

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

Complaint no. : 3598 of 2023
Date of filing : 17.08.2023
Date of decision : 08.07.2025

Rajan Singla

R/o: # A-146, Sushant lok, ph-1, Gurgaon, Haryana-
122002**Complainant**

Versus

1. M/s Ansal Housing Ltd. (Formerly known as Ansal
Housing & Construction Ltd.)**Regd. Office:** 15 UGF, Indraprakash, 21,
Barakhambha Road, new Delhi -110001

2. M/s Samyak Projects Pvt. Ltd.

Regd. Office: 111, 1st floor, Antriksh Bhawan, K.G.
Marg, New Delhi-110001**Respondents****CORAM:**

Shri Arun Kumar

Shri Ashok Sangwan

**Chairperson
Member****APPEARANCE:**

Ms. Priyanka Agarwal (Advocate)

Sh. Amandeep Kadyan (Advocate)

Sh. Shanker Wig (Advocate)

Counsel for Complainant**Counsel for Respondent no. 1****Counsel for Respondent no. 2****ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	Ansals Hub 83 Boulevard, Sector 83 Gurugram
2.	Nature of the project	Commercial Project
3.	Project area	2.60acres
4.	DTCP license no.	License No. 71 of 2010 dated 15.09.2010
5.	RERA Registered/ not registered	Registered 09/ 2018 Dated 08.01.2018
6.	Unit no.	S-001 (As per page no. 30 of the complaint)
7.	Unit area admeasuring	3909 sq. ft. (As per page no. 30 of the complaint)
8.	Date of buyer agreement	13.01.2015 (R2 not confirming party) (As per page no. 26 of the complaint)
9.	Possession clause	30. <i>The developer shall offer possession 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 construction, whichever is later subject to timely payment of all the dues by buyer and subject to force-majeure circumstances as described in clause 31. 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.</i>
10.	Due date of possession	13.01.2019 (calculated from the date of buyer's agreement including grace period)
11.	Total sale consideration	₹2,01,02,290/- (As per payment plan on page no. 46 of the complaint)

12.	Amount paid by the complainant	₹21,38,893/-
13.	Occupation Certificate	Not obtained
14.	Offer of possession	Not offered
15.	Cancellation notice issued by R2	12.12.2023 [pg. 157 of reply by R2]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That the complainants/allotees approached the respondent-1 for booking commercial unit no. S-001 admeasuring 3909 sq. ft. along with the exclusive right to use appurtenant terrace, in the commercial project, namely, "Ansals HUB-83 Boulevard", Sector 83, Gurugram, Haryana. The initial booking amount of ₹21,38,893/- was paid through Cheques dated 13.01.2015.
 - b. That the respondent-1 with a view to dupe the Complainant in their nefarious net even executed Developer Buyer Agreement Signed Between M/s Ansal Housing Ltd. and Mr. Rajan Singla & Mrs. Tinku Singla, dated 13.01.2015. Respondent-1 created a false belief that the project shall be completed in a time bound manner.
 - c. It is submitted that as per clause 23 of the Developer buyer agreement the buyer was to be charged very high interest rate i.e. 24% per annum, compounded quarterly in cases of purchase on instalments. Furthermore, according to clause 24 of agreement if buyer fails to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature.
 - d. The complainants further submit that as per clause 34, the developer/ respondent had very cleverly and specifically accepted a meagre liability to pay Rs. 5/- per sq. ft. per month on the super area for the

delay in offering of possession. That the total cost of the said Commercial Unit is Rs 2,01,02,290.38/- and a sum of Rs 21,38,893/- was paid by the complainant. This amount constituted more than 10% of the total sum taken from the Complainant at the time of booking. This amount was taken by the Respondent by making a dishonest commitment to complete the Project within 42 months after collecting money and there has been little progress in construction since then.

- e. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) Complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the Complainant herein is not in breach of any of its terms of the Agreement. As per Payment Plan Complainant needed to pay only 10 % Amount and balance amount is payable at the time of offer of possession.
- f. That complainants booked the Commercial Unit on 13.01.2015 (more than 9 years ago) and as per Developer Buyer Agreement, Respondents/ Builder were liable to offer possession on before 13.01.2019 (DBA Clause no.30). Complainant visited the Respondent's office and project site several times regarding possession of the unit and interest on delayed delivery, however respondent did not reply till date.
- g. That sometime in Oct 2021, the Respondent-2, namely, Samyak Projects Pvt. Ltd communicated to the Complainants that they had been handed over the Commercial Project on 14.10.2021 pursuant to an order of Sole Arbitral Tribunal of Justice A. K. Sikri to the exclusion of Ansals and that they intended completing the project before 31.3.2023. They further needed a 'No Objection' from the complainants for registering as 'Promoter' with RERA. Samyak further mentioned that failure to send the NOC would be deemed as acceptance of their request.



