

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

Complaint no. : 3767 of 2024
Date of filing : 07.08.2024
Date of decision : 15.07.2025

Ashok Kumar Yadav

R/o: # 55, Village Sikanderpur, Gurugram-
122001

Complainant

Versus

1. M/s Ansal Housing Ltd. (Formerly known as
Ansal Housing & Construction Ltd.)

Regd. Office: 15 UGF, Indraprakash, 21,
Barakhamba 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. Harshit Batra (Advocate)

Sh. Amandeep Kadyan (Advocate)

Ms. Sanya Arora (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" in Sector 83, Manesar, Gurgaon.
2.	Nature of the project	Commercial
3.	Project area	2.60 acres
4.	RERA Registered/ not registered	Registered vide no. 09 of 2018 dated 08.01.2018 valid up to 31.12.2020
5.	DTCP License No.	113 of 2008 dated 01.06.2008 valid up to 31.05.2018
6.	Name of licensee	Browz Technologies Pvt. Ltd and 4 others
7.	Unit no.	G-039 [pg. 26 of complaint]
8.	Unit admeasuring	517 sq. ft.
9.	Date of builder buyer agreement (R2 not party)	02.03.2020 [pg. 22 of complaint]
10.	Possession clause	30 <i>The developer shall offer possession of the unit anytime 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 major 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>
11.	Due date of delivery of possession	02.03.2024

		[due date calculated from the date of BBA as the date of start of construction is not known. Grace period of 6 months allowed.]
12.	Total sale consideration	₹64,65,343/- [as per BBA at pg. 26 of complaint]
13.	Total amount paid by the complainant	₹71,90,927/- [alleged by complainant at pg. 6 of complaint] *60% to be paid on offer of possession as per payment plan.
14.	Occupation certificate	NA
15.	Offer of possession	NA

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That the Respondent No. 1 is a company incorporated under the Companies Act 1956 having their registered office at 115, Ansal Bhawan, 16, KG Marg, New Delhi – 110001 and claims to be one of the leading real estate companies and was responsible for the development of the Project and has the registration of the Project in its name under Registration Number 09 of 2018 dated 08.01.2018 granted vide Memo No. HRERA-433/2017/97.
 - b. That Respondent No. 2 is a company incorporated under the Companies act, 1956 having its registered office situated at 111, First floor, Antariksh Bhawan, 22, Kasturba Gandhi Marg, New Delhi – 110001, and is the land owner, licensee and currently, undergoing the construction and development of the Project, as such, falls within the meaning of 2(zk) of the Real Estate (Regulation and Development) Act, 2016.
 - c. That the Project came to the knowledge of the Complainant in 2016, through Respondent No. 1 when the Complainant was providing Advertising services to the Respondent no.1, who was acting in connivance with Respondent No. 1 & 2. That the Respondent no.1



- persuaded the Complainant by the manipulative tactics and offered to pay the bills of the Advertising services by allotting a unit in one of the projects of the Respondent no.1.
- d. That the Respondent No.1 informed that the Project shall be one of a kind of commercial complex with all the amenities and will entail luxury facilities. It was communicated to the Complainant that the Project has attained all the necessary approvals and plans and the construction shall be smoothly and religiously completed. That it was concealed from the Complainant that Respondent No. 1 i.e. Ansal Housing and Construction Limited is just a developer of the Project and the owner of the land on which the Project is being built is Samyak Project Pvt Ltd, herein Respondent No. 2. That the Respondent No. 1 has signed a MOU with the Respondent No.2 to develop the Project under the name of "ANSAL'S HUB 83 BOULEVARD" as Respondent No. 1 has goodwill in the market to sell the project before the scheduled time. The Complainant was shown a site plan and made the Complainant believe that the bookings in the Project are filling up fast and that the Complainant will miss a chance of a lifetime.
- e. That being persuaded by the manipulative tactics of Respondent No. 1, the Complainant carefully perused the site plan shown by the Respondents and vide Developer buyer agreement ("DBA") dated 02.03.2020 booked a unit no. G-039 admeasuring 517 sq. ft. ("unit"). That after the booking was made by the Complainant, the malafide activities of the Respondents began to unturn and the false promises, assurances and warranties saw the light.
- f. That the Complainant had already provided services to the Respondent no.1 for which it refused to make any payment. The complainant had no option but to accept the one-sided and arbitrary demands of



