

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

Complaint no. : 4555 of 2022
Date of filing : 24.06.2022
Date of decision : 22.07.2025

1. Punit Jha
2. Pushpa Jha

Both RR/o: # 802, Tower 14, Sare Homes, Sector 92,
Gurugram, Haryana-122505

Complainants**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 Vijay Kumar Goyal
Shri Ashok Sangwan

Chairperson
Member
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 of the project	"Ansal Hub 83 Boulevard" Sector-83 Gurugram Haryana
2.	Nature of the project	Commercial
3.	Registered/not	Registered 09 of 2018 dated 08.01.2018 Valid till 31.12.2020
4.	Shop No.	F- 116, 149 sq. ft. (Page 36 of complaint)
5.	MoU with Samyak	25.05.2022 (page 71 of complaint)
	As per clause 9 of the MoU executed between the parties the complainants were allotted a new unit bearing no. F-128 admeasuring 306 sq. ft. on 1 st floor. The total sale consideration of the said unit was revised to ₹30,37,002/- and the amount paid by the complainant was adjusted against the new allotted unit.	
6.	Date of builder buyer agreement Samyak as confirming party	31.12.2014 R2 is confirming party [As per page 32 of complaint]
7.	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 the 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 dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be of 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>

8	Date of start of construction	(Emphasis supplied) 15.12.2014 [As per the customer ledger dated 08.05.2020 on page 25 of the complaint]
9.	Due date of possession	31.12.2018 (Calculated from the date of the execution of this agreement i.e., 31.12.2014 being later. Grace period is allowed being unqualified.)
10.	Total sale consideration	Rs. 30,37,002/- [As per MoU on page 73 of complaint]
11.	Amount paid	Rs. 14,42,612/- [As per information of complaint]
12.	Occupation certificate	Not received yet
13.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - a. That the complainant is a law-abiding citizen and consumer who have been cheated by the malpractices adopted by the Respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a commercial project and the complainants desired their own commercial space.
 - b. That the complainant was subjected to unethical trade practice as well as subject of harassment, Developer buyer agreement clause of escalation cost, many hidden charges which will be forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided. That the executed Developer Buyer Agreement between Respondent and complainants mentioned in Developer's Representations, DTCP given the license no. 113 of 2008 dated 01.06.2008 and 71 of 2010 dated 15.09.2010.

- c. That the allottees approached to the respondent for booking commercial unit admeasuring 149 sq. ft., in the Commercial Project Commercial Unit No. F-116, "Ansals HUB83 Boulevard", Sector 83, Gurugram, Haryana. The initial booking amount of Rs. 4,82,122/- was paid through Cheque.
- d. That the respondent to dupe the Allottees in their nefarious net even executed Buyer's Agreement Signed Between Complainants and M/S Ansal Housing Ltd. M/S Samyak Projects Pvt. Ltd. on dated 31.12.2014. Respondent create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.
- e. It is submitted that as per clause 23 of the Developer buyer agreement the buyer was charged very high interest rate i.e. 24% per annum, compounded quarterly. 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.
- f. 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.
- g. That the total cost of the said Commercial Unit is Rs 14,29,655/- and a sum of Rs 14,43,612/- was Paid by the complainant in time bound manner. This amount constituted more than 90% of the total sum taken from the Complainant within 4 years. This amount was taken by the

Respondent through fraudulent means by erecting a bare structure within 2017. The Respondent declined to complete the Project after collecting money and there has been little progress in construction from 2016 onwards.

