

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

Complaint no. : 2728 of 2023
Date of filing: 06.07.2023
Date of decision : 01.07.2025

Rajesh Kumar

Address: 12, Model Town Bhattu Kalan, Fatehbad

Complainant

Versus

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

Regd. office: 606, 6th floor, Indraprakash, 21, Barakhamba Road, New Delhi -110001

2. M/s Samyak Projects Pvt. Ltd.

Regd. office: 111, 1st floor, Antriksh Bhawan, 22, K.G. Marg, New Delhi-110001

Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Sh. Animesh Goyal (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 complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the

provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Ansal Heights 86, sector 86, Gurgaon.
2.	Nature of the project	Residential
3.	DTCP License no. & validity status	48 of 2011 dated 29.05.2011
4.	Rera registered or not	Not Registered
5.	1 st subsequent allottee	Mr. Rajender Prasad the original allottee transferred the unit in the name of his son and his son Mr. Pankaj Bansal became the 1 st subsequent allottee vide endorsement in the buyer's agreement at page 35 of complaint.
6.	2 nd subsequent allottee	Pankaj Bansal transferred the unit to the complainant and the present complainant became the 2 nd subsequent allottee on 01.06.2018. (page 37 of complaint)
7.	Unit No.	J-304 (page no. 21 of complaint)
8.	Unit area admeasuring	1690 sq. ft. (Page no. 21 of complaint)
9.	Date of builder buyer agreement with original allottee	18.08.2012 (page no. 18 of complaint)
10.	Possession Clause	31 Construction & Possession The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction , whichever is later subject to timely payment of all the dues by buyer and subject to force majeure circumstances as described in clause 32. 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. [Emphasis Supplied] (Page 26 of the complaint)
11.	Commencement of construction	01.10.2013 (At page 47 of complaint)
12.	Due date of possession	01.10.2017 (Due date is calculated from the date of execution of agreement including grace period of 6 months being unqualified)
13.	Basic sale price	₹62,43,138/- (as per BBA on page no. 21 of complaint)
14.	Amount paid by the complainant	₹75,89,990/- (as stated by the complainant)
15.	Occupation certificate	Not obtained
16.	Offer of possession for fit out	07.03.2023 (page no. 62 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- That in the year 2012, the respondent advertised their proposed project called 'Ansal Heights', (hereinafter referred to as 'Project') in Sector-86, Gurugram, Haryana, wherein the respondent specifically stated that the possession of the units shall be delivered within 42 months of signing of the builder buyer's agreement/application letter. That from the aforesaid advertisements of the respondent many more people were induced by the respondent to part with their hard-earned money for booking the promised flat.
- That initially Mr. Rajender Prasad Bansal booked the flat on 30.03.2012 by giving initial booking amount in favor of respondent. After receiving the amount from the respondent duly signed and executed a flat buyers agreement dated 18.08.2012 and allotted a unit No. J-304, Ansal Heights,



Sector-86, Gurugram area admeasuring 1690 sq. ft. in favor of Rajender Prasad Bansal (Herein after referred to as the 'said property').

- c. That thereafter the Mr. Rajender Prasad Bansal started paying the number of instalments as per the demand of the respondent on time and the respondent received the same from time to time accordingly. The respondent assured the timely delivery of possession of the said property, which fell due way back on 18.02.2016, but the respondent never delivered the same on time and even till date the respondent has been miserably failed to handover the possession of the said property to Mr. Rajender Prasad Bansal despite there being inordinate delay of more than 7 years from the due date. The respondent even cannot count the grace period in the total period agreed for handing over the actual physical possession of the said property complete in all respects as the same can only be considered when the respondent is able to deliver the actual physical possession of the said property within the grace period, failing which the respondent is liable to pay the interest and penalty for this period also.
- d. That Mr. Rajender Prasad Bansal transferred the said property in favor of his son Mr. Pankaj Bansal and accordingly the endorsement was made by the respondent in flat buyers' agreement. That after some time Mr. Pankaj Bansal transferred the aforesaid property in favor of present complainant and transferred was confirmed by the respondent vide letter dated 01.06.2018 and transfer all payment made by Mr. Pankaj Bansal and Mr. Rajender Prasad Bansal in favor of complainant and accordingly endorsement was made on the flat buyer's agreement.
- e. That at the time of transfer of the unit in favor of the complainant, the complainant has paid 100% payment of the said property along with all charges ₹75,89,990.57/-. This payment was acknowledged and



confirmed by the respondent through its account statement gave to the complainant at the time of transferring the said property in the name of the complainant.