Respondent no. 1. Moreover, the said agreement was filled with various one-sided and arbitrary clauses like clause 10 (external electrification charges), 22 (earnest money is 20% of basic sales price), clause 23 (compounded interest @24% p.a., compounded quarterly, is being charged from the Complainant for delay payment charges), clause 33 & clause 39 (handover of physical possession is made subjected all types of incidental expenses to be paid by the Complainants and obtaining of no objection certificate from the maintenance agency which is further subjected to maintenance/electricity supply/ DG power backup agreement), clause 34 (wherein the Buyer is only liable for paying Rs. 5/- per sq. ft. per months on super area in the event of offering delayed possession) etc. When the Complainant objected about the same, the Respondents communicated that the same has to be executed as it is without any changes and refusal to execute the agreement will lead to cancellation of allotment and forfeiture of entire amount paid. The Complainant was given no option but to execute the said agreement.

- g. That as per the Clause 1 with the DBA the total sale consideration of the unit is Rs. 71,83,715/- however Rs. 64,65,343.50/- after discount. That till date the Complainant has paid Rs. 71,90,927/- and the bills raised by the Complainant for the services completed for the Respondent No.1 are adjusted. That the Complainant was coerced to accept the payment for services in the form of allotment of the unit, however, after execution of the agreement, when the Complainant visited the site and sought the necessary site plans from the people at site, it was revealed that unit is still in complete and not in a habitable condition. The Complainant was

completely shocked to learn about the same. That having no other option whatsoever, the Complainants had to accept the same.

- h. That however, even though the Respondent No. 1 assured the Complainant that the possession will be delivered in the timely manner. That as per the payment plan annexed at the *Annexure A* of the DBA, the 40% of the TSC was payable within 90 days from the date of booking and rest 60% was payable at the time of offer of possession. That the Respondent no.1 did not make any payments for the Complainant's invoices of 2015 and 2016 and adjusted the amount of Rs. 29,60,250/- in 2016. That thereafter, despite requests, the Respondent no.1 neither executed the buyer's agreement nor gave possession of the unit. It was only after complete payment of Rs. 71,90,927/- by adjusting the invoices of the services provided by the Complainant the Respondent executed the DBA on 02.03.2020.
- i. This has caused utter harassment of the Complainants and given an undue enrichment to the Respondents. It is a settled principle of law that no one should gain the benefit of their own wrong, however, the Respondents have, very conveniently, wrongfully gained by causing wrongful loss to the Complainant.

C. Relief sought by the complainant

4. The complainant has sought the following reliefs:
- a. To hold that both Respondent no. 1 and 2 are jointly and severally liable in respect to the project;

- b. To direct Respondent no. 1 and 2 to provide the valid physical possession to the Complainant after procuring the occupancy certificate;
 - c. To direct the refund of the PLC amount paid by the Complainants along with interest till the actual realization of the same;
 - d. To direct Respondent no. 1 and 2 to give delay possession charges @ MCLR +2% from the due date of offer of possession till the actual handing over of physical possession;
 - e. To direct the Respondent no. 1 and 2 to refund the amount paid towards the area in which shaft is being covered in the unit, as determined by LC, along with interest.
 - f. To direct the Respondent to refund the amount of Rs 4,482 paid by the Complainant towards the Labour cess charges.
 - g. To direct the Respondent to not charge any illegal charges.
 - h. To direct Respondent no. 1 and 2 to not charge labour cess, electrification charges, EEC and FFPBIC charges, as the same are illegal.
 - i. To direct Respondent no. 1 and 2 to execute the conveyance deed;
 - j. To penalize the Respondent no. 3 under section 62 of the Act;
 - k. To penalize Respondent no. 1 and 2 for non-submission of BIP, and violation of section 61 for non-extension of registration of the project.
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 in an upcoming project Ansal Boulevard, Sector 83, Gurugram. Upon the satisfaction of the complainant regarding

- inspection of the site, title, location plans, etc. a builder buyer agreement dated 02.03.2020 was signed between the parties.
- b. 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 2024 and the cause of action accrue in 2020 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.
- c. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2020 without coercion or any duress cannot be called 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 10 years after it was agreed upon by both parties.
- d. That the Respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that 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.
- e. 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. That admittedly, the Complainant had signed and agreed on Builder Buyer Agreement dated 09.01.2015. 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.
- h. 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.

