

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

Complaint no. : 3529 of 2023
Date of filing : 21.08.2023
Date of decision : 08.07.2025

Rajpal Singh Yadav
R/o: # 1018, 3rd floor, Sector 15 part 2, Gurugram-
122001

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:

Sh. Garvit Gupta (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.	Project name and location	Ansals Hub 83, Sector 83 Gurugram
2.	Project area	2.60acres
3.	Nature of project	Commercial Project
4.	RERA registered/not registered	Registered 09/2018 Dated 08.01.2018
5.	DTPC license no. & validity status	License No. 71 of 2010 dated 15.09.2010
6.	Date of allotment letter issued by R1	24.07.2018 [pg. 26 of complaint]
7.	Date of transfer of unit in name of complainant	09.07.2018 (pg. 22 of complaint)
8.	Unit No.	SF-246 [pg. 26 of complaint]
9.	Unit area admeasuring	689 sq. ft. [pg. 26 of complaint]
10.	Possession clause	Clause 26 of BBA <i>The Developer shall offer of the unit any time a period of 36 months from the date of building plan or 36 months from the date of allotment letter, whichever is later.</i>
11.	Due date of Possession	24.07.2021
12.	Sale consideration	₹ 31,00,500/- [pg. 26 of complaint]
13.	Total amount paid by the complainant	₹ 6,94,512/- [As alleged at pg. 19 of complaint]
14.	Offer of Possession	NA
15.	Occupation Certificate	NA

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That the respondent offered for sale units in a Commercial Complex known as 'Ansal Hubs 83' which claimed to comprise of commercial units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Sector 83, Gurugram, Haryana. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 87 of 2009 in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.
 - b. That the complainant received a marketing call from the office of respondent in the month of April, 2018 for booking in commercial project of the respondent, 'Ansal Hubs 83, situated at Sector 83, Gurugram. The complainant had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. The complainant visited the sales gallery and consulted with the marketing staff of the respondent. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in their project. The marketing staff of the respondent also assured timely delivery of the unit.
 - c. That the complainant, induced by the assurances and representations made by the respondent, decided to book a commercial unit in the project of the respondent as the complainant required the same in a time bound manner for his own use. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the commercial unit to be allotted to



the complainant would be positively handed over within the agreed time frame. The complainant signed several blank and printed papers at the instance of the respondent who obtained the same on the ground that the same were required for completing the booking formalities. The complainant was not given chance to read or understand the said documents and he signed and completed the formalities as desired by the respondent. Accordingly, on the basis of the assurances and representations of the respondent, the part-payment of Rs. 56,000/- was made and the respondent allotted Shop no. SF-246 in the said project. It is pertinent to mention herein that earlier the booking was made in the name of M/s Sunrise Management & Estates Pvt. Ltd. and the same was then transferred in the name of the complainant by the respondent vide its letter dated 09.07.2018.

- d. That the complainant thereafter, had made the payment of Rs. 2,00,000/- and the respondent had issued an acknowledgement receipt dated 09.07.2018. A copy of the Allotment Letter was sent to the complainant which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favoring the respondent and was totally against the interest of the purchaser, including the complainant herein. Despite specific assurances of the respondent at the time of booking that the terms of the allotment would be balanced and non-arbitrary, the said allotment letter contained several clauses which were totally discriminatory and biased towards the respondent.
- e. That it is pertinent to mention herein that while in the case of the complainant making the delay in the payment of instalments, the respondent company is shown to be entitled to charge interest @ 24% compounded quarterly, the complainant is shown to be only entitled to



a meagre amount of Rs. 5/- per sq.ft per month of the super area of the apartment for the period of delay in offering the possession of the apartment beyond the period stated by the respondent. It is thus clear, that the compensation to be offered to the complainant, in case of default of the respondent, has deliberately been formulated to the detriment of the complainant and the same is illegal and unsustainable. That furthermore, the respondent had given itself unlimited and arbitrary powers to not even send any demand letter/demand notice to the Complainant.