- f. That the complainant duly adhered his part of the contractual stipulations and the respondent with mala-fide intentions, even after taking the amount as per the prescribed payment schedule, never adhered to its contractual stipulation and liabilities causing huge financial losses to the complainant. That the complainant has been asking the respondent time and again about the delivery of the possession of the said property vide various visits in the office of respondent and telephonically call to Mr. Shadab Khan, representative of the respondent company. However, the respondent always gave evasive replies and never apprised the complainant about actual state of affairs or the date and time of delivery of possession of the said property.
- g. That in November the complainant received a letter of settlement dated 16.11.2021 along with one settlement agreement dated 13.11.2021 containing the signatures of the representative of the respondent company without any notice, knowledge and even without discussing with the complainant. The aforesaid letter is totally false, frivolous, null, void and arbitrary. The complainant never agrees for the same and deny signing any kind of settlement agreement and demanded the compensation as per RERA Act and rules, but after that the respondent has been deli delaying the matter of offering of the possession of the said apartment to the complainant.
- h. That thereafter respondent issued totally illegal, null, void and arbitrary offer of possession dated 07.03.2023 sent via email dated 07.03.2023 received from the email id of Mr. Shadab Khan representative of the



respondent along with demand made by the respondent. The complainant apprised the said representative of the company that he already made all payments and demanded the copy of valid occupation certificate of the tower in which the said property is situated, but the representative did not come forward with answers to the complainant.

- i. That complainant sent an objection cum reply dated 16.04.2023 to the respondent vide email dated 16.04.2023 and also sent vide registered post-dated 21.04.2023 with regards to their offer of possession letter dated 07.03.2023 and request the respondent to withdraw the offer of possession along with settlement agreement, but respondent did not pay any heed. That the respondent after receiving the total amount of sale consideration way back has been miserably failed to handover the possession of the said property and even till date the respondent is not in a position to handover the possession of the same to the notice and knowledge of the complainant.
- j. That the complainant and many other people have invested their hard-earned money with hope of having their properties on time, which they could use for their personal use, but now they are left with nowhere to go except approaching this Hon'ble Authority. That the Act and conduct of the Respondent in deliberately inducing the complainant to part way with his life saving and cheat him based upon false documents amounts to an act of fraud and cheating for which the present complaint is being filed.
- k. That it is submitted that the modus operandi of the respondent has caused tremendous financial pressure upon the complainant herein for which the complainant is entitled to be reimbursed forthwith as well as for the mental agony caused to the complainant by the acts, omissions and mala fide conduct on the part of the respondent. That it is submitted



that the conduct of the respondent has resulted in wrongful loss to the complainant and wrongful gain to the respondent herein, for which the respondent is liable to be prosecuted under Indian Penal Code. That the Act of receiving the hard-earned money from the complainant and not making delivery of the said property after passing of more than 7 years from the due date of possession, wilfully and knowingly amounts to an act of fraud and deliberate delay for which respondent is solely liable to pay damages also.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondents to withdraw the offer of possession letter dated 07.03.2023 and issue fresh offer of possession after providing the copy of occupation certificate to the complainant.
 - b. The respondent may kindly be directed to hand over the possession of the said property i.e. unit no. J-304, Ansal Heights, Sector-86, Gurugram area admeasuring 1690 sq. ft. complete in all respects along with all amenities as agreed to be provided by the respondent in terms of flat buyer agreement dated 18.08.2012 along with all ancillary facilities attached to it.
 - c. The respondent may kindly be directed to pay interest upon the total amount of Rs. 75,89,990/- w.e.f. 18.02.2016 i.e. the due date for handing over possession of the said property till handing over the actual, physical and peaceful possession of the said property i.e. unit no. J-304, Ansal Heights, Sector-86, Gurugram area admeasuring 1690 sq. ft. complete in all respects along with all amenities.
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 has contested the complaint on the following grounds:
- a. That the complainants had approached the answering Respondent for booking a flat in an upcoming project Ansal Heights, Sector 86, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. the flat bearing no. J-0304. 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 2012. 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.
 - b. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong. 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 on 18.08.2016 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 the Respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and



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

- d. 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. 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 32 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.
- e. That the answering Respondent has clearly provided in clause 37 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 07.09.2012. 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.

