

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

Date of decision: 13.05.2025

NAME OF THE BUILDER		ANSAL HOUSING LIMITED SAMYAK PROJECTS PVT. LTD.	
PROJECT NAME		ANSAL HEIGHTS 92	
S. No.	Case No.	Case title	APPEARANCE
1	CR/1717/2023	Computers Networks & telecom India Pvt. Ltd. V/s 1. JSG Builders Private Limited 2. NCC Urban Infrastructure Pvt. Ltd. 3. Samyak Projects Pvt. Ltd. 4. Ansal Housing Ltd. (Formerly known as Ansal Housing & Construction Ltd.)	Sh. Satvir Singh Hooda Sh. Sanya Arora for R3 Sh. Amandeep Kadyan for R4
2	CR/1718/2023	Computers Networks & telecom India Pvt. Ltd. V/s 1. JSG Builders Private Limited 2. NCC Urban Infrastructure Pvt. Ltd. 3. Samyak Projects Pvt. Ltd. 4. Ansal Housing Ltd. (Formerly known as Ansal Housing & Construction Ltd.)	Sh. Satvir Singh Hooda Sh. Sanya Arora for R3 Sh. Amandeep Kadyan for R4

CORAM:

Shri. Arun Kumar
Shri. Vijay Kumar Goyal
Shri Ashok Sangwan

Chairperson
Member
Member

ORDER

- This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ansal Heights 92" (group housing colony) being developed by the same respondent/promoter i.e., M/s Ansal Housing Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with interest.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"ANSAL HEIGHTS " Sector-92, Gurugram.	
Possession Clause: 29		
<i>"29. The Developer shall offer possession of the Unit any time, within a period of 36 months from the date of execution of Agreement or within 36months 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 30. Further, there shall be a grace period of 6 months allowed to developer over and above the period of 36 months as above in offering the possession of the unit."</i>		
(Emphasis supplied)		
Occupation certificate: - Not obtained		
Date of commencement of construction: 14.06.2012		
Complaint No.	CR/1717/2023	CR/1718/2023
Unit no. and area admeasuring	D-807 admeasuring 1565 sq. ft. [pg. 65 of complaint]	D-705 admeasuring 1320 sq. ft. [pg. 52 of complaint]
Date of builder buyer agreement (signed by R1, R2, R3, R4)	03.10.2012 [pg. 61 of complaint]	11.04.2012 (with original allottee) [pg. 51 of complaint]
Date of endorsement	NA	03.12.2012 [pg. 62 of complaint]

Due date of delivery of possession	03.04.2016	11.10.2015
Sale Consideration (SC)	₹37,23,448/- [pg. 65 of complaint]	₹32,27,400/- [pg. 52 of complaint]
Total Amount paid by the complainant(s)(AP)	₹ 41,74,538/- [SOA dated 28.01.2019]	₹36,51,933/- [SOA dated 28.01.2019]
Offer of possession	Not offered	Not offered
Relief sought	1. Possession 2. DPC 3. Compensation for not providing entrance and interior according to layouts plans	1. DPC 2. Possession 3. Compensation for not providing entrance and interior according to layouts plans

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1717/2023 Computers Networks & telecom India Pvt. Ltd., V/s JSG Builders Private Limited and NCC Urban Infrastructure Pvt. Ltd. And Samyak Projects Pvt. Ltd. And Ansal Housing Ltd. Formerly known as Ansal Housing & Construction Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/1717/2023 Computers Networks & telecom India Pvt. Ltd., V/s JSG Builders Private Limited and ors.

Sno.	Particulars	Details
1.	Name of the project	"Ansal Heights", Sector-92, Gurugram
2.	Total area of the project	10.563 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	76 of 2010 dated 01.10.2010
5.	Name of licensee	Buzz Estate Pvt. Ltd. & others.
6.	Registered/not registered	Not Registered
7.	Unit no.	D-807 [pg. 65 of complaint]
8.	Area of the unit	1565 sq. ft. [pg. 65 of complaint]
9.	Date of execution of BBA	03.10.2012 [pg. 61 of complaint]
10.	Possession clause	<p>29.</p> <p><i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."</i></p> <p><i>(Emphasis supplied)</i></p>