- f. That the above stated provisions of the Allotment Letter besides other similar one-sided provisions are on the face of it highly illegal, absurd, unilateral, arbitrary, unconscionable and not valid. The legislature has promulgated the Real Estate (Regulation and Development) Act, 2016 to balance the bargaining power of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. A bare perusal of the above clauses highlights the one-sided arbitrary agreement and the abuse of dominant position is all pervasive in the terms and conditions of the Allotment letter executed by the respondent vide various clauses imposing all the liabilities on the complainant, while conveniently relieving itself from all obligations on its part.
- g. That the complainant made vocal his objections to the arbitrary and unilateral clauses of the Allotment Letter to the respondent. The complainant repeatedly requested the respondent for execution of allotment letter with balanced terms. However, during such discussions, the respondent summarily rejected the bonafide request of the complainant and stated that the allotment terms were non-negotiable and would remain as they were. The respondent/ promoter refused to amend or change any term of the pre-printed Allotment letter and



further threatened the complainant to forfeit the previous amounts paid by him if further payments are not made. However, it was assured by the respondent that the terms of the Builder Buyer's Agreement would be more balanced and would cover all the concerns of the Complainant. It is pertinent to mention herein that the complainant had made payment of approximately of Rs. 2,56,000/- before the execution of the Agreement and hence the complainant was left with no other option but to accept the lopsided and one-sided terms of the Allotment letter. Since the complainant had duly paid a huge amount out of his hard-earned money, he felt trapped and had no other option but to accept the said allotment.

- h. That thereafter, the respondent demanded and the Complainant made another payment of Rs. 4,38,512/- towards the allotted unit and the respondent accordingly issued a receipt dated 04.02.2019 to the Complainant. That since, the respondent had failed to execute the Buyer's Agreement with the Complainant despite lapse of one year from the date of booking, the Complainant visited the office of the respondent in the month of February, 2019 to enquire about the construction status and execution of the Agreement in question. The complainant was surprised and anguished with the response of respondent who informed the complainant that the execution of the Buyer's Agreement would take some more time. However, since, the Complainant had made substantial payment towards the total sale consideration of the unit, the Complainant had no other option but to believe the said representations of the Respondent. However, all the representations of the respondent turned out to be false as the Respondent failed to even share the copy of the draft agreement with the Complainant.

- i. That it is pertinent to mention here that despite having made the Allotment Letter dated 24.07.2018 containing terms very much favorable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter has even failed to perform the most fundamental obligation of the agreement which was to handover the possession of the commercial unit and execution of the Agreement within the promised time frame, which in the present case has been delayed for an extremely long period of time. The failure of the respondent and the fraud played by it is writ large.
- j. That as per Clause 26 of the Allotment letter, the possession of the unit was to be handed over by the respondent within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter. Thus, as per the terms and conditions of the Allotment letter, the due date to hand over the possession of the allotted unit lapsed on 23.07.2021.
- k. That the complainant has till date made the payment of Rs. 6,94,512/- strictly as per the terms of the allotment and the payment plan and no default in making timely payment towards the instalment demands has been committed by the complainant. It is submitted that the respondent/promoter used to only provide a short time span to make the payment of all the payment demands. It is pertinent to mention herein that as per Payment plan forming part of Annexure A of the Allotment letter, the next payment plan was to be raised at the offer of possession. However, no such demand has been raised till now which speaks volumes about the illegalities and delays on the part of the respondent.



- l. That since the time period to handover the possession stated by the respondent in the Commercial Space Buyer's Agreement lapsed, the complainant requested the respondent telephonically, and by visiting the office of the respondent to update him about the date of handing over of the possession. The representatives of the respondent assured the complainant that the possession of the unit would be handed over to him very shortly as the construction was almost over. The respondent has continuously been misleading the allottees including the complainant by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainant. The respondent/promoter had represented and warranted at the time of booking that it would deliver the commercial unit of the complainant to him in a timely manner. However, the failure of the respondent company has resulted in serious consequences being borne by the complainant.
- m. That the respondent has miserably failed to send any other legal payment demand for the period of 4 years from the date of issuance of last payment demand for the simple reason that the respondent has not completed the construction within the agreed time frame. There has been virtually no progress and the construction activity is lying suspended since long. The fact that no intimation regarding the application for the grant of the Occupation Certificate was given by the respondent to the complainant speaks about the volume of illegalities and deficiencies on the part of the respondent/promoter. There is inordinate delay in developing the project well beyond what was promised and assured to the complainant.
- n. That the respondent has committed various acts of omission and commission by making incorrect and false statements at the time of booking. There is an inordinate delay of 2 years calculated up to July,



2023 and till date the possession of the allotted unit has not been offered by the respondent to the complainant. The non-completion of the project is not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by the respondent/promoter. The respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainant and are unconcerned about the possession of the unit despite repeated assurances.