- f. That the perusal of the Builder Buyer Agreement at page 3 would show that the proposed party to be impleaded i.e., M/s Samyak Projects Pvt. Ltd not only possesses all the rights and unfettered ownership of the said land whereupon the project namely Ansal Heights, Sector 92 is being developed, but also is a developer in the said project. That the operating lines at page 3 of the Builder Buyer Agreement are as follow: *"The Developer has entered into an agreement with the Confirming Party 3 i.e., M/s Samyak Projects Pvt. Ltd to jointly promote, develop and market the proposed project being developed on the land as aforesaid."* That, while filing the present complaint, the Complainant has not arrayed M/s Samyak Project Pvt. Ltd. having its Registered Office at 153, Okhla Industrial Estate, Phase-III, New Delhi - 110020 as a party to the complaint. That M/s Samyak Projects Pvt. Ltd is a very necessary and proper party to be arrayed to the Complaint for proper, fair and transparent disposal of the present case. 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.

E. Reply by the respondent no. 2

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



- a. That the respondent no. 2 i.e. Samyak Projects Private Limited, having acquired the rights to develop the land on which the present project was to be constructed, entered into a memorandum of understanding "MOU" dated 06.09.2011 with respondent no.1 i.e. Ansal Housing Limited with respect to the construction and development of the present project under the name and style of "Ansal Heights-86" with respect to the land admeasuring 102 kanals 15 marlas (12.843 acres) falling in Rect. No. 14, 15 & 19, situated in the revenue estate of village Nawada Fathehpur, Tehsil and District Gurgaon, Haryana which is presently part of residential Sector 86 of Gurgaon Manesar Urban Plan 2021 ("Scheduled Land") for the development of group housing society. However, superseding the said MOU, the respondent no. 1 & 2 entered into a Joint Venture Agree "JVA" dated 24.05.2013.
- b. 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.
- c. That as per the clause 9.2 of the said MOU which is as follows: 'The developer shall keep the first party/owner fully indemnified and harmless against any/all the claims, disputes, demands, litigations etc. raised by the prospective buyers of the built-up unit/spaces in the project in respect of quality and workmanship of construction or for delay in completion of the project due to reasons attributable to the developer. In case, any liability is fastened against the first party/owner on this account, the developer unconditionally undertakes to owe and discharge the same without any demur or reservation.' That the bare



perusal of the clause 9.2 of the MOU clearly reflects that it is the sole responsibility / obligation of the respondent no.1 towards the buyers / allottees.

- d. It is pertinent to mention that as per the MOU it was the sole responsibility of the respondent no.1 to develop the project and handover the possession to the allottees. It is also submitted that it was the respondent no.1 who received the consideration amount from all the allottees. It is also further submitted that there are no specific allegations in the complaint against the respondent no.2.
- e. That it is also submitted that the Hon'ble Authority in various cases pertaining to the same project has already decided that it is the responsibility of the respondent no.1 towards the allottees. That it is also submitted that the Hon'ble RERA Authority in 73 cases has decided that the sole responsibility to return the amount paid by the allottees lies upon the respondent no.1 i.e., Ansal.
- f. The Authority has in its various decisions have observed that Samyak Projects is not the primary party, neither has direct nexus in respect of the consideration of the unit with the decree holder. Moreover, it is important to mention that it is the obligation of the party who has been benefitted by the amount of consideration. Hence, it shall prejudice the interest respondent no.2 i.e. M/s Samyak Projects Pvt. Ltd. who has not received any amount toward the completion of the said project by the respondent no. 1.
- g. Moreover, it is further submitted that arbitration proceedings with respect to the said project are pending before the sole arbitrator Hon'ble Justice A.K. Sikri. It is equally important to bring to the knowledge of this Hon'ble Tribunal that a status quo has been maintained on the project by the Sole Arbitrator vide interim order dated 31.08.2021 till the final

award is passed. That there is no privity of contract between the Respondent No.2 and Complainant as it was the sole responsibility of the Respondent No.1 to deliver the units to the allottees. Moreover, a status quo has been imposed by the learned Arbitrator on the project, the unit cannot be handed over to the Complainant.

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 objections raised by the respondent.