		[Page no. 71 of complaint]
11.	Date of commencement of construction	14.06.2012
12.	Due date of possession	03.04.2016 (Note: 36 months from date of agreement i.e., 03.10.2012 being later. Grace period allowed being unqualified)
13.	Basic sale consideration as per payment plan annexed with BBA at page 65 of complaint	₹37,23,448/-
14.	Total amount paid by the complainant as per SOA dated 28.01.2019	₹41,74,538/-
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -

- a. That the complainants came into contact with Mr. Sandeep Kumar who informed the complainant that respondent companies are developing a project "ANSAL HEIGHTS" affordable group housing society situated at Sector-92, Gurugram. Mr. Sandeep Kumar also informed the complainant that he has booked a unit/flat bearing no. D-807, having super built-up area of 1565 sq. ft. situated at Sector-92, Gurugram, in the above said project and the respondent company has also issued an allotment letter in his favor. Mr. Sandeep Kumar told the complainant that he has already paid an amount of ₹14,86,266/- to the company. Mr. Sandeep Kumar requested to the complainant to get transfer of this flat / unit in their name as he is in dire need of money and he cannot afford this unit anymore. On going through the attractive brochure, the payment plan and assurance given by the officials of the respondent companies and Mr. Sandeep Kumar



regarding constructing of various projects in Gurugram and other Districts of Haryana within the stipulated period. It was intimated, the rates of the properties would soar to the great high's and by the reputation of the respondent's company, the complainant decided to buy the said booked residential unit from Mr. Sandeep Kumar. The said unit was duly transferred in the name of complainant vide transfer letter duly signed by the authorized person of the respondent company and an agreement to sell between Sandeep Kumar and complainant was also executed. Copy of transfer letter and agreement to sell is annexed herewith. The complainants duly paid the settled amount to Mr. Sandeep Kumar as mentioned in the agreement to sell executed between Mr. Sandeep Kumar and complainant have paid the settled amount to Mr. Sandeep Kumar.

- b. That apart from issuing a payment receipts on different dates, acknowledging the receipt of amount, the respondent company also issued an allotment letter dated 27.11.2012 carrying the details of unit allotted and also the details of amount to be deposited by the complainant's time to time as per payment plan opted by the complainants as per annexure.
- c. That the complainant deposited the required amount as per the payment plan opted by the complainant according to the apartment buyer agreement, which was executed between the complainant and the respondent company on 03.10.2012 admitting all the details of terms and conditions of the said agreement as and when it was required by the respondent company.
- d. That as per one of the terms and conditions of the said agreement dated 03.10.2012, it was agreed and settled between the complainant and the respondent company that the possession of the said unit/flat shall be handed over to the complainant within the period of 42 months from the



date of approval of building plan or on or before 03.03.2016. Hence, from the above said clause as mentioned in apartment buyer agreement, the respondent company was duty bound to handover the physical possession of the above said unit/flat to the complainants positively up to 03.03.2016 but till date nothing has been done in that context.

- e. That the complainant without making any kind of delay always deposited the amount required as per the payment plan/schedule opted by the complainants immediately on receipt of letters from the respondent company and in total the complainants paid an amount of Rs.31,01,580/- in the following manners which has also been admitted and acknowledged by the respondent's company officials. The stamp duty + registration charges & administrative charges as mentioned in the payment plan is liable to be payable by the complainant and that too at the time of registration of sale deed and possession of the flat.
- f. That from the above said timely payments made by the complainant in the respondent company leaves no iota of doubt that the complainant has been very sincere and honest while complying with the terms and conditions of the letter of allotment dated 27.11.2012 as well as of apartment buyer agreement as the same was agreed and settled to be payable at the time of offer of peaceful physical possession complete in all respect of the said Unit by the respondent company.
- g. That instead of admitting their fault/negligence on account of not offering the possession of the said Unit to the complainant without being fit for living, respondents kept on issuing reminders for illegal demand of payment regularly. That the respondent rather had crossed all the limits by keeping aside all the provisions of law of the land and without bothering



having any fear of natural justice of law, they kept on sending their illegal demands to the complainant regularly.

