

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

<b>Complaint filed on:</b>	<b>22.05.2024</b>
<b>Order reserved on:</b>	<b>07.08.2025</b>
<b>Order pronounced on:</b>	<b>18.09.2025</b>

<b>NAME OF THE BUILDER</b>		<b>M/s Ansal Housing Limited &amp; M/s Samyak Projects Private Limited</b>	
<b>PROJECT NAME</b>		<b>"Ansal Hub 83 Boulevard"</b>	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>APPEARANCE</b>
1.	CR/2087/2024	Late Sangeeta Nagpal through Sourabh Nagpal V/S M/s Ansal Housing & Construction Limited M/s Samyak Projects Private Limited	Shri Himanshu Gautam Advocate  Shri Amandeep Kadyan Advocate Shri Shankar Wig Advocate
2.	CR/2088/2024	Late Sangeeta Nagpal through Sourabh Nagpal V/S M/s Ansal Housing & Construction Limited M/s Samyak Projects Private Limited	Shri Harshit Batra Advocate  Shri Amandeep Kadyan Advocate Shri Shankar Wig Advocate

**CORAM:****Shri Vijay Kumar Goyal****Member****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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

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- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**Ansal Hub 83 Boulevard**" being developed by the same respondents. The terms and conditions of the buyer's agreement against the allotment of units in the project of the respondent/builder and fulcrum of the issues involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges and others.
- The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>		<b>Ansal Hub 83 Boulevard at Sector - 83, Gurugram.</b>				
<b>Occupation Certificate: - Not Obtained</b>						
<b>Possession Clause: -</b>						
<i>30. 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 31. Further, there shall be a grace period of 6 months allowed to Developer over and above the period of 2 months as above in offering the possession of the Unit.</i>						
Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of agreement to sell and Offer of possession	Due date of possession	Total Consideration/Total Amount paid by the complainants in Rs.
1.	CR/2087/2024  Lt. Sangeeta Nagpal V/S	Reply by respondent no. 1 received on <b>12.09.2024</b>	<b>F-009</b>  Area admeasuring 364 sq. mt.	<b>21.04.2015</b>  (As per page no. 17 of the complaint)	<b>21.04.2019</b>  (Calculated from 42 months from the date of	TSC: - <b>35,30,232/-</b>  (As per page no. 21 of the complaint)





	M/s Ansal Housing Limited & M/s Samyak Projects Pvt. Ltd.  Date of Filing of complaint <b>22.05.2024</b>	Reply by respondent no. 2 received on <b>03.09.2024</b>	[As per page no. 21 of the complaint]	<b>Offer of possession:</b> - Not Offered	BBA as the date of start of construction is not known + a grace period of 6 months is being granted unconditional)	AP: - <b>11,70,251/-</b>  (As per page no. 43-47 of complaint)
2.	<b>CR/2088/2022</b>  Lt. Sangeeta Nagpal V/S M/s Ansal Housing Limited & M/s Samyak Projects Pvt. Ltd.  Date of Filing of complaint <b>22.05.2024</b>	Reply by respondent no. 1 received on <b>12.09.2024</b>  Reply by respondent no. 2 received on <b>03.09.2024</b>	<b>F-010</b>  Area admeasuring 364 sq. mt.  (As per page no. 21 of the complaint)	<b>21.04.2015</b>  (As per page no. 17 of the complaint)  <b>Offer of possession:</b> - Not Offered	<b>21.04.2019</b>  (Calculated from 42 months from the date of BBA as the date of start of construction is not known + a grace period of 6 months is being granted unconditional)	TSC: - <b>35,30,232/-</b>  (As per page no. 21 of the complaint)  AP: - <b>11,73,594/-</b>  (As per page no. 47-53 of complaint)

**The complainant in the above complaints have sought the following reliefs:**

1. Direct the respondent to pay interest for every month of delay @ 24% p. a .
2. Direct the respondent to complete the project in expeditious manner and offer the possession with all the promised amenities and facilities and to the satisfaction of the complainant.

**Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**  
TSC Total Sale consideration  
AP Amount paid by the allottee(s)

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4. The aforesaid complaints were filed against the promoter on account of violation of the buyer's agreement against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of handover the physical possession of the allotted unit along with delayed possession charges and others.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2088/2024 titled as Late Sangeeta Nagpal through Sourabh Nagpal vs M/s Ansal Housing Limited & Anr.** are being taken into consideration for determining the rights of the allottee(s) qua of handover the physical possession of the allotted unit along with delayed possession charges and others.

