

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

Complaint no. : 4779 of 2023
Date of filing : 16.06.2023
Date of decision : 15.04.2025

1. Col S B Bhandari
2. Mrs. Maya Bhandari

Both R/o: Flat No. 203, Tower 2-J, Gurjinder Vihar AWHO Colony Greater Noida, Uttar Pradesh-201315

Complainants

Versus

1. M/s Samyak Projects Pvt. Ltd.
Regd. office: 111, 1st floor, Antriksh Bhawan, K.G. Marg, New Delhi-11000115
2. M/s Ansal Housing Ltd. (Formerly known as Ansal Housing & Construction Ltd.)
Regd. office: UGF, Indraprakash, 21, Barakhambha Road, new Delhi -110001

Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Sh. M S Sehrawat (Advocate)
Sh. Amandeep Kadyan (Advocate)
Sh. Sanya Arora (Advocate)

Counsel for Complainants
Counsel for Respondent no. 1
Counsel for Respondent no. 2

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall

be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Project name and location	Ansal 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 of 2018 Dated 08.01.2018
5.	DTPC license no. & validity status	License No. 71 of 2010 dated 15.09.2010 valid up to 14.09.2018
6.	Date of execution of buyer agreement.	20.12.2014 (Pre-RERA) (Unsigned copy annexed- However same date is admitted by respondent no. 2 in its pleadings at page 1 of its reply) (page no 24 of complaint)
7.	Unit No.	S-115, Type- Shop (Page no. 28 of complaint)
8.	Unit area admeasuring	259 sq. ft. (Saleable Area) (Page no 28 of complaint)
9.	Possession clause	Clause 30 of new BBA <i>The Developer shall offer of the unit any time, within a period of 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of</i>

		<p>construction, whichever is later subject to timely payment of all dues by Buyer and subject to force-majeure circumstances as described in clause 31. Further there shall be a grace period 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit.</p> <p style="text-align: right;">[Emphasis Supplied]</p> <p>(As on page no. 35 of complaint)</p>
10.	Due date of Possession	<p>20.01.2018</p> <p>(Calculated to be 42 months from the date of execution of the agreement including grace period of 6 months)</p>
11.	Sale consideration	<p>Rs. 19,64,642/-</p> <p>(Customer ledger dated 10.05.2018 at page 48 of complaint)</p>
12.	Total amount paid by the complainants	<p>Rs. 16,27,127/-</p> <p>(Customer ledger dated 10.05.2018 at page 47 of complaint)</p>
13.	Public notice sent by respondent no.2 stating Samyak project private limited has taken possession of the project and requested the allottees to submit the documents for KYC	<p>16.12.2020 and 04.05.2023 respectively</p> <p>(Page 53 of complaint)</p>
14.	Notice to execute addendum agreement with Samyak	<p>14.06.2023</p> <p>(Page 55 of complaint)</p>
15.	Offer of Possession	Not Obtained
16.	Occupation Certificate	Not Offered

B. Facts of the complaint

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



- a. That the complainant a senior citizen and retired Col was looking to start own business at Gurgaon thus booked a shop during in "Ansal Hub 83" Sector 83 Village Sihi Gurgaon. A veteran Colonel on the verge of retirement was looking for a small affordable shop at Gurgaon for some income source for post-retirement. Millinium City, Gurgaon offered better opportunities and decided to book a shop in Ansal Housing Ltd. Promoted "Ansal's Hub 83, Boulevard Gurgaon", Sector 83 Gurgaon. The shop-S-115, I the project named Ansals Hub 83 Boulevard, Sector 83 Gurgaon was booked by S B Bhandari on 23.11.2013.
- b. That builder buyer agreement was signed between the parties on 20.12.2014 bearing unit no. S-115 having super area of 259 sq. ft. the basic sale price of the unit was Rs. 18,11,769/- and possession was to be offered within 42 months as per clause 30 of the agreement.
- c. That M/s Samyak Projects Pvt. Ltd., entered into agreement to buy land on 01.04.2013 and a sale deed was executed on 18.11.2014 with Abhash & Vatika acquiring the rights, title & interest of Abhash in the scheduled property, along with all the rights to develop the permitted FSI, as such the SPPL is the land owner of the project land and all the rights for the construction and development of a real estate project by virtue of a sale Memorandum of Understanding between M/s Samyak Projects Pvt. Ltd and Ansal Housing Ltd.
- d. That glitches surfaced in the project and development stopped by 2016 and complainants sent an email dated 16.12.2017 regarding a true report from the Ansal Housing Ltd office, which was never replied to and again complainants sent e-mail dated 05.04.2018 regarding the same.