- h. That on account of issuance of the above illegal demands regularly, followed by reminders and claiming huge amount without their being any justification leaves no doubt in the minds of the complainants that the respondent being such a type of company which firstly trapped the several innocent home buyer customers like the complainants by showing attractive brochures boosting about the reputation of the respondent company and once the customers like the complainant are trapped in their net, the builder company without having fear of law of land continuously carried on its demands of amount without having any norms leaving the customers, like the complainants to run from pillar to post without their being any fault on their part.
- i. That on account of not completing the construction of the above said Unit allotted to the complainant within the stipulated period of 42 months, the complainant had suffered a huge monetary loss. The act and conduct of the respondents have also snatched the mental peace of the complainants. The following are the details of monetary losses which had been suffered by the complainant on account of total negligence/carelessness on the part of the respondent.
- j. That, the complainant approached the respondent many times and requested him with folded hands to hand over the physical possession of the said unit/flat. But the respondent did not even bother to respond the buyer and paid no heed to his request.
- k. That as the respondent has failed to discharge his liabilities to complete the project and handover the peaceful physical possession of the allotted unit / space to the complainant within the stipulated time and thus the

respondent has cheated the complainant to invest their hard-earned money on believing upon their false assurances. The respondent in a master minded and scripted way succeeded to their ulterior motive and caused wrongful losses to the complainant for their wrongful gains. Thus, the respondent has not only breached the trust of the complainant but also in a planned and thoughtful way cheated/defrauded the complainant. The complainant due to their said illegal acts, conduct and misdeeds, suffered mental agony, sorrow, trauma and apathy. The respondent involved in the swindling and embezzlement of funds of not only of the complainant but similarly situated innocent people at large. That due to illegal acts and conducts of the respondent, the complainant had suffered to great mental agony, physical harassment, financial loss, humiliation, hence the respondent is liable to pay the delay possession charges and handover the physical possession to the complainant.

C. Relief sought by the complainants:

9. The complainants have sought following relief(s)
 - a. Direct the respondent to handover the physical possession along with the delayed possession charges along with compound interest @ 24% per annum to the complainant.
 - b. Direct the respondent to pay the compensation for not providing entrance and interior according to the layout plans as was shown to complainant.
10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 4.

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



- a. The answering respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR with a well-established reputation earned over years of consistent customer satisfaction. That the complainants had approached the answering respondent for booking a flat no. D-807 in an upcoming project Ansal Heights, Sector 92, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 03.10.2012 was signed between the parties.
- b. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the answering respondent was in the year 2012. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that parliament would not make the operation of a statute retrospective in effect.
- c. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong.
- d. That even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2023 and the cause of action accrue on 03.10.2012 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HARERA Gurugram as the same is barred by limitation.

- e. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2012 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 37 of the said agreement provides for ₹5/- sq. ft. per month on super area for any delay in offering possession of the unit as mentioned in Clause 31 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Hon'ble Commission in order to alter the penalty clause by virtue of this complaint more than 10 years after it was agreed upon by both parties.
- f. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint.
- g. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector 103 Gurugram, Haryana on 20.02.2015. 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.
- h. 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.

- i. 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 32 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.
- j. That the answering respondent has clearly provided in clause 37 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.
- k. That admittedly, the complainant had signed and agreed on builder buyer agreement dated 11.04.2012. 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.
- l. That the perusal of the builder buyer agreement at page 3 would show that the proposed party to be impleaded i.e., M/s Samyak Projects Pvt. Ltd not only possesses all the rights and unfettered ownership of the said land

whereupon the project namely Ansal Heights, Sector 92 is being developed, but also is a developer in the said project.

- m. That, while filing the present complaint, the complainant has not arrayed M/s Samyak Project Pvt. Ltd. having its Registered Office at 153, Okhla Industrial Estate, Phase-III, New Delhi - 110020 as a party to the complaint. That M/s Samyak Projects Pvt. Ltd is a very necessary and proper party to be arrayed to the complaint for proper, fair and transparent disposal of the present case.
- n. The said M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the said project well within time as was agreed and given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd.