**A. Unit and project related details:**

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

**CR/2088/2024 titled as Lt. Sangeeta Nagpal vs M/s Ansal Housing Limited & Anr.**

Sr. No.	Particulars	Details
1.	Name of the project	"Ansal Hub 83 Boulevard", Sector-83, Gurugram

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2.	Total area of the project	2.60 acres
3.	Nature of the project	Commercial complex part of residential colony
4.	DTCP license no.	113 of 2008 dated 01.06.2008 valid up to and 71 of 2010 dated 15.09.20210 valid up to
5.	Name of licensee	Buzz Estate Pvt. Ltd. & others
6.	Registered/not registered	Registered vide no. 09 of 2018 dated 08.01.2018 for 2.80 acres Valid up to 31.12.2020
7.	Unit no.	F-009 [pg. 21 of complaint]
8.	Area of the unit	364 sq. ft. [pg. 21 of complaint]
9.	Date of execution of BBA	21.04.2015 [Pg. 17 of complaint]
10.	Possession clause	<p><b>Clause 30.</b></p> <p><i>30. 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 31. Further, there shall be a grace period of 6 months allowed to Developer over and above the period of 2 months as above in offering the possession of the Unit.</i></p> <p style="text-align: right;"><i>(Emphasis supplied)</i></p>

		[Page 28 of complaint]
11.	Due date of possession	21.04.2019  (Note: 42 months from date of BBA i.e., 21.04.2015 as the date of start of construction is not known + 6 months grace period is allowed unconditionally)
12.	Sale consideration	Rs.35,30,232/-  [As per page 21 of complaint]
13.	Total amount paid by the complainant	Rs. 11,70,251/-  [As per receipts at page 43-47]
14.	Notices to sign addendum agreement	01.06.2023, 03.08.2023, 11.09.2023  [As per page 49-55 of complaint]
15.	Cancellation letter dated	12.12.2023  [As per page 61 of complaint]
16.	Offer of possession	Not offered
17.	Occupation certificate	Not obtained

**B. Facts of the complaint:**

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

- i. That on 29.04.2013, original allottees Mr. Sourabh Nagpal and Late Mrs. Sangeeta Nagpal, wife of the complainant Mr. Sourabh Nagpal booked a shop in the project named "ANSALS HUB 83 Boulevard" in Sector 83, Gurugram. Accordingly, the shop bearing unit no. F-010 admeasuring 364 sq. ft. in the project named "Ansals HUB 83 Boulevard" in Sector 83, Gurugram, was allotted to the original allottee.

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- ii. That the original co-allottee Late Mrs. Sangeet Nath alias Sangeeta Nagpal, was died on 18.05.2023, she left behind the following family members:
- Aditya Nagpal (Son) aged about 17 years.
  - Sourabh Nagpal (Husband) aged about 49 years (Co-allottee of the shop).
- iii. Being guardian of a minor son, complainant Mr. Sourabh Nagpal is fully competent to become legal representative of his deceased wife (original allottee) Late Mrs. Sangeeta Nagpal.
- iv. On 21.04.2015, builder buyer agreement (BBA) was entered into between the parties wherein as per clause 30, the developer should offer possession of unit within 42 months with a grace period of 6 months from date of execution of allotment letter or the date of obtaining all the required sanctions and approval necessary for the commencement of construction, whichever is later.
- v. The complainant made all the payments as per payment plan and also as per clause 30 of the BBA, the committed date of offering the possession was 21.10.2018 but even after a delay of almost 5 years and 3 months, the project has not yet been completed and the respondents are still not offering the possession, which is a clear violation of provisions of BBA and amounts to breach of BBA on the part of the respondents.
- vi. That vide public notice dated 04.05.2023, the respondent no. 2 namely Samyak Projects Private Limited, informed the complainant that he is the legal owner of the project land and has granted development rights to the respondent no. 1 namely Ansal Housing Limited vide Memorandum of Understanding, dated 12.04.2013 ("MoU"), for the construction and development of a commercial complex over the Project Land. The respondent no. 2 further claimed that he has terminated the said MoU with respondent no. 1 and got the possession