- h. It may be mentioned that even after the expiry of the expected completion date (31.3.2023) by Samyak, the bare structure of our booked unit is still not constructed. On top of that, legal notices are being sent on behalf of Samyak that in case an "Addendum Agreement" (A copy of which is not being made available despite request) is not signed with Samyak, the complainants will be deemed to have relinquished their rights in the property.
- i. That the Respondent no. -2 (Samyak Projects Pvt. Ltd) sent the letters to allottees seeking to unilaterally change the terms the Builder Buyer Agreement. That due to the malafide intentions of the respondents and non-delivery of the Commercial Unit the complainants have incurred huge monetary losses on account of loss of return on investments and potential business opportunities. Due to delay in possession complainants have incurring huge financial loss and mental harassment month after month. Complainants visited respondent's office several times and requested for possession but the respondent did not bother to respond till date.

C. Relief sought by the complainant

4. The complainant has sought the following reliefs:
- Direct the Respondent to pay delay interest on paid amount of ₹21,39,893/- of 24% till the handing over the physical possession. As per Developer Buyer Agreement, Builder was liable to offer possession on or before 13.01.2019.
 - Direct the Respondent to complete the project immediately and hand over the possession of the Commercial Unit with all basic amenities mentioned in the Brochure.
 - Direct the respondent to quash all unilateral charges and mis calculated amount which might be imposed at the time of offer of possession.

- d. Direct the respondent to quash the one-sided clauses from Developer Buyer Agreement.
 - e. Pass an order for payment of GST amount levied upon the Complainant with respect to which the benefit of input credit has been taken by builder.
 - f. Direct the Respondent-2 to abstain from trying to change the terms of the Builder Buyer Agreement unilaterally and not to insist on the Complainants signing some Addendum Agreement which is outside the scope of the legally binding Builder Buyer Agreement.
 - g. Direct the Respondent-2 to abstain from issuing letters threatening with presumptions that we are not interested in continuing our interest in the property which has been legally vested in us for consideration duly paid. We also commit to pay the balance amount on offer of possession after the Builder receives the Occupation Certificate in terms of the Builder Buyer Agreement.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.
- D. Reply by the respondent no. 1.**
6. The respondent no. 1 has contested the complaint on the following grounds.
- a. That the complainants booked the Shop No. S-0001 in his name in an upcoming project Ansal Boulevard, Sector 83, Gurugram of the answering Respondent. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. Builder Buyer Agreement dated 13.01.2015 was signed between the parties as per claim of the complainant.
 - b. That the project in question i.e. "Ansal Hub Boulevard 83" has already been handed over to the "Samyak Projects Pvt. Ltd." on dated

13.10.2021 and they are necessary party for the proper adjudication of the present case and they need to be impleaded as the "Respondent" in the present case.

- c. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement and only paid less than 30% of the sale consideration. 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 in 2019 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.
- e. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2015 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 34 of the said agreement provides for Rs. 5/ sq foot per month on super area for any delay in offering possession of the unit as mentioned in Clause 30 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 7 years after it was agreed upon by both parties.
- f. That the answering Respondent had in due course of time obtained all necessary approvals from the concerned authorities. Similarly, the approval for digging foundation and basement was obtained and

sanctions from the department of mines and geology were obtained in 2012. Thus, the Respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the Complainant.

- g. 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.
- h. 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 31 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. That the answering Respondent has clearly provided in clause 34 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.

- i. That the Complainant had signed and agreed on Builder Buyer Agreement dated 04.08.2018 That perusal of the said agreement would show that it is a Tripartite Agreement wherein M/s Samyak Projects Pvt. Ltd is also a party to the said agreement.
- 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. That the operating lines at page 3 of the Builder Buyer Agreement are as follow: "The Developer has entered into an agreement with the Confirming Party 3 i.e., M/s Samyak Projects Pvt. Ltd to jointly promote, develop and market the proposed project being developed on the land as aforesaid."
- 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 Samyak Projects Pvt. Ltd., the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. and not on the part of them, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd.
- l. That in an arbitral proceeding before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. Ltd. has taken over the present project from the answering Respondent for completion of the project and the Respondent has no locus or say in the present project which is also admitted by the complainant. The Answering Respondent due to constraint reasons has no role to play presently in the project as it has been taken over by Samyak Projects Pvt. Ltd. who also illegally cancelling the units of the allottees and further creating third party rights despite of being stay granted by the Sole Arbitrator. Further, also

sending communications to the allottees to harass them and the answering Respondent also warned them to desist from such kind of malpractices but they are doing things according to his own whims and fancies and flouting the orders of Sole Arbitrator.