E. Reply by the respondent no. 3

12. The respondent has contested the complaint on the following grounds:
- a. That the present complaint with respect unit/flat bearing no. D-807, having super built-up area of 1565 sq. ft. situated at sector- 92, Gurugram is pending adjudication before this Ld. Authority and listed for hearing on 22.11.2024.
 - b. That the complaint filed by the complainant is a misuse of process of law and is misconceived, hence it is liable to be dismissed out rightly. That the respondent no. 3 i.e. Samyak Projects Private Limited, having acquired the rights to develop the land on which the present project was to be constructed, entered into a memorandum of understanding "MOU" with respondent no.1 i.e. Ansal Housing Limited in respect of construction and development of the project under the name and style of "Ansal Heights 92"



on the scheduled land. As per the clauses of the MOU, the entire scheme of development of the proposed project on the said scheduled property was to be carried out by respondent no.4 i.e. Ansal at its own cost and expense including development of internal development services, commercial areas and other related developments, after taking all necessary approvals, sanctions/ permissions etc. of the MoU dated 18.04.2011 entered between the respondent no.4 and respondent no.3.

- c. As per the clauses of the JVA, the entire scheme of development of the proposed project on the said scheduled property was to be carried out by respondent no.4 i.e. Ansal Housing Limited, at its own cost and expense including development of internal development services, commercial areas and other related developments, after taking all necessary approvals, sanctions/ permissions etc. That as per the MoU it was the sole responsibility of the respondent no.4 to develop the project and handover the possession to the allottees. It is also submitted that it was the respondent no.4 who received the consideration amount from all the allottees.
- d. That there are no specific allegations in the complaint against the respondent no.3. That there is an ongoing arbitration proceeding between the respondent no. 3 and respondent no.4, thereby a status quo on the project namely "Ansal Heights 92" has been imposed by the Arbitral Tribunal vide order dated 31.10.2021 in **O.M.P (I) (COMM) 59 OF 2021**.
- e. That the Hon'ble RERA Authority through Hon'ble members Sh. Sanjeev Arora and Sh. Ashok Sangwan in the matter of Arun Kumar Singh v. Ansal (4391/2021) vide its order dated 12/12/2023 with respect to the present project namely "Ansal Heights 92" clearly stated that stated that the payments against the allotted units were received by M/s Ansal Housing &

Constructions Ltd. and therefore Samyak Projects Pvt. Ltd. cannot be held responsible.

- f. That the Hon'ble Authority in various cases pertaining to the same project has already decided that it is the responsibility of the respondent no.1 towards the allottees. That it is also submitted that the Hon'ble RERA Authority in 73 cases has decided that the sole responsibility to return the amount paid by the allottees lies upon the respondent no.4 i.e. Ansal. Moreover, the Authority through Hon'ble members Sh. Sanjeev Arora, Sh. Ashok Sangwan and Sh. Vijay Kumar Goyal in the matter of "MR KRISHNENDU GHOSH DASTIDAR AND MRS ANANYA GHOSH DASTIDAR V/S MS ANSAL HOUSING AND CONSTRUCTION LIMITED" (2032/2018) vide its order dated 13.09.2022 which disposed of 42 other cases with respect to the project namely "Ansal Heights-86", clearly stated that the payments against the allotted units were received by M/s Ansal Housing & Constructions Ltd. and Samyak Projects Pvt. Ltd. was not party to the BBA's and therefore Samyak Projects Pvt. Ltd. cannot be held responsible. Also, it was held that the sole responsibility to return the amount paid by the allottees lies upon the Respondent no.4 i.e. Ansal.
- g. that this Hon'ble Authority has observed and passed detailed orders with respect to the payment of refund and interest on delayed possession.
- h. The Authority has in its various decisions have observed that M/s Samyak Projects is not the primary party, neither has direct nexus in respect of the consideration of the unit with the decree holder. Moreover, it is important to mention that it is the obligation of the party who has been benefited by the amount of consideration. Hence, it shall prejudice the interest Respondent No.3 i.e. M/s Samyak Projects Pvt. Ltd who has not received

any amount toward the completion of the said project by the respondent no. 4.