- e. That the respondent was sending only payment reminders and not replying to the emails showed that the respondent was trying to swindle the maximum money before abandoning the project.
- f. That the dispute between Samyak Projects Pvt. Ltd and Ansal Housing Ltd is public information and it sent chilling sensations to the allottees.

C. Relief Sought by complainants: -

- a. Interest for every month of delay at 24% p.a. or @as per established norms of Authority, may be granted w.e.f. 19.06.2018 (due date of possession) to the date of filing of this complaint to be paid now.
 - b. Monthly payment of delay possession charges thereafter till actual possession.
 - c. Any interest charged from the complainants @18% p.a. to be converted to the same rate of interest as for DPC.
 - d. Respondent be directed to handover possession to the complainants without any pre-conditions and without further delay along with a copy of Occupation Certificate granted by the competent authority.
 - e. Respondents are liable to compensate complainants to the tune of Rs. One lakh-toward forced litigation costs.
4. 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. Short affidavit on behalf of respondent no. 1. i.e., Samyak Project Pvt. Ltd. filed on 10.04.2024:

5. That the respondent no.1 i.e., Samyak Projects Pvt. Ltd. and respondent no.2 i.e., Ansal Housing Construction Ltd. entered into a MoU dated 12.04.2013 in respect of construction and development of a project known as Ansal Boulevard 83 situated on a land admeasuring 2.60 acres situated in Village Sihi, Tehsil & District Gurgaon. As per MoU, the respondent no.2 being the

developer, made sale of various units to the allottees, executed builder buyer agreement with allottees and also received sale consideration amount from the allottees. The respondent no.1 was not a party to any builder buyer agreement executed between the respondent no.2.

6. That respondent no.2 failed to fulfil its obligation under the said MoU. Therefore, due to abject failure of respondent no. 2 to perform its obligations under the said MoU, the respondent no.1 being left with no other option, terminated the said MoU vide termination notice dated 10.11.2020.
7. That the respondent no.1 also published a public notice in the newspaper dated 16.12.2020 informing the public at large about the termination of said MoU by respondent no.1 due to breach of the terms of MoU by the respondent no.2.
8. That the respondent no.2 challenged the termination of MoU before the Hon'ble HC 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 HC 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.
9. That the learned arbitrator rejected the prayer of respondent no.2 for stay on the termination of MoU and directed the respondent no. 2 to handover the possession of the said project on 14.10.2021 to respondent no.1 for taking over the balance construction of the said project and the Ld. Arbitral Tribunal, passed various orders on time to time in favour of respondent and against the AHL till today.
10. That the respondent acting in good faith and in the interest of public at large, in benefit/interest of the allottees of the aforementioned project, the respondent sought to authenticate and verify the veracity of the

agreements/allotments made by AHL and urged the allottees including the complainants vide various emails to come forward for KYC process.

11. It came to the knowledge of respondent no.1 that respondent no.2. Has done several dummy transactions by creating fake profiles of allottees. Thus, the respondent no.1 issued notice dated 04.05.2023 to the complainants for verification of the complainants and legitimacy of the transaction undertaken by respondent no.2.
12. After verification process of the complainants and legitimacy of the transaction undertaken by respondent no.2 found that complainants are under dummy transactions profiles. No satisfactory response or compliance was received from complainants. The said Ansal Housing Ltd. executed the agreement with the complainants are any malfeasance and intentionally as dummy transactions and for that complainants would not entitled to make any claim, not initiate any civil, criminal or legal proceeding of any nature whatsoever against respondent no.1. As respondent no.1 was not a party to the agreement executed if any with respondent no.2. The captioned complaint is liable to be dismissed against respondent no.1.
13. That the respondent no.1 has proceeded to commission experts who are in the process of determining the status of the construction and the further steps/constructions necessary to complete the project, respondent no.1 is making its best endeavor to ensure that the progress of the said project is being affected by frivolous and premature challenged being made against the efforts of respondent no.1.
14. That the respondent no.1 as a land owner have their limited liabilities to the extend provided the land only. Not sign any builder buyer agreement, and don't have any obligation towards builder buyer agreement with the complainants. Though the respondent no.1 is in no way liable for

performance of any contract with the allotment/allottees as applicant was not a privy to the any contract with the allotment/allottees as applicant was not a privy to the any contract with them and all the documents were executed by the AHL in favour of allottees.

15. That the complaint filed by the complainants is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favour of the complainants and the present complaint has been filed with malafide intention to blackmail the respondent no.1 with this frivolous complaint and hampering the project.
16. That the respondent no.1 confirms that this booking is a part of a dummy transaction made by AHL.