as well as the right, by the competent authority, to sell the units/areas in the project and collect monies from the allottees apart from completing the construction of the Project namely Ansals HUB 83 Boulevard. Respondent No. 2 also asked the complainant to submit his KYC documents and also threatened that his rights in the project would be deemed to have been forgone if KYC documents were not submitted by 20.05.2023. It is pertinent to mention here that the respondent no. 2 is a confirming party to the builder buyer agreement and is very well aware of the allotment of the said shop to the allottee but still he has compelled the allottee to provide KYC documents just to harass the complainant.

- vii. Again vide letter dated 01.06.2023, the respondent no. 2, asked the allottee to submit KYC documents and sign an arbitrary and unlawful addendum agreement with respondent no. 2 and threatened that if allottee don't submit KYC documents and don't sign the addendum agreement within 15 days, their rights in the said project would be deemed relinquished.
- viii. On 10.06.2023, the complainant visited the project site and met Mr. Ajay Jain of respondent no. 2 and submitted the KYC documents as asked in letter dated 01.06.2023. But instead of providing receipt against the KYC documents, respondent no. 2 pressurized the complainant to execute addendum agreement with them and make 95% payment of the total consideration amount. When complainant asked the respondent no. 2 to raise the demand of 95% of the consideration amount in written, he refused to provide anything in written.
- ix. Out of the total cost of the said unit a sum of Rs. 11,73,594 /- has already been paid by the original allottee to the respondent no. 1 as per the payment plan and balance amount of 70% was to be paid at the time of

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possession, but respondent no. 2 is asking the complainant to pay 95% of total sales consideration, which is much more than the balance amount to be paid by the complainant, this conduct of the respondent no. 2 is not only unethical but also arbitrary and illegal.

- x. Again vide letter dated 03.08.2023, the respondent no. 2, asked allottee to provide KYC documents and sign an addendum agreement with respondent no. 2 and again threatened that if allottee doesn't sign the addendum agreement within 15 days. Their allotment would be cancelled. In this way, the respondent no. 2 is arbitrarily and unlawfully compelling the allottee to enter into an unlawful and unilaterally drafted agreement with him, which is a clear violation of the provisions of The Indian Contract Act, 1872.
- xi. In continuation of notices dated 01.06.2023 and 03.08.2023, the respondent no 2 namely Samyak Projects Private Limited, again issued an unlawful and illegal reminder notice dated 11.09.2023 reminding and forcing allottee to sign the arbitrary "addendum agreement" to continue their rights in the said project and also threatened the allottee that the allotment of the said shop would be automatically cancelled if they don't sign the addendum agreement within 15 days.
- xii. As the builder buyer agreement dated 21.04.2015 has already executed in respect of booked units between the original allottee and respondents, in which respondent no. 2 is the confirming party. The respondent no. 2 is still arbitrarily and unlawfully forcing complainant/original allottee to sign and execute arbitrary addendum agreement for the purpose of escaping from standing liability of payment of accrued delayed possession charges for the period of delay in delivery of possession. A valid contract can be executed only with free consent of both parties.

- xiii. That vide email dated 17.08.2023, the complainant shared the KYC documents and replied to the notice sent by the respondent no. 2 through email and also raised some queries regarding the addendum agreement, but received no reply. Again, vide email dated 29.08.2023 and 11.09.2023, the complainant reminded the respondent no. 2 to reply but has not received any reply yet. Also vide letter dated 11-09-2023 through Speed Post, complainant sent his reply to the respondent no.2.
- xiv. The complainant was shocked to know that instead of offering possession vide notice dated 12.12.2023, the respondent no. 2. namely Samyak Projects Private Limited, unilaterally, arbitrarily and unlawfully cancelled the allotment of the said unit and claimed to be free to create any or all third-party rights in the said unit. It is pertinent to note here that the allottee has made all the payment on time as per the payment plan mentioned in the builder buyer agreement and if the unit is cancelled and third-party rights are created, an irreparable loss and damage shall be caused to the complainant.
- xv. Vide letter dated 21.12.2023, complainant replied to the legal notice of the respondent against the cancellation of the allotment of the unit under question and asked the respondent no. 2 to withdraw the legal notice dated 12.12.2023 within 5 days. But the respondent no. 2 didn't take any action on the reply of the complainant.
- xvi. It is interesting to note here that on one hand respondent no. 2 is claiming that he has got the development rights of the said project without even showing any evidence supporting his claim on the other hand respondent no. 1 is silent on this, but when complainant asked both the respondents who will take the liability to pay the interest for the delay in handing over the possession and compensation for the