- h. 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.
- i. That Complainant has paid all the instalments timely and deposited Rs12,42,612/- that respondent in an endeavour to extract money from Allottees devised a payment plan under which respondent linked more than 35 % amount of total paid against as advance. Rest 60% amount linked with the construction of super structure only of the total sale consideration to the time lines, which is not depended or co-related to the finishing of Commercial Unit and Internal development of facilities amenities and after taking the same respondent have not bothered to any development on the project till date as a whole project not more than 50% and in term of particular Tower just built a super structure only. Extracted the huge amount and not spend the money in project is illegal and arbitrary and matter of investigation.
- j. That complainant's booked a Commercial Unit dated 13.07.2013 (more than 9 years ago) and as per Developer Buyer Agreement, Respondents/ Builder are liable to offer possession on before 30.12.2018 so far. That in order to dupe the complainants the respondent no.2 approached the complainants asking the complainants to pay Rs.2,00,000/- and

providing false assurance that the respondent no. 2 will complete the construction and handover the physical possession. On the bases of the false assurance of respondent no. 2, complainants signed the dotted line MOU as asked by the respondent no. 2. Thereafter, complainants came to know that respondent no. 2 does not have the right of construction and fraudulently complainants was made to pay Rs.2,00,000/-

- k. That the builder started construction work more than 9 years back and quickly erected a bare structure with the sole intention of taking money from buyer on construction-linked installments. Respondents/Builder are not completing the Project and intend to delay for undefined times to complete the project. The long period has made adverse effect on construction quality of project.
- l. That The respondent has indulged in all kinds of tricks and blatant illegality in taking money through booking and drafting of Developer Buyer Agreement with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and his family. That the complainants communicate with respondent and asked for delayed possession respondent show problem of financial crunch other side builder extracted huge amount from complainants and given loan to others, and project development abundant create suspicion on builder intentions.
- m. That due to the malafide intentions of the respondent and non-delivery of the Commercial unit the complainants have accrued huge losses on account of the future of the complainants and their family are rendered dark as the planning with which the complainants invested his hard-earned monies have resulted in sub-zero results and borne thorns instead of bearing fare fruits. Due to delay in possession complainants

have incurring huge financial 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 complainants

4. The complainants have sought the following reliefs:
 - a. Direct the Respondent to pay delay interest on paid amount of Rs.14,43,612/- @ 24% till the handing over the physical possession.
 - b. Direct the Respondent to complete the project immediately and hand over the possession of the Commercial Unit with all basic amenities which mention in Brochure.
 - c. Direct the respondent to quash all unilateral charges and mis-calculate amount which will be imposed at the time of offer of possession.
 - d. Direct the respondent to quash the one-sided clauses from Developer Buyer Agreement.
 - e. Direct the respondent to quash the one-sided MOU dated 25.02.2022.
 - f. Pass an order for payment of GST amount levied upon the Complainant and taken the benefit of input credit by builder.
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 even otherwise, the Complainant has no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the Allotment



Letter/Buyer's Agreement dated 31.12.2014, which is evidentiary from the submissions made in the following paragraphs of the present reply.

- b. That the Complainant approached the Respondent sometime in the year 2013 for the purchase of an independent unit in its upcoming residential project "ANSAL HUBS" (hereinafter be referred to as the "project") situated in Sector-83, District Gurgaon (Haryana). It is submitted that the Complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the Complainant was being fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the Respondent to undertake development of the same and the Complainant took an independent and informed decision to purchase the unit, un-influenced in any manner.
- c. That thereafter the Complainant applied to the Respondent for provisional allotment of a unit in the project on 13.7.2013. The Complainant, in pursuant to the application, was allotted Shop/Office Space bearing No. F-116 in the project "ANSAL HUB" situated at Sector 83, District Gurgaon, Haryana. The Complainant consciously and willfully opted for a Construction Linked Plan for remittance of the sale consideration for the unit in question and further represented to the Respondent that the Complainant should remit every installment on time as per the payment schedule. The Respondent had no reason to suspect the bonafide of the Complainant.
- d. It is further submitted that despite there being a number of defaulters in the project, the Respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work

will be completed within the prescribed time period as given by the respondent to the authority. It is further submitted that the Respondent no.2 has taken over the said project from the Respondent No.1 and is completing the same in timely manner.