E. Reply by the respondent no. 2.

17. The respondent no. 2 has contested the complaint on the following grounds:
 - a. That the complainants had approached the respondent for booking a shop no. S-115 in an upcoming project Ansal Boulevard, Sector 83, Gurugram. Upon the satisfaction of the complainants regarding inspection of the site, title, location plans, etc. an agreement to sell dated 20.12.2014 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 complainants and the respondent was in the year 2014. The regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016.
 - c. 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 complainants belatedly. The complainants have



admittedly filed the complaint in the year 2023 and the cause of action accrue on 20.12.2018 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.

- d. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2014 without coercion or any duress cannot be called in question today. The builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 34 of the said agreement provides for Rs. 5/ sq.ft. per month on super area for any delay in offering possession of the unit as mentioned in clause 30 of the agreement. Therefore, the complainants would 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 8 years after it was agreed upon by both parties.
- e. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. 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 complainants.
- f. That the respondent has adequately explained the delay. The delay has been occasioned on account of things beyond the control of the respondent. 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 respondents 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.

- g. That the respondent and the complainants admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. Clause 31 of the builder buyer agreement is clear that there is no compensation to be sought by the complainants/prospective owner in the event of delay in possession.
- h. That the respondent has clearly provided in clause 34 the consequences that follow from delayed possession. The complainants cannot alter the terms of the contract by preferring a complaint before the Authority.
- i. That admittedly, the complainants had signed and agreed on builder buyer agreement dated 20.12.2014. 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.
- j. That the perusal of the builder buyer agreement at page 3 would show that M/s Samyak Projects Pvt. Ltd. not only possesses all the rights and unfettered ownership of the said land whereupon the project namely

Ansal Boulevard, Sector 83 is being developed, but also is a developer in the said project.

- k. 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. In an arbitral proceeding before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. has taken over the present project the respondent for completion of the project and the respondent has no locus or say in the present project.

18. 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.

F. Jurisdiction of the Authority

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

F.I Territorial jurisdiction

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

F.II Subject-matter jurisdiction

21. 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) 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.

22. 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 objections raised by the respondents:

G. I Objection regarding no privity of contract between respondent no.1 i.e., M/s. Samyak Projects Pvt Ltd. and the complainants.

23. The respondent no.1 i.e., M/s. Samyak Projects Pvt Ltd has raised an objection that there is no privity of contract between the complainants and respondent no.1 as it was the sole responsibility of respondent no. 2 to construct and handover the units to the allottees and all the consideration amount has been received by respondent no.2 from the allottees.
24. The Authority observes that although the BBA placed on record by the complainants does not bear signatures of any of the parties, the respondent

no. 2 as admitted to have executed the same on 20.01.2014. However, respondent no.1 i.e., Samayak Project Pvt. Ltd. has denied privity of contract between the complainants and the respondent and denied signing the document. So far as the factum of a MoU between respondent no. 1 and 2 is concerned, the same is under arbitration which is still pending. In view of the above, the liability for performance of the contractual obligations qua the BBA would lie entirely on part of respondent no. 2 i.e., Ansal Housing Limited.

G.II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

25. The respondent/promoter no.2 has raised an objection that the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the BBA signed between the complainants and the respondent no.2 was in the year 2014. The Authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottees

prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

26. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottees shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

27. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottees to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the

plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

28. Moreover, as per proviso to section 3 of Act of 2016, projects that are ongoing on the date of commencement of this Act i.e., 28.07.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder.-

"Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act."

29. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. It is important to note that till date, the respondent/builder has not obtained the completion certificate till the commencement of the Act, 2016. After taking note of the statutory provisions as mentioned in Section 3 of the Act of 2016, it is observed that the Act of 2016 is retroactive in nature and covers all ongoing projects for which completion certificate has not been issued by the competent authority.
30. Further, the Hon'ble Supreme Court of India in Civil Appeal No(s). **6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Private Limited vs. State of U.P and Ors.** has observed that:

52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity

is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.

31. Therefore, in view of the above, the plea advanced by the respondent/promoter is hereby rejected.

G.III Objection regarding delay due to force majeure circumstances.

32. The respondent no.2 has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Punjab and Haryana High court, Hon'ble NGT, shortage of labour, demonetisation, outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the admitted BBA was executed between the parties on 20.01.2018. As per clause 30 of the BBA, the due date for offer of possession of the unit was 42 months from the date of execution of the Agreement or 42 months from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later, along with a grace period of six months over and above the said period. The period of forty two months is calculated from the date of execution of the agreement. The BBA has been executed between the parties on 20.01.2014, the period of 42 months from 20.01.2014 comes out to be 20.01.2018. Further, an unqualified grace period of six months has been agreed between the complainants and the respondents to be granted to the respondents over and above the said 42 months. The same is granted to the respondents, being unqualified. Thus, the due date of possession comes out to be 20.01.2018. Since, a grace period of six months has already been granted to the respondent, any further grace would amount to undue advantage in favour of the respondents. The respondent no.1 have submitted that due

to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, but these were for a short period of time and are the events happening every year. The respondents were very much aware of these event and thus, the promoter/respondent cannot be given any more leniency based on the aforesaid reasons.