E. Reply by the respondent no. 2

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

- a. That the present complaint has been filed by the Complainant regarding Unit No. S-001 in the project "Ansal HUB 83 Boulevard", Gurugram, Haryana. It is pertinent to mention that the said unit was originally being constructed and developed by Respondent No.1 (Ansal Housing and Construction Ltd.). That Respondent No.1 was solely responsible for the construction and development of the project but failed to fulfil its obligations towards the complainant, other allottees, and Respondent No.2 (Samyak Projects Pvt. Ltd.).
- b. That due to Respondent No.1's failure to complete the project in a timely manner, the Memorandum of Understanding (MoU) dated 12.04.2013 between Respondent No.1 and Respondent No.2 was terminated, leading to the initiation of arbitration proceedings. That, pursuant to the Arbitration Tribunal's order dated 02.09.2022, the project was handed over to Respondent No.2 (Samyak Projects Pvt. Ltd.) for completion of construction.
- c. That it is pertinent to mention here that the project was handed over to Respondent No.2 i.e., Samyak Projects Pvt. Ltd. as per the above-mentioned orders for completion of the project and Samyak was also directed by the Hon'ble Arbitrator to collect the funds from the allottees and further persuading them to sign the Addendum agreement. It is also pertinent to mention here that the format of the addendum agreement was validated by the arbitral tribunal in the order dated 14 June 2024.

- d. It is also submitted that Samyak is willing to handover the fit-out possession immediately to the genuine allottees upon executing the addendum agreement and upon payment of the balance amount of consideration due against the allotted unit. That the only purpose to get the addendum agreement executed is nothing but demand of KYC and statement of accounts of the Allottee regarding the said unit.
- e. It is also pertinent to mention that as Respondent No.2 is only land owner and the development rights as well as the registration certificate was in the name of Respondent No. 1 i.e., Ansal Housing and Construction Ltd. A complaint regarding this and further various representations have already been submitted by the Respondent No.2 i.e., Samyak Projects Pvt. Ltd. before the authority.
- f. That it is also pertinent to mention here that as per the Builder Buyer Agreement (executed between the Respondent No. 1 and the complainant) dated 13.01.2015. That a bare reading of the clauses of the Builder buyer agreement it is clear that the agreement executed between the Complainant and Respondent No. 1 clearly holds the liability of Respondent No. 1 in case of default / delay in handing over the possession. That the intentions of Samyak Projects Pvt. Ltd. are bonafide and are willing to handover the possession of the unit to the allottee with the support and cooperation of the authority.
- g. Further in the civil appeal numbers 1065 of 2021, title M/s Janpriya Build estate vs Amit Soni, the Hon'ble Supreme Court of India ruled that in cases where there is a memorandum of understanding between the landowner and the developer, explicitly stating that the responsibility for constructing and handing over the physical vacant positions of the flats to all allottees lies solely with the developer, the developer bears the total and absolute responsibility for indemnify losses, delays,



- charges, etc., to the allotted individuals, despite the landowner being a confirming party in the builder agreement.
- h. That it is submitted that the total sale consideration of the unit as per the Builder buyer agreement was Rs.2,01,02,290/- out of which amount of Rs.20,73,554 was to be paid within 90 days from the date of booking and the remaining amount was to be paid on offer of possession.
 - i. To the shock and utter dismay of the Respondent No.2, the Statement of Accounts of the complainant clearly reflects that most of the amount alleged to be paid by the complainants are nothing but certain adjustments made by the Respondent no.1 on behalf of the complainant to the tune of Rs.10,00,000/- (Rupees Ten Lakhs Only). That these adjustments are with respect to a different project wherein Respondent No.2 i.e. was neither a party or was privy to any such transactions between the Complainants and Respondent No. 1.
 - j. That these adjustments made by the complainant are not considered a valid consideration as the same are mere adjustments for which the Respondent No.1 had not taken any prior approvals from Respondent no.2 by the Respondent No.1. Thus, making the said transaction invalid.
 - k. Furthermore, the only an amount of Rs.11,38,781/- was only the financial amount / valid consideration paid by the complainant with respect to the unit in question and the ONLY said amount is recorded in the books of the Respondent no.2. That it is pertinent to mention that as per the MOU dated 12/04/2013 Respondent No.1 i.e. Ansal Housing Ltd. was handed the developing rights of the project, but any transfers/ illegal adjustments were not permitted even under the MOU signed between the parties.
 - l. That the Respondent no. 2 was neither the party/privy to the arrangement between the complainant and the Respondent no.1 nor