mental agony and harassment caused to the complainant because of fault on the part of the respondents, both the respondents shifted the liability on each other and no one is ready to accept the liability for the delay in possession handover. It seems that both the respondents colluded and playing hand in gloves with each other to confuse the allottees and take benefit of this confusion to escape their liabilities towards the allottees.

- xvii. 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.
- xviii. 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 units 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 the respondents has still not rectified his defects and not fulfilled their obligations as per the Builder Buyer's Agreement. Hence, the present complaint.

**C. Relief sought by the complainant:**

9. The complainant has sought following relief(s):
- i. Direct the respondents to pay interest for every month of delay @ 24% p.a.
  - ii. Direct the respondents the respondents to complete the project in expeditious manner and offer the possession along with all the promised amenities and facilities and to the satisfaction of the complainant.

10. On the date of hearing, the authority explained to the respondents/promoters 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:**

11. The respondent no. 1 has contested the complaint on the following grounds:

- i. The complainant 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 21.04.2015 was signed between the parties.
- ii. 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 2015. 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.
- iii. 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 2017 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.
- iv. The builder buyer agreement provides for a penalty in the event of a delay in giving possession. 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 8 years after it was agreed upon by both parties.

- v. The respondent had in due course of time obtained all necessary approvals from the concerned authorities. 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.
- vi. 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. 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.
- vii. The respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. 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.

- viii. The answering respondent has clearly provided in clause 34 the consequences that follow from delayed possession. The complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.
- ix. Admittedly, the Complainant had signed and agreed on builder buyer agreement dated 21.04.2015. 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.
- x. 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. Ltd to jointly promote, develop and market the proposed project being developed on the land as aforesaid."*
- xi. 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.
- xii. In an arbitral proceeding before the Ld. Arbitrator Justice A.K Sikri, M/s Samyak Project Pvt. has taken over the present project the answering respondent for completion of the project and the respondent has no locus or say in the present project.

**E. Reply by respondent no.2**

12. The respondent no. 1 has contested the complaint on the following grounds:

- i. The respondent no.2 i.e., Samyak Projects Pvt. Ltd. and respondent No.1 i.e., Ansal Housing Constructions Ltd. entered into a Memorandum of Understanding dated 12.04.2013 in respect of construction and development of a Project known as ANSAL BOULEVARD 83, situated on a land admeasuring 2.60 acres, situated in Village Sihi, Tehsil & District Gurgaon in Sector - 83 of Gurgaon, Manesar forming a part of License No. 113 of 2008 dated 01.06.2008 and License No. 71 of 2010 dated 15.09.2010. As per the said MoU, the respondent no.1 being the Developer, made sales of various units to the allottee, executed builder buyer agreement with allottee and also received sale consideration amount from the allottee. The respondent no.2 was not a party to any builder buyer agreement executed between respondent no.1.
- ii. The perusal of the builder buyer agreement at page 3 (clause D) would show that M/s Samyak Projects Pvt. Ltd. possesses all the rights and unfettered ownership of the said land whereupon the projects namely boulevard 83, Sector 83 Gurgaon, Haryana is being developed.
- iii. As respondent no.1 failed to fulfil its obligation under the said MoU and construction of the said project was substantially delayed. Therefore, due to abject failure of respondent no.1 to perform its obligations under the said MoU and to construct the said project, the respondent no.2 being left with no other option, terminated the said MoU vide termination notice dated 10.11.2020.