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

13. The respondent has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Punjab and Haryana High court, Hon'ble NGT, shortage of labour, demonetisation, outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the 'Flat Buyer's Agreement' was executed between the parties on 18.08.2012. As per clause 31 of the Flat Buyer Agreement, the due date for offer of possession of the unit was 42 months from the date of execution of the Agreement or 42 months from the date of obtaining all the required sanctions and approvals necessary for commencement of construction, whichever is later, along with a grace period of six months over and above the said period. The period of forty-two months is calculated from the date of commencement of construction i.e., 01.10.2013 being later. The period of 42 months from 01.10.2013 comes out to be 01.04.2017. Further, an

unqualified grace period of six months has been agreed between the complainant and the respondents to be granted to the respondents over and above the said 42 months. The same is granted to the respondent, being unqualified. Thus, the due date of possession comes out to be 01.10.2017. Since, a grace period of six months has already been granted to the respondent, any further grace would amount to undue advantage in favour of the respondents. The respondent has submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, but these were for a short period of time and are the events happening every year. The respondents were very much aware of these events and thus, the promoter/ respondent cannot be given any more leniency based on the aforesaid reasons.

H. Findings on the relief sought by the complainant.

H.I. Direct the respondents to withdraw the offer of possession letter dated 07.03.2023 and issue fresh offer of possession after providing the copy of occupation certificate to the complainant.

H.II. The respondent may kindly be directed to hand over the possession of the said property i.e. unit no. J-304, Ansal Heights, Sector-86, Gurugram area admeasuring 1690 sq. ft. complete in all respects along with all amenities as agreed to be provided by the respondent in terms of flat buyer agreement dated 18.08.2012 along with all ancillary facilities attached to it.

H.III. The respondent may kindly be directed to pay interest upon the total amount of Rs. 75,89,990/- w.e.f. 18.02.2016 i.e. the due date for handing over possession of the said property till handing over the actual, physical and peaceful possession of the said property i.e. unit no. J-304, Ansal Heights, Sector-86, Gurugram area admeasuring 1690 sq. ft. complete in all respects along with all amenities.

14. In the present matter the complainant was allotted unit no. J-304, admeasuring 1690 sq. ft. in the project "Ansal Heights 86" Sector 86 by the respondent-builder for a sale consideration of ₹62,43,138/- and they have paid a sum of ₹75,89,990/-. A buyer's agreement was executed with the

original allottees on 18.08.2012. Thereafter, the unit was transferred in the name of complainant vide letter dated 01.06.2018.

15. As per the BBA, M/s Resolve Estate Pvt. Ltd. assigned their entire rights, entitlements and interest in the land and the resultant FSI of the entire project to Optus Corona Developers Pvt. Ltd. Further the Optus Corona Developers Pvt. Ltd. assigned its entire rights, entitlements and interest in the land and the resultant FSI of the entire project to entered into a separate agreement whereby the development and marketing of the project was to be done by the Samyak Projects Pvt. Ltd. Again M/s Samyak Projects Pvt. Ltd. vide a separate agreement transferred its rights to develop and construct the said project in terms of the license/permissions granted by the DTCP, Haryana to the respondent.
16. 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 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)

17. Clause 31 of the BBA provides for handing over of possession and is reproduced below:

"Clause 31

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."

18. **Due date of possession and admissibility of grace period:** As per clause 31 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 period of 42 months is calculated from the date of commencement of construction i.e., 01.10.2013 being later. 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 01.10.2017. The occupation certificate for the project has not yet been obtained from the competent authority.
19. **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.

20. 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.
21. 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., 01.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
22. 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:

"(z) "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;"

23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
24. 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 respondents are 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 31 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 01.10.2017. But the subject unit was endorsed in name of the complainant after the due date of possession i.e., on 01.06.2018 accordingly the respondent is liable to pay delay possession charges from the date the said unit is endorsed in favor of complainant i.e., from 01.06.2018. Also, till date no occupation certificate has been received by respondents but the respondent no. 2 has offered the possession of the said unit to the complainant on 07.03.2023 therefore, the said offer of possession is not a valid offer of possession.
25. 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.
26. 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 is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the date the said unit is endorsed in favour of the

complainant i.e., from 01.06.2018 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

I. 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 respondents are jointly and severally liable to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from the date the said unit is endorsed in favour of the complainant i.e., from 01.06.2018 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- b. The respondents are 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 complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



e. The respondent^{are} is 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: 01.07.2025