was aware of their collusive intentions. That the said adjustment receipts cannot be considered to be a valid consideration for the unit, as the same reflects to be some arrangement to which neither any prior approval was given to the Respondent No.1 nor was within the knowledge of Respondent no. 2. That neither Respondent no. 2 was a privy to the said transaction.

- m. That any adjustments made by the complainant with respect to the said unit are not considered as valid consideration and are not recognized by the Respondent No.2. Therefore, all the obligation towards the delay in completion of the construction and handing over of the unit was the sole liability of Respondent No.1. That the application is filed by the Respondent no. 2 i.e. Samyak Projects Pvt. Ltd. dated -15.10.2024, vide HRERA Dak Receipt ID - 80956 to seek clarification with respect to the relief sought by the complainant & the complainant has not filed a reply to the same.
- n. That the complainant be directed by the Hon'ble Authority to clarify in the prayer of the complaint as to whether the relief of delay possession charge is to be sought from the respondent no. 1 or respondent no. 2. As to whether the relief of possession of the unit is to be sought from the respondent no. 1 or respondent no. 2 Furthermore the complainant be directed to apprise the authority regarding the payment of the balance amount with respect to the unit due upon him to be paid to either respondent no. 1 or respondent no. 2, as per the BBA. That it is equally important for the complainant to clarify the same for the better adjudication of the dispute and further clarification.
- o. That it is also pertinent to mention that as Respondent No.2 is only land owner and the development rights as well as the registration certificate was in the name of Respondent No.1 i.e., Ansal Housing and

Construction Ltd. A complaint regarding this and further various representations have already been submitted by the Respondent No.2 i.e., Samyak Projects Pvt. Ltd. before the authority.

8. 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

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

F.I Territorial jurisdiction

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

F.II Subject-matter jurisdiction

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

Section 11

.....
(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

G. Findings on the relief sought by the complainants.

G.I. Direct the Respondent to pay delay interest on paid amount of ₹21,39,893/- of 24% till the handing over the physical possession. As per Developer Buyer Agreement, Builder was liable to offer possession on or before 13.01.2019.

G.II. Direct the Respondent to complete the project immediately and hand over the possession of the Commercial Unit with all basic amenities mentioned in the Brochure.

13. In the present matter the complainant was allotted unit no. S-001, admeasuring 3909 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder vide buyer's agreement dated 13.01.2015 wherein the respondent no. 2 was not the confirming party. Against the sale consideration of ₹2,01,02,290/- the complainants have paid a sum of ₹21,38,893/-. As per clause 30 of the BBA, respondent no. 1 was obligated to complete the construction of the project and hand over the possession of the subject unit within 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The due date of possession is calculated from the date of BBA i.e., 13.01.2015 since the date of commencement of construction is not known. The period of 42 months ends on 13.07.2018. 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.

14. As per the BBA, respondent no. 2(land owner) and respondent no. 1(developer) entered into a MoU dated 12.04.2013 whereby the development and marketing of the project was to be done by the respondent no. 1 in terms of the license/permissions granted by the DTCP, Haryana. Upon failure of respondent no. 1 to perform its obligations as per MoU and complete the construction of the project within the agreed timeline, respondent no. 2 terminated the said MoU vide notice dated 10.11.2020 and issued a public notice in newspaper for termination of the MoU. The matter pursuant to the dispute was referred to the Delhi High Court under section 9 of the Arbitration & Conciliation Act, 1996 and vide order dated 22.01.2021 Hon'ble High Court of Delhi appointed the Hon'ble Justice A.K. Sikri, former Judge of the Hon'ble Supreme Court of India as a sole arbitrator of Arbitral Tribunal.
15. The complainant i.e., Ansal Housing Pvt. Ltd. in the petition sought various reliefs including to stay the operation of the termination letter dated 10.11.2020 and the public notice dated 16.12.2020 till the final arbitral award is given. The Arbitral Tribunal vide order dated 31.08.2021 granted no stay on termination notice dated 10.11.2020 and no restraining order in this regard was passed against the M/s Samyak Projects Pvt. Ltd. Further, vide order dated 13.10.2021 of the sole arbitrator respondent no. 1 was directed to handover the aforementioned project to the respondent no. 2. Following the directive outlined in the order dated 13.10.2021 of the sole arbitrator, respondent no. 1 handed over the project to respondent no. 2 via a possession letter dated 14.10.2021, for the purpose of undertaking the remaining construction tasks. Subsequently, on 02.09.2022, the Sole Arbitrator directed respondent no. 2 to finalize the project within the stipulated timeline, specifically by the conclusion of June 2023 and to collect