E. Reply by the respondent no. 2

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

- a. It is pertinent to mention that the no builder buyer agreement was executed between the respondent no.2 and the complainant and there is no privity of contract between the complainant and respondent no. 2. Hence, no cause of action accrued in the favor of complainant as against the respondent no.2.
- b. It is further submitted that no consideration and communication has ever been received by the respondent no.2 from the complainant. More so, the only financial transaction by the complainant is amounting to ₹11,000/- with respondent no.1.
- c. That it is clear that the financial transaction/ amount paid by the complainant to respondent no.1 being ₹11,000/- is not even 10% of the total value of the unit which cannot be considered as the consideration of the said unit, which clearly reflects to be a fake booking. Moreover, there is no payment / consideration paid by the complainant to the respondent no.1. It is a settled proposition of law that without consideration an agreement is nudum pactum i.e., void ab initio.
- d. That it is submitted that the respondent is not even a confirming party to the agreement that is pressed into service by the complainant. More so, the complainant has approached this Hon'ble Authority with unclean hands and has impleaded the respondent no. 2 without any cause of action.

- e. 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.
- f. It is also important to mention that the said unit bearing no. G-039 was an empty shop in the inventory of the respondent no.2 and it is further pertinent to mention that third party rights have already been created on the said unit. It is a settled position of law that one who seeks equity must do equity. That the complainant has approached this hon'ble authority with an intention to stall the proceedings against the respondent no. 2 being in connivance with respondent no.1 for the reasons best known to them.
- g. There being no privity of contract between the complainant and respondent no.2 the application shall be dismissed. That there is no privity of consideration between the parties either, hence it is crystal clear that the present complaint of the complainant is frivolous with the intention to abuse the process of the court.
- h. It is also prayed that the present application is not maintainable on the grounds of lack of privity of contract between the parties, no consideration between the parties and moreover the payment of ₹11,000/- does not amount to consideration for the unit and the same is liable to be dismissed.
- i. It is therefore most respectfully prayed that keeping in view the aforesaid facts this Ld. Authority may be pleased not to grant any stay on the said unit. In case, any stay is granted the same will hamper the completion of the project. It is pertinent to mention that an application under section 151 of civil procedure code for not granting the stay on the unit is already filed before the authority on 22.08.2024.

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. To hold that both Respondent no. 1 and 2 are jointly and severally liable in respect to the project;

G.II. To direct Respondent no. 1 and 2 to provide the valid physical possession to the Complainant after procuring the occupancy certificate.

G.III. To direct Respondent no. 1 and 2 to give delay possession charges @ MCLR +2% from the due date of offer of possession till the actual handing over of physical possession.

13. In the present matter the complainant was allotted unit no. G-039, admeasuring 517 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent no. 1 vide buyer's agreement dated 02.03.2020 wherein the respondent no. 2 was not the confirming party. Against the sale consideration of ₹64,65,343/- the complainant has paid a sum of ₹71,90,927/- to respondent no. 1. 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., 02.03.2020 since the date of commencement of construction is not known. The period of 42 months ends on 02.09.2023. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession of possession comes out to be 02.03.2024. 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., 02.03.2020 since the date of commencement of construction is not known. The period of 42 months ends on 02.09.2023. 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 02.03.2024. 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 08.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%. (*inadvertently mentioned as 11.10% in the proceedings dated 15.07.2025.)
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., 10.90% 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 02.03.2024. 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., 02.03.2024 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., 10.90% 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.IV. To direct the refund of the PLC amount paid by the Complainants along with interest till the actual realization of the same.

G.V. To direct the Respondent no. 1 and 2 to refund the amount paid towards the area in which shaft is being covered in the unit, as determined by LC, along with interest.

G.VI. To direct the Respondent to refund the amount of Rs 4,482 paid by the Complainant towards the Labour cess charges.

G.VII. To direct the Respondent to not charges any illegal charges.

G.VIII. To direct Respondent no. 1 and 2 to not charge labour cess, electrification charges, EEC and FFPBIC charges, as the same are illegal.

29. The respondent shall not charge anything which is not the part of the BBA.

G.IX. To direct Respondent no. 1 and 2 to execute the conveyance deed.

30. 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 respondents are 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 in consonance with the orders of the Sole Arbitrator.

G.X. To penalise the Respondent no. 3 under section 62 of the Act;

G.XI. To penalise Respondent no. 1 and 2 for non-submission of BIP, and violation of section 61 for non-extension of registration of the project.

31. The above-mentioned reliefs were not pressed by the complainant during the course of argument.

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 10.90% p.a. for every month of delay from due date of possession i.e., 02.03.2024 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; 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., 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 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: 15.07.2025



HARERA
GURUGRAM