

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

Complaint no. : 5044 of 2024
Date of filing : 25.10.2024
Date of decision : 22.07.2025

Richa Kapoor

R/o: # 218-A, GF,DG-2, Vikas Puri, West Delhi, Delhi-110018

Complainant

Versus

1. M/s Ansal Housing Ltd. (Formerly known as Ansal Housing & Construction Ltd.)
Regd. Office: 15 UGF, Indraprakash, 21, Barakhambha Road, new Delhi -110001
2. M/s Samyak Projects Pvt. Ltd.
Regd. Office: 111, 1st floor, Antriksh Bhawan, K.G. Marg, New Delhi-110001

Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Sh. Himanshu Gautam (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:

Sr. No.	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.	Unit no.	F-162 (Page no. 17 of complaint)
7.	Unit admeasuring	193.924 sq. ft. Carpet area (Page no. 17 of complaint)
8.	Date of agreement for sale (Samyak is not the confirming party)	17.01.2020 (page no. 14 of complaint)
9.	Possession clause	7. Possession of the said unit: 7.1 Schedule for possession of the said unit: The vendor agrees and understands that timely delivery of possession of the said unit along with parking (if applicable) to the Vendee and the common areas to the association of vendees or the competent authority, as the case may be as provided under Rule

		<i>2(1) (f) of the Rules, 2017 is the essence of the Agreement.</i>
10.	Due date of delivery of possession	31.12.2020
11.	Total sale consideration	Rs. 25,70,400/- (as per payment plan on page 44 of complaint)
12.	Total amount paid by the complainant	Rs. 8,63,655/- (as per SOA on page no. 48 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not Offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That on 13.08.2019, complainant Mrs. Richa Kapoor booked a Shop by making a payment of Rs. 2,24,000/- vide RTGS number 559798 dated 13.08.2019 in the project named "ANSALS HUB 83 Boulevard" situated in Sector 83, Gurugram. Accordingly, the Shop bearing unit no. F-162 having carpet area of 193.924 sq. ft. and super area of 367.78 sq. ft. in the project was allotted to the complainant.
 - b. That on 17.01.2020, Builder Buyer Agreement (BBA) was entered into between the parties wherein as per Payment Plan provided under Schedule-C, complainant has to make payments to respondent no. 1. That the complainant has made all the payments on time as per the above-mentioned payment plan and has paid Rs. 8,63,655/- in total to the Respondent No. 1 till the present date and the balance amount is to be paid at the time of possession.
 - c. That as per the details available in Form A-H of the above said project, namely "ANSALS HUB 83 Boulevard", available on the official website of



the Haryana Real Estate Regulatory Authority, Gurugram, the said project was to be completed by 31.12.2020 and thus possession was also to be handed over by 31.12.2020, but even after a delay of almost 3 years and 10 months, the project has not yet been completed and the respondents are still not in a condition to hand over the possession of the said shop to the complainant.

- d. That once again vide unlawful notice dated 03.08.2023, the respondent no. 2, asked complainant to provide KYC documents and sign an Addendum Agreement with respondent no. 2 and again threatened that if complainant doesn't sign the Addendum Agreement within 15 days, her allotment would be cancelled. In this way, the respondent no. 2 is arbitrarily and unlawfully compelling the complainant to enter into an unlawful and unilaterally drafted agreement with him, which contains such terms and conditions which dilute the complainant's interest and affect the obligations of the respondent no.2 towards the complainant in a manner disadvantageous to the complainant. Thus, it is a clear violation of the provisions of The Indian Contract Act, 1872.
- e. That in follow up, the complainant submitted his KYC documents to Respondent No. 2 through her broker and requested an acknowledgment of receipt. However, Respondent No. 2 not only refused to provide such an acknowledgment but also arbitrarily, unlawfully, and mischievously denied to recognize complainant's rights as the allottee of the said shop just because the respondent no. 2 is not a confirming party in the Builder Buyer Agreement. This matter has already been put before the Arbitration Tribunal for its consideration by respondent no. 1 and vide order dated 11.10.2022, the Arbitration Tribunal directed both the respondents to sit together to resolve their



dispute and also directed respondent no. 2 not to create further interest in respect of the shops sold by respondent no. 1.