funds from the allottees with a condition that the amount so collected shall be put in escrow account.

16. In the builder buyer agreement, it was specifically mentioned that respondent no. 2(land owner) and respondent no. 1(developer) entered into a MoU dated 12.04.2013 whereby the development and marketing of the project was to be done by the respondent no. 1 in terms of the license/permissions granted by the DTCP, Haryana.
17. Further, the authority observes that the occupation certificate for the project is yet to be received and the project stands transferred by the sole arbitrator to the respondent no. 2 who is now responsible to complete the same. In absence of any final arbitration award the Authority cannot deliberate up on the liability of handing over the possession of the subject unit since the respondent no. 2 is not the party to the contract. 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 respondent no. 1 and the liability to handover the unit shall depend on the outcome of the Arbitral proceedings.
18. 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)

19. 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."

20. **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., 13.01.2015 since the date of commencement of construction is not known. The period of 42 months ends on 13.07.2018. 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 13.01.2019. The occupation certificate for the project has not yet been obtained from the competent authority.

21. **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.

22. 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.
23. 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., 08.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. 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;"*

25. 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.
26. 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 13.01.2019. However, till date no occupation certificate has been received by respondent and neither possession has been handed over to the allottee till date.
27. The Authority is of considered view that there is delay on the part of the respondent 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.
28. 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 no. 1 is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 13.01.2019 till the date of valid offer of possession plus 2 months after obtaining occupation

certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules. As far as possession is concerned the same shall depend up on the final outcome of the arbitral proceedings.

G.III. Direct the respondent to quash all unilateral charges and mis calculated amount which might be imposed at the time of offer of possession.

G.IV. Direct the respondent to quash the one-sided clauses from Developer Buyer Agreement.

29. The above mentioned reliefs have neither been pressed by the counsel for the complainant in its pleadings nor have been argued during the course of hearing.

G.V. Pass an order for payment of GST amount levied upon the Complainant with respect to which the benefit of input credit has been taken by builder.

30. It is pleaded that the liability to pay GST is on the builder and not on the allottee. But the version of respondents is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/charges including any fresh incident of tax even if applicable retrospectively. It is important to note that the possession of the subject unit was required to be delivered by 13.01.2018 and the incidence of GST came into operation thereafter on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees **where the same was leviable**, at the applicable rate, if they have not opted for composition scheme subject to furnishing of such proof of payments and relevant details.

G.VI. Direct the Respondent-2 to abstain from trying to change the terms of the Builder Buyer Agreement unilaterally and not to insist on the Complainants signing some Addendum Agreement which is outside the scope of the legally binding Builder Buyer Agreement

G.V. Direct the Respondent-2 to abstain from issuing letters threatening with presumptions that we are not interested in continuing our interest in the property which has been legally vested in us for consideration duly paid. We also commit to pay the balance amount on offer of possession after the Builder receives the Occupation Certificate in terms of the Builder Buyer Agreement.

31. The complainant is an allottee to his duly executed an agreement in respect of purchase of the said commercial unit for which consideration has been paid and accepted. The detailed terms and conditions of the agreement cannot be altered to the disadvantage of the complainant allottee at this stage. In view of the above, the respondents are directed not to alter the terms and conditions of allotment or coerce the complainant allottee into signing any document against his/her interest.

H. Directions of the authority

32. 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 no. 1 is 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., 13.01.2019 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - b. The respondents are directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate in consonance with the final outcome of the arbitral proceedings.

- 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(zb) of the Act.
- d. The complainants are directed to pay outstanding dues to the concerned respondent at the time of handing over of possession, 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.
33. Complaint stands disposed of.
34. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.07.2025