- o. That the respondent has misused and converted to its own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about the timely finishing of the project and delivery of possession of the unit in question to the complainant as per the terms of the Commercial Space Buyer's Agreement. The respondent has deliberately, mischievously, dishonestly and with malafide motives cheated and defrauded the complainant. It is unambiguously lucid that no force majeure was involved and that the project has been at standstill since several years. The high headedness of the respondent is an illustration of how the respondent conducts its business which is only to maximize the profits with no concern to the buyers.
- p. That the complainant has been duped of his hard-earned money paid to the respondent regarding the commercial unit in question. The complainant requested the respondent to hand over the possession of the allotted unit to him but the respondent has been dilly-dallying the matter. The complainant has been running from pillar to post and have

been mentally and financially harassed by the conduct of the respondent.

- q. That the respondent has even failed to renew registration certificate of the project from this Hon'ble Authority and has acted in blatant violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016. The respondent was bound to comply with provisions of the Act and the Rules and Regulations made thereunder. It is, thus clear that the respondent/promoter has been acting not only in contrary to the terms of the agreement which were drafted by the respondent itself but has also on account of its own acts and has reduced the complainant at its mercy wherein and the complainant's questions have been left unanswered and the respondent/promoter is continuing with its illegal acts acting strictly in violation of the provisions of the RERA Act, 2016 and Haryana Rules, 2017. It is thus, also clear, that without getting the renewal of the registration certificate done, the Respondent cannot raise or collect any further amount from the Complainant.
- r. That the Respondent is enjoying the valuable amount of consideration paid by the Complainant out of his hard-earned money and the Complainant realizing the same demanded delayed possession charges from the respondent/promoter. But a week ago, the respondent has in complete defiance of its obligations refused to execute the Agreement and hand over the possession to the Complainant along with delayed possession charges leaving him with no other option but to file the present complaint. Since respondent miserably failed in its obligations, hence the Complainant are entitled to delayed possession charges at the rate prescribed as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.

- s. That it is submitted that the project is an ongoing project and hence falls under the first proviso to Section 3(1) of RERA 2016. The Complainant believe that no occupation and completion certificate has been issued for the project in question till date and hence this project falls clearly under the jurisdiction of this Hon'ble Authority. The respondent in utter disregard of its responsibilities has left the complainant in the lurch and the Complainant has been forced to chase the respondent for seeking relief.
- t. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to execute the Agreement, hand over the possession and compensation for delay on its part and finally about a week ago when the respondent refused to compensate the Complainant with the delayed possession interest amount and compensation. The Complainant reserve his right to approach the appropriate Forum to seek compensation.

C. Relief sought by the complainant

4. The complainant has sought the following reliefs:
- Direct the respondent to pay interest for every month of delay at prevailing rate of interest from 23.07.2021 till actual handing of the possession.
 - To handover the possession of the unit, in a habitable state, after obtaining the occupation certificate from the concerned authorities.
 - To execute builder buyer agreement as per the provisions of RERA Act, 2016.
 - To execute the conveyance deed of the allotted unit in favor of the complainant.

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 had approached the answering Respondent for booking a shop no. SF-246 in an upcoming project Ansal Boulevard, Sector 83, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an allotment letter dated 14.06.2018 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 2014. 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 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 2022 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 2018 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 ₹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 8 years after it was agreed upon by both parties.

- c. 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.
- f. 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.

- g. 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.
- h. That admittedly, the Complainant had signed and agreed on allotment letter dated 14.06.2018. 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.
- i. 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. That in an arbitral proceeding before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. has taken over the present project the answering Respondent for completion of the project and the Respondent has no locus or say in the present project.

