi-110001
3. Samyak Projects Pvt. Ltd.
Registered office at: 111, FF Antriksh
Bhawan 22 Kasturba Gandhi Marg New
Delhi
4. Satinder Kumar Jain
Registered office at: 111, FF Antriksh
Bhawan 22 Kasturba Gandhi Marg New
Delhi
5. Jitendra Kumar Magan
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. Satish Kumar Vashisht
(Advocate)
Sh. Amandeep Kadyan (Advocate)

Counsel for Complainant

Counsel for Respondent no. 1

ORDER

- 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

- 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.	Project name and location	Ansals Hub 83 Boulevard, Sector 83 Gurugram
2.	Project area	2.60 acres
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	31.12.2014 (R2 is the Confirming Party) [pg. 36 of complaint]
7.	Unit No.	F-005 (Page no. 41 of Complaint)
8.	Unit area admeasuring	330 sq. ft. (Page no 41 of Complaint)

9.	Possession clause	Clause 30 of BBA <i>The Developer shall offer the unit within a time period of 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. Further there shall be a grace period 6 months allowed to the developer over and above the period of 42 months.</i>
10.	Due date of Possession	31.12.2018 (Calculated from the date of Execution of Agreement, as no document w.r.t date of start of construction placed on record) (Grace period of 6 months is allowed being unqualified).
11.	Application for amendment in Relief Sought	16.10.2023 Allowed in proceedings dated 17.05.2024
12.	Basic Sale Consideration	Rs. 32,43,157/- (Page no 41 of BBA/ Complaint)
13.	Total amount paid by the complainant	Rs. 16,13,856/- (As alleged by complainant) Page no 25 of complaint)
14.	Offer of Possession	NA
15.	Occupation Certificate	NA

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That on 11.10.2014, the complainant had provisionally booked a commercial shop on First Floor, Unit No. F-005, having Area 330 Sq. Ft. in Project ANSAL HUB 83 Boulevard, Sector- 83, Gurugram to be developed by respondent no.1, for a total price of ₹32,43,158/- including PLC but excluding EDC & IDC etc. The Complainant had paid the amount of ₹4,14,832/- vide Cheque no. 841990 dated

- 10.10.2014 and the respondent no. 1 acknowledged the same. Vide receipt no. 592771 dated 21.10.2014.
- b. That on 08.12.2014, the complainant paid Rs. 2,57,851/- & ₹5,940/- to respondent no.1 company vide cheque no. 709752 and 709751 respectively both dated 08.12.2014 and the same is acknowledged by the respondent vide receipts 596590 and 596592 respectively.
- c. That on 31.12.2014, BBA was executed between the complainant and respondent no. 1. That on 20.10.2015, the Complainant paid the amount of ₹9,35,233/- vide Cheque no. 709770 dated 20.10.2015 and the respondent acknowledged the same vide receipt no. 617188 dated 20.10.2015. That on 08-01-2018, RERA registration of commercial project named "Ansal's Hub 83 Boulevard" to be developed by respondent no. 1 was done.
- d. That on 31.12.2018, date/time until which the offer of possession must have been made by the respondent no.1 to the complainant (including 6month grace period) as per BBA was expired. That on 10.11.2020, respondent no. 3 gave notice to respondent no. 1 for termination of their MOU dated 12.04.2013 in respect of commercial project on property in sector-83 on account of delay in construction and development of the said complex and other breach of obligations under the said MOU.
- e. That on 22.01.2022, the Complainant received a letter dated 20.01.2022 from respondent no. 3 mentioning that respondent no. 3 has terminated the MOU dated 12.04.2013 vide termination notice dated 10.11.2020 with respondent no. 1 due to huge delay in the construction and development of the above-mentioned project and breach of other obligations by respondent no. 1 under the said MOU.

- Also, the project has been handed over to respondent no. 3 by respondent no. 1 vide possession letter dated 14.10.2021.
- f. That the respondent no. 1 and 3 are engaged in the business of developing housing/Commercial projects and selling of apartments & commercial spaces, having their registered office mentioned in titled of the complaint. Respondent no. 2 is the director of the respondent no. 1 company and respondent no. 2 is responsible for the acts and conducts of the respondent no. 1. The respondent no. 4 & 5 are directors of the respondent no. 3 company and the respondent no. 4 and 5 are responsible for the acts and conducts of the respondent no. 3. That the complainant had, in the month of October, 2014, booked a commercial shop admeasuring 330 sq. fts. in Project "Ansal Hub-83 Boulevard", Sector-83, Gurugram for a total price of ₹32,43,158/- including PLC but excluding EDC & IDC etc. and paid ₹4,14,832/- vide cheque no. 841990 dated 10.10.2014 and the respondent no. 1 acknowledged the same vide receipt no. 592771 dated 21.10.2014. Further, on the demand of respondent no. 1, the complainant paid ₹2,57,851/- & ₹5,940/- to respondent no.1 company vide cheque no. 709752 and 709751 respectively both dated 08.12.2014 and the same is acknowledged by the respondent vide receipts 596590 and 596592 respectively. That on 31.12.2014, BBA was executed between the complainant and respondent no. 1 and on the further demand of respondent no. 1, the complainant paid the amount of ₹9,35,233/- vide Cheque no. 709770 dated 20.10.2015 and the respondent acknowledged the same vide receipt no. 617188 dated 20.10.2015.
- g. That the complainant had paid the total amount of ₹16,13,856/- to the respondent no. 1 in respect of above stated commercial shop on

the 1st floor (Unit no. F005) in the project named "Ansal's Hub 83 Boulevard" to be developed by the respondent no. 1 in Sector-83, Gurugram.