- f. That further on 16.08.2023, the complainant once again sent her KYC documents to Mr. Ajay Jain of respondent no. 2 through WhatsApp and again requested to acknowledge the receipt of the said KYC documents. But respondent no. 2 didn't provide any such acknowledgement even after multiple follow ups taken by the complainant.
- g. That despite repeated calls and meetings with the respondents, no definite commitment was shown for timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant. That repeated calls, meetings and correspondences with the respondents and multiple visits to know the actual construction status not only caused loss to the complainant in terms of time, money and energy but also caused mental agony to him.
- h. That the cause of action arose in favor of the Complainant and against the respondents from the date of booking of the said unit and it further arose when respondents failed/neglected to deliver possession of the said unit within a stipulated time period. The cause of action further arose when the respondents has not completed the said project with the assured facilities and amenities. It further arose and it is continuing and is still subsisting on day-to-day basis as still the respondents have not rectified their defects and not fulfilled their obligations as per the Builder Buyer's Agreement.

C. Relief sought by the complainant

- 4. The complainant has sought the following reliefs:
 - a. Direct the respondents to pay Interest for delay at the prescribed rate from 31.12.2020 till the handover of possession as per section 18(1) of Real Estate (Regulation and Development) Act, 2016.



- b. Restrain the respondent no. 2 from implementing the contents of letter dated 03.08.2023 and taking any coercive action against the interest of the complainants.
 - c. Direct the respondents to complete the project in expeditious manner and offer the possession of the shop bearing no. F-162 in Project HUB 83 Boulevard located in Sector 83, Gurgaon along with all the promised amenities and facilities and to the satisfaction of the Complainants.
 - d. Direct the respondents to execute the conveyance deed in favor of the complainant with respect to the said shop bearing unit no. F-162 in said project namely Ansals HUB 83 Boulevard located in Sector 83, Gurgaon.
 - e. Direct the respondents to commit a date for offering the possession by submitting an affidavit before the Hon'ble Authority.
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 booked shop bearing no. F-162 in their own name in project Ansal HUB-83 Boulevard, Sector 83, Gurugram of the answering Respondent Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. a Builder Buyer Agreement was entered dated 17.01.2020 was signed between the parties as per claim of the complainant. 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 in question today. It is submitted that the clause 7.6 of the builder buyer agreement provides for compensation in the event of a delay in giving possession. However, the same clause also provides for the exception that the



vendor shall not be liable to pay compensation in case of occurrence of "Force Majeure" and the present project is delayed due to force majeure and not because of the default of the respondent.

- b. That the Respondent had in due course of time obtained all necessary approvals from the concerned authorities. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the Respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the Complainant.
- c. That the answering Respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering Respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The Respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the Answering Respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID -19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.
- d. 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 7.6 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 due to force majeure. That the answering Respondent has clearly provided in 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.

- e. That the Complainant had signed and agreed on Builder Buyer Agreement dated 17.01.2020. 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. That the perusal of the Builder Buyer Agreement 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 Hub83 boulevard, Sector 83 is being developed, but also is a developer in the said project. That the operating lines 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."
- f. 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. and not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd. That in an arbitral proceeding before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. has taken over the present project the answering Respondent for completion of the project and the Respondent has no locus or saying in the present project.



- g. Samyak approached Ansal for development of a commercial project to be developed over the said parcel of land, and pursuant to several discussions, negotiations and after bargain, Ansal entered into a Memorandum of Understanding (Hereinafter to be referred as "MoU") with Samyak on 12.04.2013, for the purpose of development and construction of a commercial complex on a the afore said parcel of land (Hereinafter to be referred as 'said parcel of land').
- h. At the time of execution of the MoU i.e., in April 2013, Ansal also paid a Non-Refundable Security Deposit of Rs.4,00,00,000/- (Rupees Four Crores Only) to the Samyak, as per the understanding of the parties under Clause 13 of the said MoU, receipt of which was acknowledged by Samyak. As far as the revenue sharing between the parties was concerned, it was mutually agreed between the parties that revenue generated from this project will be at 55:45 between Ansal and Samyak, respectively. The sharing ratio in the MoU was also framed/designed in such a manner, that for the first 75 crores received as sale consideration, Samyak shall get 75% of the same and merely 25% comes to Ansal, as per Clause 15 of the MoU. The final sharing ratio was 45% to Samyak and 55% to Ansal, hence Ansal was entitled to receive a substantial amount at the later stage of the construction.
- i. Ansal also had financially assisted Samyak to the tune of Rs. 32.5 crores, to get abovementioned parcel of land transferred from the erstwhile owner in its own (Samyak's) name. Ansal, was constructing the project at a rapid pace, however, Samyak was causing regular impediment like delay in repayment of the advance of Rs. 32.5 crores, and further not cooperating in the other compliances. Also, in November 2016, when the Government of India banned the 500 & 1000 Rupees Note, the same made a huge impact on the pace of construction of any real estate



project. It is a matter of common knowledge, that major part of transactions, be it payment to contractors, labors etc. are done through cash only and banning the same, adversely affected the construction in the year 2016-17.