- e. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the Complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing Air Quality Index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the major factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent unable to cope with the labor pressure. However, the respondent is carrying its business in letter and spirit of the Builder Buyer Agreement as well as in compliance of other local bodies of Haryana Government.
- f. That the respondent is carrying his business in letter and spirit of the Builder Buyer Agreement but due to COVID"19 the lockdown was imposed throughout the country in March, 2020 which badly affected

the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent. That similar lockdown was imposed in the year 2021 which extended to the year 2022 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the ongoing construction of the project.

- g. That it is submitted that the complaint is not maintainable or tenable under the eyes of law as the Complainant has not approached this Hon'ble Authority with clean hands and has not disclosed the true and material facts related to this case of complaint. The Complainant, thus, has approached the Hon'ble Authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1 in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the Hon'ble Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as Tata Motors Vs. Baba Huzoor Maharaj bearing RP No. 2562 of 2012 decided on 25.09.2013.



- h. That without admitting or acknowledging the truth or legality of the allegations advanced by the Complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the Complainant seeking refund, interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the Builder Buyer's Agreement. It is further submitted that the interest for the alleged delay demanded by the Complainant is beyond the scope of the Buyer's Agreement. The Complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the Builder Buyer's Agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in a case titled as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298, the liberty to the promoter/developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para No.86 and 119 of the above said citations are very much relevant in this regard.
- i. That the respondent reserves its right to file additional reply and documents, if required, assisting the Hon'ble Authority in deciding the present complaint at the later stage. That it is submitted that several allottees have defaulted in timely remittance of payment of installment

which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effect on the operation and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite the default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. The construction of the project is completed and ready for delivery, awaiting occupancy certificate which is likely to be completed by the year 2022.

- j. The Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in Clause 7 & 8 of the Builder Buyer's Agreement, vide which Complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The Complainant further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
- 7. 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.

8. The present complaint was filed on 24.06.2022 in the Authority. The notice for hearing was duly served to respondent no. 2. However, despite providing enough opportunity for filing the reply, no written reply has been filed by the respondent no. 2. Thus, keeping in view the opportunity given to the respondent no. 2, has failed to file the reply in the registry. Therefore, in view of the above-mentioned fact, the defence of the respondent no. 2 is hereby struck off by the Authority.

E. Jurisdiction of the authority

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

E.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.

E.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.

F. Findings on the relief sought by the complainants.

F.I. Direct the Respondent to pay delay interest on paid amount of Rs.14,43612/- @ 24% till the handing over the physical possession.

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

13. In the present matter the complainant was allotted unit no. F-116, admeasuring 149 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder vide BBA dated 31.12.2014 wherein the respondent no. 2 was the confirming party for sale consideration of Rs.14,29,655/- and they have paid a sum of Rs.14,42,612/-. 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 a period of 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 date of execution of BBA i.e., 31.12.2014 being later. The period of 42 months ends on 30.06.2018. As far as grace period of 6 months is concerned the same is allowed being unqualified. Hence due date of possession comes out to be 31.12.2018. The occupation certificate for the project has not yet been obtained from the competent authority.
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. The authority is of the view that the builder buyer's agreement was signed by the complainants and the respondent no. 1. 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. Although the respondent no.2 i.e., Samyak Projects Pvt. Ltd. cancelled the agreement vide termination notice dated 10.11.2020 and the matter is subjudice before the arbitral tribunal appointed by Delhi High Court vide order dated 22.01.2021. It is relevant to refer the definition of the term 'Promoter' under the section 2(zk) of the Real Estate (Regulation and Development) Act, 2016.