- h. That all the negotiations before the booking of the commercial shop and at the time of making payment to the respondent No. 1 were in the shape of cheques, and the complainant was lured by respondent No. 1 and 3 to invest in the project on the pretext that delivery of the above-mentioned commercial shop shall be done within 48 months (including 6 months grace period) from the date of execution of BBA dated 31.12.2014. However, due to the huge delay in construction and development, the above-mentioned project has not been finished till now and consequently no completion or occupation certificate has been obtained by the respondents from the competent authority till now. The respondents have played fraud with the complainant as they have collected huge amount of money from complainant on various occasions as detailed above but failed to complete the project even after the lapse of almost 8 years.
- i. That in the year 2022, the complainant received a letter from respondent no. 3 mentioning that respondent no. 3 has terminated the MOU dated 12.04.2013 vide termination notice dated 10.11.2020 with respondent no. 1 due to huge delay in the construction and development of the above-mentioned project and breach of other obligations by respondent no. 1 under the said MOU. Furthermore, it was mentioned in the said letter that the project has been handed over to respondent no. 3 by respondent no. 1 vide possession letter dated 14.10.2021 which was all done without any knowledge of the complainant and also in the same letter, respondent no. 3 unilaterally demanded from the complainant to

furnish no objection certificate in favor of respondent no. 3. It is pertinent to mention here that the complainant has not given any such 'No objection certificate' as demanded by respondent no. 3 till now.

- j. That, thereafter, the complainant repeatedly followed up with the officials of the respondent no. 1 and respondent no. 3 for refund of amount ₹16,13,256/- to the complainant which was paid by the complainant to the respondent no. 1 but the respondents avoided the matter on one pretext or the other.
- k. That as per section 18 (1) Provision of RERA, the respondents have provided false information on the prospectus/Brochure and under the same section the complainant is entitled to get refund along with interest on account of delay in handing over the possession of the commercial shop.
- l. That the act of the respondents is malafide, arbitrary, illegal, unconstitutional, unjust, unfair, opposed to the public policy, equity and fair play and is unsustainable in the eyes of the law and is liable to be prosecuted under Section 61 and other relevant sections of the Haryana Real Estate (Regulations and Development) Act 2016.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s).
 - a. 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.
 - b. Direct the respondent to handover the possession of the unit to the complainant.
 - c. Litigation cost.

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:

6. The respondents have contested the complaint on the following grounds.
- a. 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 31.12.2014, which is evidentiary from the submissions made in the following paragraphs of the present reply.
 - b. That the Complainant 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.
 - c. That thereafter the Complainant applied to the Respondent for provisional allotment of a unit in the project on 11.10.2014. The Complainant, in pursuant to the application, was allotted

Shop/Office Space bearing No. F-005 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 bonafide of the Complainant. 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.

- d. 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.
- e. 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. 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.
- f. 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.

- g. 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.

- h. 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 instalment 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.
- i. 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. 3, 4 & 5

7. The respondent has contested the complaint on the following grounds:
 - a. That the complainant has filed the present complaint against the respondent seeking the refund of Rs. 16,13,256/- along with interest at the prescribed rate of interest against respondents for the failure to deliver the unit no. F- 005, having area 330 sq. ft in the project ANSAL HUB 83 BOULEVARD, SECTOR-83, Gurugram.
 - b. It is submitted before this Hon'ble Authority that the construction/ development of the project was to be carried out by Respondent no.1 i.e. ANSAL by way of the Memorandum of Understanding with Respondent no. 2 i.e. Samyak vide dated 12.04.2013 (hereinafter referred to as "MoU") in respect of construction and development of a Project known as ANSAL BOULEVARD 83.
 - c. As Respondent No.1 failed to fulfil its obligation under the said MoU and construction of the said Project was substantially delayed. Therefore, due to abject failure of Respondent No.1 to perform its obligations under the said MoU and to construct the said Project, the Respondent No.3 being left with no other option, terminated the said MoU vide Termination Notice dated 10.11.2020.
 - d. The Respondent No.1 challenged the termination of MoU before the Hon'ble High Court of Delhi in OMP (I) (COMM) No.431 of 2020 in the matter titled as "Ansal Housing Limited vs. Samyak Projects Private Limited" under Section 9 of the Arbitration and Conciliation

Act, 1996. The Hon'ble High Court of Delhi was pleased to refer the matter to Arbitration and appointed Justice A.K Sikri, (Retired Judge of Supreme Court) as the Sole Arbitrator and appointed Local Commissioner.