- j. Apart from the aforesaid, Orders passed by the National Green Tribunal whereby mining of sand was banned in Haryana and Rajasthan in 2014 - 15 badly affected the pace of construction in the year 2014 and 2015. The Hon'ble Punjab & Haryana High Court in the year 2012-2015 had banned the ground water extraction in the reign of Haryana, reason of which the water supply completely stopped in the construction site. This compelled the Claimant to get the supply of water from tankers etc. which goes without saying, was very less in supply if compared to earlier. In 2016, during the Jat Agitation in Haryana, trains and buses were stopped & burnt, which not only prevented innumerable labors from reaching the site but also the tractors & trollies of suppliers which highly affected the pace.
- k. In April 2015 & November 2015, and further in 2016 -18, the Hon'ble National Green Tribunal also directed to stop construction in Delhi NCR to prevent emission of dust which made the construction at a standstill. In addition to the abovesaid, the nation came to a standstill after the outbreak of Covid-19 in the entire world. The period wherein the lockdown was imposed and wherein the laborers migrated to their native places, made it impossible to have any kind of construction from March 2020 - August 2020. That, even after August 2020, the pace of the construction was not very rapid, given the fact that there was shortage of laborers and also since the Covid -19 was also at its peak, pace was much slower if compared to pre-corona times.



- l. The abovementioned conditions were beyond the control of the Claimant and will come under the ambit of 'Force Majeure' event. When Samyak had enough of the share from the sale proceeds, in order to arm twist Ansal sent a notice for termination dated 10.11.2020, and terminated the MoU dated 12.04.2013. Pursuant to the illegal termination, Ansal approached the Hon'ble Delhi High Court u/s 9 of the Arbitration & Conciliation Act 1996, and sought an interim direction to restrain Samyak from creating any third-party interest. Parallely, Ansal invoked the dispute resolution clause of the MoU and approached the Hon'ble High Court for appointment of a Sole Arbitrator, and wherein the Hon'ble High Court, appointed Justice Arjan Kumar Sikri, Former Judge, Supreme Court of India, as a Sole Arbitrator.
- m. The Petition u/s 9 of the Arbitration & Conciliation Act 1996, was converted into an application u/s 17 of the Act, and the interim relief which was sought before the Hon'ble High Court was therefore sought before the Learned Sole Arbitrator. During the pendency of the abovementioned application, the Arbitral Tribunal vide Procedural Order No. 04 dated 05.03.2021, directed both the parties, to submit their respective proposal for taking over the task of completion of the balance construction work of the project. In compliance of such direction, both the parties had submitted their respective proposal(s).
- n. That vide order dated 31.08.2021, the Arbitral Tribunal dismissed the application of Ansal, and refused to stay the notice of termination. In Para 57 and 58 of the Order dated 31.08.2021, the Arbitral Tribunal referred about the proposals submitted by both the parties, proposing their action plan for completion of the balance construction work in relation to Ansal Boulevard, Sector 83, Gurugram. Copy of all the orders passed by the Arbitral Tribunal.



- o. The Arbitral Tribunal's intent behind seeking the best proposals from both the parties for completing the balance construction was to somewhere pass an order on equity, which could have been passed only by consent of both the parties. An order without consent 'for ensuring the unobstructed, unhindered and unimpeached pace of construction' could not be passed by the Arbitral Tribunal owing to the embargo of Section 28(2) of the Arbitration Act.
- p. Although, Ansal itself was competent enough to complete the project on its own within a period of fifteen months, as assured by it through its proposed plan of action, but since Samyak had proposed to complete the balance construction within a period of 10 months, Ansal, without prejudice to its legal rights, remedies and claims, consented (by filing an application) to the proposal submitted by the Respondent for completion of the balance construction work of project, in the interest of project, and to ensure that the dispute between the promoters must not hamper the interest of the project.
- q. The application found favor from the Arbitral Tribunal, and therefore in compliance of the Order dated 13.10.2021 by the Arbitral Tribunal, the physical possession of the project site was handed over by Ansal to Samyak on 14.10.2021 at 3:00 P.M. The entire records of the project, viz. Customer Ledgers, Builder Buyer Agreements, Title Deeds, Fire NOC, Building Plans etc. were shared with the Samyak via Google Drive, vide Email dated 21.10.2021.
- r. Furthermore, it was undertaken by Samyak, which is recorded in the Order dated 02.09.2022, that the overall construction of the project shall be completed within 9 months, i.e., by the end of June 2023. During the proceedings held in 11.10.2022, Ansal had informed the Arbitral Tribunal, that some of the allottees of the subject project are