H. Findings on the relief sought by the complainants.

- H.I Interest for every month of delay at 24% p.a. or @as per established norms of Authority, may be granted w.e.f. 19.06.2018 (due date of possession) to the date of filing of this complaint to be paid now.**
- H.II Monthly payment of delay possession charges thereafter till actual possession.**
- H.III Any interest charged from the complainants @18% p.a. to be converted to the same rate of interest as for DPC.**
- H.IV Respondent be directed to handover possession to the complainants without any pre-conditions and without further delay along with a copy of Occupation Certificate granted by the competent authority.**

33. In the present matter the complainants were allotted unit no. S-115, admeasuring 259 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder vide admitted BBA dated 20.12.2014. However, it is observed that the respondent no. 1 has not appended its signatures as a confirming party in the said agreement. As per clause 30 of the BBA, respondent no. 2 was obligated to complete the construction of the project and hand over the possession of the subject unit within 42 months from obtaining all the required sanctions and approval sanctions and approval necessary for commencement of construction, whichever is later. The due date of possession is calculated from the date of BBA i.e., 20.01.2019 since the date of commencement of construction is not known. The period of 42 months ends on 20.01.2014. 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.

34. It is evident that the builder buyer agreement dated 20.12.2014 for the subject unit was executed between two parties, namely M/s Ansal Housing Ltd. (Respondent No. 2), and the allottees, Col. S.B. Bhandari & Maya Bhandari. There is no privity of contract between the respondent no.1 and the allottees, therefore, it would be unfair to attribute any liability on part of respondent no. 1 in the matter and respondent no. 2 is liable for the performance of the obligations stipulated therein. Moreover, costumer ledger dated 25.06.2018 was issued by the Ansal Housing Limited which clearly shows that the payments were received by respondent no.2 i.e., Ansal Housing Limited.
35. As per the BBA, respondent no. 1 and respondent no. 2 entered into a MoU dated 12.04.2013 whereby the development and marketing of the project was to be done by the respondent no. 2 in terms of the license/permissions granted by the DTCP, Haryana. Upon failure of respondent no. 2 to perform its obligations as per MoU and complete the construction of the project within the agreed timeline, respondent no. 1 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.
36. The complainants 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. 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. 2 was directed to handover the aforementioned project to the respondent no. 1. Following the directive outlined in the order dated 13.10.2021 of the sole arbitrator, respondent no. 2 handed over the project to respondent no. 1 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. 1 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.

37. 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 no.1. The complainants intend to continue with the project and are seeking delay possession charges interest on the amount paid. Proviso to section 18 provides that where an allottees 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 allottees 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 allottees 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)

38. 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 any time a 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."

39. Due date of possession and admissibility of grace period: As per clause 30 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 due date of possession is calculated from the date of BBA i.e., 20.12.2014 since the date of commencement of construction is not known. The period of 42 months ends on 20.07.2017. 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 20.01.2018. The occupation certificate for the project has not yet been obtained from the competent authority.

40. **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 allottees 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.

41. 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.
42. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 15.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
43. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

44. 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.
45. 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 20.01.2018. However, till date no occupation certificate has been received by respondent no.2 and neither possession has been handed over to the allottees till date.
46. 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.

47. 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 allottees shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 15.04.2025 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.
48. 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 complainants. In view of the above, the respondent is directed to handover possession of the flat/unit to the complainants 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.
49. It is pertinent to mention here that matter regarding the MoU dated 12.04.2013 is presently under arbitration proceedings on orders of the Hon'ble High Court of Delhi. Therefore, so far as handing over of possession to the complainants are concerned, the same would also be subject to the final outcome of the said proceedings.

H. IV. Compensation & litigation cost.

50. The complainants are also seeking relief w.r.t. litigation expenses & 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 allottees 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

I. Directions of the authority

51. 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 respondent/promoter no.2 i.e., Ansal Housing Ltd. are directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 20.01.2018 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.
- b. The respondent no. 2 is directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate and thereafter execute conveyance deed in favor of complainants within 3 months from the date of obtaining occupation certificate, subject to the final outcome of the arbitration proceedings w.r.t. the MoU dated 12.04.2013.
- c. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the



promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- d. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- e. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- f. The respondent shall not charge anything which is not the part of BBA.

52. Complaint stands disposed of.

53. File be consigned to registry.

(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.04.2025

HARERA
GURUGRAM