- e. That the project was handed over to the Respondent No. 3 vide order dated 13.10.2021 by the Arbitral tribunal for the completion of the construction/development of the project. That the construction of the project began in 2022.
- f. It is further submitted that any adjustments to be made against the delay in possession charges shall be prejudicial to the interest of the Respondent no. 2 as the instalments/payments were made by the Complainant to Respondent No. 1 and 2 and respondent no. 3-5 was not a beneficiary to the same. Thus, it will be prejudicial to the interest of the Respondent No.3-5, if any order of adjustment is passed against Respondent No. 3-5.
- g. It is pertinent to mention that the complainant has failed to oblige the terms and conditions of the payment plan specified in the Builder Buyer Agreement. Moreover, the Complainant has miserably failed to make payments of the pending amounts to the Respondents as per payment plan in the BBA dated 31.12.2014 executed between complainant and R1. That upon the non-payment of the money as per the agreed terms & conditions of BBA, the unit stands automatically cancelled vide Clause 24 of the executed BBA.
- h. It is submitted that the decision of the Hon'ble Authority in the Complaint Nos. 2032 of 2018, 4831 of 2020 and 4391 of 2021 shall apply to the present case as well and that the Respondent No. 3-5 are neither liable to any refund or interest in delay in possession to the

complainant as the same is the sole responsibility of the Respondent No.1 and 2 who have failed miserably to perform its part of duty.

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.
9. In the present complaint, the complainant has sought relief against M/s Ansal Housing Limited, Kushagr Ansal, M/s Samyak Projects Private Limited, Satinder Kumar Jain, and Jitendra Kumar Magan. The grievance arises from the respondents' failure to fulfil their contractual obligation to complete the project within the stipulated timeline. Consequently, the complainant has approached this Authority seeking compensation in the form of delay possession charges on the amount paid towards the allotted unit.
10. Upon examination of the documents placed on record, it is evident that Respondent No. 1 is the developer, while Respondent No. 3 is the landowner. It is not in dispute that a Builder Buyer Agreement (BBA) was executed between the complainant and Respondent No. 1, with Respondent No. 3 being a confirming party to the said agreement. Respondents No. 2, 4, and 5 are merely directors and/or authorised representatives of Respondents No. 1 and 3, and therefore cannot be held personally liable for any acts or omissions attributable to the corporate entities, namely Respondents No. 1 and 3.
11. Accordingly, there exists no privity of contract between the complainant and Respondents No. 2, 4, and 5. In light of the foregoing, it is just and proper that their names be deleted from the array of parties to the present proceedings.

F. Jurisdiction of the authority

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

E. I Territorial jurisdiction

13. 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.

E. II Subject-matter jurisdiction

14. 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.

15. 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. Direct the respondent to handover the possession of the unit to the complainant.

16. In the present matter the complainant was allotted unit no. F-005, admeasuring 330 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder for a total sale consideration of ₹32,43,157/- and they have paid a sum of ₹16,13,856/-. A buyer's agreement dated 31.12.2014 was executed between the allottee and respondent no. 1 wherein respondent no. 3 was the confirming party. As per clause 30 of the BBA, respondent no. 1 was obligated to complete the construction of the project and hand over the possession of the subject unit within 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval sanctions and approval necessary for commencement of construction, whichever is later. The occupation certificate for the project has not yet been obtained from the competent authority.
17. As per the BBA, respondent no. 3(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. 3 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.

18. 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. 3. 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. 3 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. 3 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.
19. The authority is of the view that the builder buyer agreement dated 31.12.2014 was signed by the complainants and the respondent no. 1. The respondent no. 3 is a confirming party to that BBA. In the builder buyer agreement dated 31.12.2014 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

xxxxxxx

20. 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).

21. 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. 3 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. 3.
22. 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)

23. Clause 30 of the BBA provides for handing over of possession and is reproduced below:

"Clause 30

The Developer shall offer possession of the unit within a time period of 42 months from the date of execution of Agreement or within 42 months from the date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later. 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."

24. 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 42 months from the date of execution of Agreement or within 42 months from the date of obtaining all required sanctions and approval necessary for commencement of construction, whichever is later. The period of 42 months is calculated from the date of buyer's agreement i.e., 31.12.2014 as the date of commencement of construction is not known. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 31.12.2018. The occupation certificate for the project has not yet been obtained from the competent authority.
25. 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.

26. 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.
27. 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%**.
28. 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;"

29. 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.
30. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 31.12.2018. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.
31. 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.
32. 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., 31.12.2018 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.

33. As per the interim order of the sole Arbitrator the said project has now been physically handed over to the respondent no. 3 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. 3 is directed to handover possession of the flat/unit to the complainant in terms of section 17 of the Act of 2016, within two months after obtaining occupation certificate from the competent authority.

F.II. Litigation cost- ₹1,00,000/-

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


H. Directions of the authority

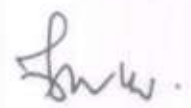
35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations



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 respondent no. 3 is directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate.
 - c. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
 - d. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
36. Complaint stands disposed of.
37. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairperson


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.05.2025