E. Reply by the respondent no. 2

7. The respondent has contested the complaint on the following grounds:
- a. That the present complaint pertains to a dispute arising out of the project "ANSAL HUB 83" which is a dispute exclusively between the Complainant and the Respondent No. 1. That though the MOU between the Respondent no.1 and Samyak has been terminated, the project is in the possession of Respondent no 1, who is solely liable to complete the project.
- b. It is submitted that the Builder Buyer's Agreement (BBA) placed on record before the registry is firstly a non-executed document and M/s



Samyak Projects Private Limited (Proposed Respondent No. 2) is not a confirming party to the said BBA nor does it have any privity of contract with the Complainant in respect of the said project.

- c. It is further submitted that the project in question is being developed and controlled solely by Respondent No. 1. All payments made by the Complainant have been duly received by Respondent No. 1 alone, and there is no financial transaction or legal obligation existing between the Complainant and the proposed Respondent No. 2.
- d. It is also pertinent to mention that only Respondent No. 1 is in a position to offer and hand over possession of the subject property to the Complainant, as the said project is being executed and managed solely by Respondent No. 1.
- e. Therefore, impleading M/s Samyak Projects Private Limited as a party to the present proceedings would neither serve the purpose of adjudication of the real dispute between the Complainant and Respondent No. 1 nor would it assist in effective resolution of the matter. Rather, such impleadment will only delay and complicate the proceedings unnecessarily.
- f. That the present matter is pending Adjudication before this Ld. Authority and is listed on 08.07.2025. The present matter pertains to Shop No. SF-246 in the project "Ansal Hub 83". That it is pertinent to mention that the complainant has referred to the project as "Ansal HUB 83" in the complaint, whereas in the Proforma-B, it is mentioned as "Ansal HUB 83 Boulevard". This inconsistency causes ambiguity regarding the identity of the project and misleads the Hon'ble Authority. Hence, the complaint is liable to be dismissed on this ground alone.
- g. That the present complaint filed by the complainant is filed by malafide intentions and to abuse the process of law and to harass the Respondent

no.2. The complaint filed by the complainant is based on false frivolous and baseless facts and is devoid of any true or valid cause of action or grievance qua the Respondent. That the complaint appears to be a result of collusion between the complainant and Respondent No.1(i.e., Ansal), aimed at wrongfully implicating Respondent No. 2 and extracting undue benefits.

- h. That it is pertinent to mention to take on record certain documents which are necessary for proper adjudication of the matter and in the interest of justice, being the Memorandum of Understanding (MoU) dated 23.02.2011 and Joint Venture Agreement (JVA) dated 24.06.2013, which clearly stipulate that the liability in question is that of Respondent No. 1 only and not of Respondent No. 2. Copies of the said MoU and JVA are annexed herewith as Annexure A and Annexure B respectively.
- i. 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.1 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.
- j. That as per the clause 9.2 of the said JVA which is as follows:
"All claims whatsoever made by any party concerned with construction by the Developer including suppliers of materials, equipment's to be used in the constructions and completion of the scheme/buildings under this Agreement shall be borne and paid by the Developer, The Developer shall keep the First Party and the Owners indemnified against all such claims and demands whatsoever".
- k. That the bare perusal of the clause 9.2 of the JVA clearly reflects that it is the sole responsibility / obligation of the Respondent No.1 towards the buyers /allottees.

- l. That it is equally important and pertinent to mention that an undertaking has been signed by Respondent no. 1 i.e. M/s Ansal Housing & Constructions Ltd. copy enclosed herewith as Annexure C which has resulted in release of Respondent no. 2 i.e. Samyak Projects Pvt. Ltd. from all the liabilities and obligations. That the undertaking covers all issues arising in respect of the Commercial Colony, whether already existing or arising in the future, and relates to all acts done in connection with the project.
- m. That the language of the undertaking signifies a complete discharge of Respondent No. 2 from any obligations, liabilities, or claims relating to the Commercial Colony project. That the undertaking constitutes a legally binding obligation on Respondent No. 1, enforceable in law, which precludes Respondent No. 1 from later shifting responsibility to Respondent No.2. That by executing this undertaking, Respondent No. 1 is waived from raising any claim against Respondent No. 2 and is estopped from attributing any liability to Respondent No. 2 in legal or administrative proceedings.
- n. That in accordance to the undertaking the Respondent no. 2 i.e. Samyak Projects Pvt. Ltd. is fully and squarely covered as Respondent no. 1 i.e. M/s Ansal Housing & Constructions Ltd. had already undertaken to protect it from all sorts of liabilities, including any compensation or thing to any sort of liability in the above mention project. Therefore, there is no liability of Respondent no. 2. That the Respondent No. 2 can rely on this undertaking as a complete defence in any legal forum, arguing non-liability based on the explicit terms of release granted by Respondent No. 1.
- o. It is further submitted that the project in question is being developed and controlled solely by Respondent No. 1. All payments made by the