- i. That there is no privity of contract between the respondent no.3 and complainant as it was the sole responsibility of the respondent no.4 to deliver the units to the allottees. Moreover, a status quo has been imposed by the learned Arbitrator on the project, the unit cannot be handed over to the complainant.
 - j. That respondent no. 4 is liable to pay the delay possession charges to the complainant as it was the sole responsibility of the R 4 to complete the project.
13. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
14. On 13.05.2025, learned counsel for Respondent No. 4 in Case No. 1718/2023 submitted before the Hon'ble Authority that the complaint has been erroneously instituted against Ansal Housing Ltd., asserting that the Builder-Buyer Agreement (BBA) was, in fact, executed with Ansal Phalak Infrastructure Pvt. Ltd. Upon due verification, the Authority finds the aforesaid contention raised by Respondent No. 4 to be devoid of merit and accordingly rejects the same.
15. The present complaint was filed on 09.05.2023 in the Authority. The notice for hearing was duly served to respondent no. 1 & 2. However, despite providing enough opportunity for filing the reply, no written reply has been filed by the respondent no. 1 & 2. Thus, keeping in view the opportunity given to the respondent no. 1 & 2, have failed to file the reply in the registry. Therefore, in view of the above-mentioned fact, the defence of the respondent no. 1 & 2 is hereby struck off by the Authority. Further, respondent no. 1 & 2 failed to put

in appearance before the Authority and have also failed to file reply. In view of the same, the matter is proceeded ex-parte against respondent no. 1 & 2.

16. The respondent no. 3 has filed the written submissions on 06.05.2025 respectively which is taken on record. The authority has considered the same while deliberating upon the relief sought by the complainants.

F. Jurisdiction of the authority

17. 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

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

F. II Subject matter jurisdiction

19. 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.

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

G. Findings on objections raised by the respondent.**G.I. Objection regarding delay due to force majeure circumstances**

21. The respondent no.3 i.e., M/s. Samyak Projects Pvt Ltd has raised an objection that there is no privity of contract between the complainant and respondent no.3 as it was the sole responsibility of respondent no. 4 to construct and handover the units to the allottees. The respondent no.3 further submitted that as per clause 9.2 of the MOU executed between the respondent no.3 and respondent no.4, it was the sole responsibility/obligation of the respondent no.4 towards the allottees to develop the project and handover the possession and all the consideration amount has been received by respondent no.4 from the allottees.
22. The Authority observes that the flat buyer agreement dated 03.10.2012 was duly executed between the complainants and respondent no.4, with respondent no.3, M/s Samyak Projects Pvt. Ltd., being a confirming party to the said agreement. It is further observed, based on the submissions of respondent no.3, that it had earlier entered into a Memorandum of Understanding (MoU) dated 06.09.2011 with respondent no.4, which was subsequently superseded by a Joint Venture Agreement (JVA) dated 24.05.2013. As per the terms of the JVA, the entire development of the project, including internal development works, commercial areas, and other ancillary developments, was to be undertaken by

respondent no.4 at its own cost, and after obtaining all requisite approvals, sanctions, and permissions.

23. Importantly, both the MoU and the JVA were agreements executed exclusively between respondent no.3 and respondent no.4 and the complainants were neither a party to these agreements nor was the arrangement disclosed to the complainants, nor did the complainants have any role in its execution. The document establishing the legal relationship between the complainant and the respondents remains the flat buyer agreement dated 03.10.2012, to which respondent no.3 is a confirming party. Therefore, the objection raised by respondent no.3 regarding the absence of privity of contract with the complainants is without merit and is accordingly rejected.

G.II. Objection raised by the respondent no. 3 in its written submissions regarding status quo being imposed by the Learned Arbitrator on the project.

24. The respondent no.2 has raised an objection that since the arbitration proceedings are going on between the respondent no.3 and respondent no.4, status quo has been imposed by the Learned Arbitrator on the project and thus the unit cannot be handed over to the complainant.
25. The Authority observes that the respondent no.3 terminated the MOU and the JVA that was executed between the respondents vide notice dated 02.02.2021 and issued a public notice in respect of the termination of the MOU. The matter pursuant to the dispute was referred to the Hon'ble Delhi High Court under Section 9 of the Arbitration and Conciliation Act, 1996 and vide order dated 22.01.2021, Hon'ble Justice A. K. Sikri, former judge of the Hon'ble Supreme Court of India has been appointed as a sole arbitrator of the Arbitral Tribunal by the Hon'ble Delhi High Court. As per the order dated 31.08.2021, the Hon'ble Tribunal observed that the construction of the project is almost complete and

the respondent no.4 has applied for occupancy certificate. As per the present status of the project, it would be apt that the respondent no.3 also does not deal with the project by entering into any arrangement with third parties during the pendency of these proceedings and/or till further orders.