approaching Ansal with the grievances' that Samyak is not recognizing their rights as flat buyers, and Samyak is instigating those allottees to file cases against Ansal. On such information, Samyak made a baseless excuse, of there not being a Tripartite Agreement (between the Samyak, Ansal and the Allottee), and therefore, the Samyak is not recognizing the allottees. This fact is recorded in the Order dated 11.10.2022.

- s. Pertinent to mention, that in terms of the MoU dated 12.04.2013, Ansal was authorized to enter into Agreement(s) with any allottee, and there was no requirement for ratification of the Samyak, being a Landowner. At the threshold after the execution of the MoU, there were some agreements, wherein, Samyak being the Landowner, had also affixed its seal in the Builder – Buyer Agreements; however, after sometime, Ansal was executing Bilateral Agreements with the Allottees, on the strength of the MoU, as Samyak was not cooperating. Furthermore, those allottees have also made the payments through banking channel to Ansal, and all these details, be it the Builder Buyer Agreement and the Customer Ledger, are already provided to Samyak via the Google Drive sent through email on 21.10.2021.
- t. A perusal of the Order dated 11.10.2022, makes it abundantly clear, that the Arbitral Tribunal, had explicitly directed Samyak to not create any third-party rights over any unit, until and unless this issue of bilateral agreement is resolved. Furthermore, on 04.05.2023, in order to resolve the abovementioned, it was further directed by the Arbitral Tribunal to Samyak to visit the office of Ansal on 08.05.2023 at 11:00 am, and to satisfy itself with the genuineness of all bilateral builder buyer agreement. On the directions of the Arbitral Tribunal, the Representatives of the Samyak also visited the Office of Ansal on 17.05.2023; however, despite verifying all the documents, neither any



clarity was given by Samyak, nor Samyak desisted from its mala fide actions.

- u. Pertinent to mention, pursuant to the meeting held on 17.05.2023, despite not finding any lacuna on any transaction, started persuading the allottees to sign an Addendum Agreement with Samyak. the attempt to sign addendum agreements with allottees by Samyak is unnecessary & unwarranted. At the time of handing over the project site to Samyak, it was expressly mentioned, that Samyak shall be entitled to only enter into agreements with new allottees (along with other riders provided in the Order/Proposal), and not with existing allottees. The agreements entered by Ansal with the existing allottees are valid & subsisting, and therefore, there is no requirement signing any addendum agreement.
- v. The Arbitral tribunal in its Order dated 02.09.2022, has made it clear, that Samyak shall communicate with the existing allottees only to the extent of collecting sale considerations from them. The act of Samyak to execute addendum agreement with the allottees goes completely against the Order(s) and undertaking given to the Arbitral Tribunal.
- w. Again, during the hearing held on 29.07.2023, it was directed by the Arbitral Tribunal, in order to resolve the issue of bilateral agreement, to send a list of all the allottees, along with all necessary particulars to Samyak. It was further directed that Samyak within a week of receiving such information, shall submit its comment with respect to those allottees, to which the dispute remains.
- x. Undisputedly, the said list, along with all necessary credentials were supplied to Samyak vide email dated 16.09.2023, however, till date, i.e., almost 7 months since supplying of such information, Samyak has not replied or filed any comment citing objection to any such allotment. Hence, since it is unrebutted, it means that Samyak has admitted all the

allotment. Despite the abovementioned, Samyak in a blatant violation of the Order dated 11.10.2022, and all further subsequent order(s), have not only started to cancel the units, but have also started to create third party rights over the same.

- y. Furthermore, it is also important to mention, that on 14.10.2023, when the project site was handed over to Samyak for the balance construction work, Samyak was obligated to raise its own funds for the said purpose, and shall not dependent upon the sale receivables of the allottees. Furthermore, the scope of the entrusting the balance work to Samyak was very limited, and it does not entitle the Samyak to issue cancellation letters to the allottees.
- z. Cancelling allotments are nowhere aiding the pace of construction, and is only not creating havoc amongst the allottees. Samyak was obligated to only complete the construction, and the project has not been handed over to Samyak; however, Samyak being the flagbearer of contemptuous acts, is deeming the subject project as its own project and is flouting the order(s) of the Arbitral Tribunal, as the order(s) doesn't matter at all. It is submitted, that Ansal has always acted in the interest of the allottees, and even now, is doing every act which is possible, to ensure, that the interest of the allottees is protected. The act of Samyak to cancel the allotments and create third party rights is beyond the authority given by the Arbitral Tribunal, and therefore, all the acts of Samyak to cancel the allotment and the creation of the third- party rights may be held as void, and illegal.