"2. Definitions.-

(zk) "promoter" means

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

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

xxxxxxx"

17. The authority observes that landowner is covered by the definition of promoter under sub clause (i) or (ii) of section 2(zk). A person who constructs or causes to be constructed a building or apartments is a promoter if such building or apartments are meant for the purpose of selling to other persons. Similarly, a person who develops land into a project i.e., land into plots is a promoter in respect of the fact that whether or not the person also constructs structures on any of the plots. It is clear that a person develops land into plots or constructs building or apartment for the purpose

of sale is a promoter. The words, "causes to be constructed" in definition of promoter is capable of covering the landowner, in respect of construction of apartments and buildings. There may be a situation where the landowner may not himself develops land into plots or constructs building or apartment himself, but he causes it to be constructed or developed through someone else. Hence, the landowner is expressly covered under the definition of promoter under Section 2 (zk) sub clause (i) and (ii).

18. Further, the authority observes that the occupation certificate for the project is yet to be received and the project stands transferred to the respondent no. 2 who is now responsible to complete the same. In absence of any final arbitration award the Authority cannot deliberate up on the ratio of financial liability between the promoters. In view of the above, the liability under provisions of Section 18(1) of the Act & Rules read with builder buyer agreement shall be borne by both the respondents jointly and severally and the liability to handover the unit shall lie with respondent no. 2.
19. In view of the above, the liability under provisions of Section 18(1) of the Act & Rules read with builder buyer agreement shall be borne by both the respondents. The Authority observes that the complainants in the present matter have executed a MoU with the respondent no. 2 on 25.05.2022 wherein a new unit bearing no. F-128 admeasuring 306 sq. ft. was allotted. The total sale consideration of the unit was also revised to ₹30,37,002/-. Accordingly, the liability to pay delay possession charges shall be borne by the respondent no. 2 alone from the date of signing of the MoU i.e., 25.05.2022.
20. 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)

21. 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."*

22. **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 a period of 42 months from the date of execution of agreement or 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 42 months from date of BBA i.e., 31.12.2014. The due date of possession

comes out to be 31.12.2018 including grace period of 6 months. The occupation certificate for the project has not yet been obtained from the competent authority.

23. **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.

24. 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.
25. 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., 22.07.2025 is 08.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%. (*The rate of interest has been inadvertently mentioned as 11.10 instead of 10.90%)
26. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(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;"

27. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
28. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 30 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 31.12.2018. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date. 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.

29. 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 respondents/promoters is established. As such, the allottee shall be paid by the respondents jointly and severally interest for every month of delay from the due date of possession i.e., 31.12.2018 till the date of execution of MoU i.e., 25.05.2022 thereafter the respondent no. 2 is solely liable to pay DPC till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.90% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
30. As per the interim order of the sole Arbitrator the said project has now been physically handed over to the respondent no. 2 and there is nothing on the record to show that the said respondent has applied for occupation certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent no. 2 is directed to handover possession of the flat/unit to the complainant in terms of section 17(2) of the Act of 2016, within two months after obtaining occupation certificate from the competent authority.
- F.II. Direct the respondent to quash the one-sided clauses from developer buyer agreement.**
- F.III. Direct the respondent to quash the one-sided MOU dated 25.02.2022.**
31. No specific clause has been mentioned by the complainant in its complaint nor has been argued during the course of hearing. Accordingly, the Authority shall not deliberate upon the said relief.
- F.IV. Direct the respondent to quash all unilateral charges and mis-calculate amount which will be imposed at the time of offer of possession.**
32. The cause of action in relation to the aforementioned relief has not yet arisen; therefore, the Authority lacks the jurisdiction to adjudicate upon the same at this stage.

F.V. Pass an order for payment of GST amount levied upon the Complainant and taken the benefit of input credit by builder.

33. 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 31.12.2018 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. Directions of the authority

34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- a. The respondents/promoters jointly and severally are directed to pay interest at the prescribed rate of 10.90% p.a. for every month of delay from due date of possession i.e., 31.12.2018 till the date of execution of MoU i.e., 25.05.2022. Thereafter the respondent no. 2 is solely liable to pay DPC till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; 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.
 - 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., 10.90% 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 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.
 - e. The respondent shall not charge anything which is not the part of BBA.
35. Complaint stands disposed of.
36. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.07.2025