Complainant have been duly received and acknowledged by Respondent No. 1 alone, and there is no financial transaction or legal obligation existing between the Complainant and the proposed Respondent No. 2.

p. That it is also submitted that the Complainant and Respondent No.1 are acting in connivance with each other for the fulfillment of their ulterior motives and harm the reputation of the Respondent no.2 for the reasons best known to the Respondent No.1 and Complainant. That there is no privity of consideration between the Respondent No. 2 and Complainant, hence it is crystal clear that the present complaint of the complainant is frivolous with the intention to abuse the process of the court.

q. Therefore, impleading M/s Samyak Projects Private Limited as a party to the present proceedings would neither serve the purpose of adjudication of the real dispute between the Complainant and Respondent No. 1 nor would it assist in effective resolution of the matter. Rather, such impleadment will only delay and complicate the proceedings unnecessarily.

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 interest for every month of delay at prevailing rate of interest from 23.07.2021 till actual handing of the possession.

G.II. To handover the possession of the unit, in a habitable state, after obtaining the occupation certificate from the concerned authorities.

13. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

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, —.....

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."

14. Clause 26 of the allotment letter provides for time period for handing over of possession and is reproduced below:

"26. The developer shall offer possession of the unit any time, within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material o supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any courts/tribunals and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer."

15. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later. The due date calculated from date of allotment i.e., 24.07.2018 as the date of sanction of building plans is not known. Accordingly, the due date of possession comes out to be 24.07.2021.
16. **Admissibility of delay possession charges at prescribed rate of interest:** The 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.
17. The legislature in its wisdom in the subordinate legislation under the 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.

18. 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%.
19. **Rate of interest to be paid by complainant/allottee for delay in making payments:** The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.
20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
21. 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 26 of the allotment letter issued by the respondent, the possession of the said unit was to be delivered within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later. Therefore, the due date of handing over possession comes out to be 24.07.2021. In the present case, the respondent has not yet offered possession of the subject unit to the complainant.
22. The complainant on 09.10.2024 filed an application of impleadment of respondent no. 2 as a necessary party. The same was allowed by the

Authority on 13.05.2025 but the Authority now observes that R2 has no privity of contract with R2 accordingly, the liability under section 18 lies with R2 only.

23. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. The respondent is directed to pay delayed possession charges on the amount paid by the complainant to it after adjusting amount already paid if any, from the due date of possession i.e., 24.07.2021 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of possession whichever is earlier at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.
24. The respondent is directed to handover the possession of the unit, after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 within two months form the date of obtaining of occupation certificate and thereafter, the complainants are obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.

G.III. To execute the conveyance deed of the allotted unit in favor of the complainant.

25. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. In view of the above, the respondent no. 1 is directed

to handover possession of the flat/unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

G.IV. To execute builder buyer agreement as per the provisions of RERA Act, 2016.

26. The Authority observes that the respondent has failed to enter into a written agreement for sale against the unit in question till date. Hence, it is violation of the provisions of the Act, and shows its unlawful conduct. As per Section 13(1) of the Act, 2016, the promoter is obligated to not to accept more than 10% of the cost of the apartment, plot or building as the case may be, as an advance from a person without entering into a written agreement for sale with such person and register the said agreement for sale. Thus, in view of Section 13 of the Act of 2016, the respondents-promoter is directed to enter into a registered buyer's agreement with the complainant as per the 'agreement for sale' annexed with the Haryana Real Estate (Regulation and Development) Rules, 2017 within a period of 90 days from the date of this order.

H. Directions of the authority

27. 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., 24.07.2021 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e.,



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

- b. The respondent no. 1 is 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 respondent shall not charge anything which is not the part of BBA.

28. Complaint stands disposed of.

29. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.07.2025