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 No 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. It is further submitted that an Agreement to sell was executed on 17.01.2020 between Respondent No.1 (i.e Ansals) and the Complainant wherein the Respondent No. 2 (i.e Samyak Projects Pvt Ltd.) was neither a party to the agreement to sell nor the same was executed in the presence of Respondent No. 2. Hence, no cause of action accrued in the favor of Complainant as against the Respondent No.2.

- b. That it is interesting to mention here that on the perusal of documents produced by the complainant in the complaint with respect to the Unit, it seems to be an Undervalued Booking. That the complainant has approached the court with a malicious intent and is presenting wrong facts before the Hon'ble Court.
- c. That the complainant is unnecessarily putting the onus upon the Respondent No. 2, however the contractual dispute was between the complainant and only with the Respondent No.1. That the complainant has spilled wrong facts in its complaint just to make Respondent No. 2 liable for the actions for which only Respondent number 1 is to be made liable.
- d. That the complaint appears to be a result of collusion between the complainant and Respondent No. 1 i.e. Ansals, aimed at wrongfully implicating Respondent No. 2 and extracting undue benefits. It is further submitted that No consideration has ever been received by the Respondent No. 2 from the complainant and the same were always received by the Respondent No. 1.
- e. That it is submitted that the Respondent No. 2 is not even a signatory 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. That it is also submitted that the Complainant and Respondent No.1 are acting in connivance with each other for the fulfillment of their ulterior motives and harm the reputation of the Respondent No.2 for the reasons best known to the Respondent No.1 and Complainant.

- f. That 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 Complainant and Respondent No.2 (i.e., Samyak Projects Pvt Ltd.), hence it is crystal clear that the present complaint is the complainant is frivolous with the intention to abuse the process of the court.
- h. That the Complainant has approached this Hon'ble Authority with bogus and fraudulent documents with the sole intention to mislead the Authority by filing false and frivolous documents. It is also prayed that the present application is not maintainable on the grounds of lack of privity of contract between the complainant and Respondent No.2.

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.1 Territorial jurisdiction

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

F.II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

G. Findings on the relief sought by the complainants.

G.I. Direct the respondents to pay interest for delay at the prescribed rate from 31.12.2020 till the handover of possession as per section 18(1) of Real Estate (Regulation and Development) Act, 2016.

G.II. Direct the respondents to complete the project in expeditious manner and offer the possession of the shop bearing no. F-162 in Project HUB 83

Boulevard located in Sector 83, Gurgaon along with all the promised amenities and facilities and to the satisfaction of the Complainants.

13. In the present matter the complainant was allotted unit no. F-162, admeasuring 193.924 sq. ft. in the project "Ansal Hub 83 Boulevard" Sector 83 by the respondent-builder vide buyer's agreement dated 17.01.2020 wherein the respondent no. 2 was not the confirming party for sale consideration of ₹25,70,400/- and they have paid a sum of ₹8,63,655/-. As per clause 7.1 of the BBA, respondent no. 1 was obligated to complete the construction of the project and hand over the possession of the subject unit by 31.12.2020. 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.
17. 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 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 no. 1 only. 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 7.1 of the BBA provides for handing over of possession and is reproduced below:

"7.1 Schedule for possession of the said unit: *The vendor agrees and understands that timely delivery of possession of the said unit along with parking (if applicable) to the Vendee and the common areas to the association of vendees or the competent authority, as the case may be as provided under Rule 2(1) (f) of the Rules, 2017 is the essence of the Agreement."*

20. As per clause 7.1 of the BBA, the possession of the allotted unit was supposed to be offered by 31.12.2020. 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., 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 is inadvertently mentioned as 11.10% in POD dated 22.07.2025)
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 7.1 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 31.12.2020. 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., 31.12.2020 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.III. To execute the conveyance deed of the allotted unit in favor of the complainant.

29. 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.

H. Directions of the authority

30. 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., 31.12.2020 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 respondents, 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.
31. Complaint stands disposed of.
32. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.07.2025