26. The Authority is of the view that the order dated 31.08.2021 is limited to the extent of the dispute inter se the respondents and does not bar the jurisdiction of this Authority to grant relief to the complainant under the provisions of the Act, 2016.

H. Findings on the relief sought by the complainants.

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

27. In the present matter the complainant was allotted unit no. D-807, admeasuring 1565 sq. ft. in the project "Ansal Heights 92" Sector 92 by the respondent-builder for a sale consideration of ₹37,23,448/- and they have paid a sum of ₹41,74,538/-. A buyer's agreement was executed with the complainant on 03.10.2012. As per the BBA, landowners assigned their entire rights, entitlements and interest in the land and the resultant FSI of the entire project to respondent no. 3 i.e., Samyak Projects Pvt. Ltd. Further, respondent no. 3 entered into an arrangement with respondent no. 4 to jointly develop and market the said project.
28. The authority is of the view that the builder buyer agreement dated 03.10.2012 was signed by the complainants and the respondent no. 4. The respondent no. 1, 2 & 3 are the confirming party to that BBA. In the builder buyer agreement dated 03.10.2012 it was specifically mentioned that respondent no. 3 and respondent no. 4 entered into an agreement whereby the development and marketing of the project was to be done jointly by the respondent no. 3 & 4 in terms of the license/permissions granted by the DTCP, Haryana. Although the

respondent no.3 i.e., Samyak Projects Pvt. Ltd. cancelled the agreement vide termination notice dated 02.02.2021 and the matter is subjudice before the arbitral tribunal appointed by Delhi High Court vide order dated 22.01.2021. It is relevant to refer the definition of the term 'Promoter' under the section 2(zk) of the Real Estate (Regulation and Development) Act, 2016.

2. Definitions.-

(zk) "promoter" means

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

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) xxxxxxxx

29. 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).

30. 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)

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

"Clause 29

The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there

shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."

32. **Due date of possession and admissibility of grace period:** As per clause 29 of the BBA, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of within a period of 36 months from the date of execution of the agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The period of 36 months is calculated from the date of agreement i.e., 03.10.2012 being later. As far as grace period of 6 months is concerned the same is allowed being unqualified. The occupation certificate for the project has not yet been obtained from the competent authority.
33. **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.

34. 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.

35. 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%**.
36. 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;"

37. 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.
38. 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 29 of the buyer's agreement, the possession of

the subject unit was to be delivered within stipulated time. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.

39. 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.
40. 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. The following table concludes the time period for which the complainants-allottees are entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:

CR no.	Period for which the complainants are entitled to DPC
CR/1717/2023	W.e.f. 03.04.2016 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier.
CR/1718/2023	W.e.f. 11.10.2015 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier.

41. As per section 17(2) of the Act of 2016, the promoter is under an obligation to handover the physical possession of the said unit to the complainant. In view of

the above, the 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.

H.II. Direct the respondent to pay the compensation for not providing entrance and interior according to the layout plans as was shown to the complainant.

42. The complainant is also seeking relief w.r.t. compensation for not providing entrance and interior according to the layout plans. It is observed that the Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* 2021-2022(1) RCR(c),357 has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

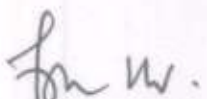
I. Directions of the authority:

43. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- a. The respondents/promoters jointly and severally are directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at

prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- b. The respondents are directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate
 - c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - d. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - e. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
 - f. The respondents shall not charge anything which is not the part of BBA.
44. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
45. The complaints stand disposed of.
46. Files be consigned to registry.

(Ashok Sangwan)
Member


(Arun Kumar)
Chairperson

V. / 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.05.2025