- iv. The respondent no.2 also published a public notice in the newspaper dated 16.12.2020 informing the public at large about the termination of said MoU by respondent no.2 due to breach of the terms of MoU by the respondent no.1.
- v. The respondent no.1 challenged the termination of MoU before the Hon'ble High Court of Delhi in OMP (I) (COMM) No.431 of 2020 in the matter titled as "Ansal Housing Limited vs. Samyak Projects Private Limited" under Section 9 of the Arbitration and Conciliation Act, 1996. The Hon'ble High Court of Delhi was pleased to refer the matter to Arbitration and appointed Justice A.K Sikri, as the Sole Arbitrator and appointed Local Commissioner.
- vi. The relevant extract of the order dated 02.09.2022 is reproduced herein below for the sake of reference:
- vii. The learned arbitrator rejected the prayer of respondent no.1 for stay on the termination of MoU and directed the respondent no.1 to handover the possession of said Project on 14.10.2021 to respondent no. 2 for taking over the balance construction of the said project. The Learned Arbitrator vide Order dated 02.09.2022 held that respondent no.2 shall also be free to approach the allottees and demand and/or collect monies from them in respect of their units.
- viii. The respondent acting in good faith and in the interest of public at large, in benefit/interest of the allottees of the aforementioned project, the answering respondent sought to authenticate and verify the veracity of the agreements/allotments made by AHL and urged the allottees including the complainants vide various Emails to come forward for KYC process and show bona fide by paying the balance amounts payable due as the project stood on the verge of completion.

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- ix. It came to the knowledge of respondent no.2 that respondent no.1 has done several dummy transactions by creating fake profiles of allottees. Thus, the respondent no.2 issued notice dated 04.05.2023 to the complainant for verification of the complainant and legitimacy of the transaction undertaken by respondent no.1.
- x. Notice dated 04.05.2023 to the complainants in order to comply with the verification process. It was specifically mentioned that, in case no response is received on or before 20.05.2023 from the allottees, then the allotment of the said unit bearing no. T-121 shall stand forfeited/cancelled. Despite numerous attempts to engage with the addressees of the complainants, no satisfactory response or compliance was received, leading to the cancellation of the allotment of said unit bearing no F-010 in question.
- xi. Respondent no.1 is registered as 'promoter' in respect of the said project with the Real Estate Regulatory Authority ("RERA"), respondent no. 2 requires a No Objection Certificate from the allottees for the purpose of carrying forth the development of the said project and obtain necessary permission from the RERA. Therefore, in order to change the developer of said project, the respondent no. 2 required written consent of the allottees of said project. In this regard, respondent no.2 issued notice dated 01.06.2023 and 03.08.2023 requesting the complainant to sign the addendum agreement with respondent no.2 to accept and acknowledge respondent No.2 as the new developer.
- xii. That more than 167 satisfied allottees after all the verification process executed the addendum agreement with the respondent no.2 wherein it was agreed that the allottees will not make any claim against respondent no.2 till the expiry of permitted period of completion of

- said project as granted by the relevant authorities. It was further agreed by the allottees that allottees will not initiate any civil, criminal or legal proceedings of any nature whatsoever against respondent no.2 before the expiry of the permitted period of completion of said project.
- xiii. As respondent no.2 was not a party to the builder buyer agreement executed with respondent no.1. The captioned complaint is liable to be dismissed against respondent no.2.
- xiv. That Ansal Housing Ltd in terms of its BBA dated 21.04.2015 with the complainant. It is pertinent to note that the delay in completion of the project is caused due to the malfeasance and negligence of the M/s Ansal Housing Ltd. Not on the part respondent no.2, because the construction and development of the said project was undertaken by M/s Ansal Housing Ltd.
- xv. The respondent no.2 has proceeded to commission experts who are in the process of determining the status of the construction and the further steps / construction necessary to complete the project, respondent no.2 is making its best endeavours to ensure that the progress of the said project can be fast-tracked. However, the pace of development of said Project is being affected by frivolous and premature challenged being made against the efforts of respondent no.2.
- xvi. That after fully understanding that respondent no. 2 as a land owner have their limited liabilities to the extend provided the land only and as a confirming party and sign builder buyer agreement without having any obligation towards completion and construction and financial liability in the project and builder buyer agreement.



- xvii. That BBA dated 21.04.2015 which was signed and executed without coercion or any duress cannot be called in question today. the complainant has mischievously impleaded the present applicant as one of the respondents in the present complainant and the possibility of some foul play on the part of the complainant cannot be ruled out. That a bare glimpse at the documents submitted by the complainant would reveal that he does not have any privity of contract with the present respondent no 2 & respondent no 2 is neither has any responsibility regarding the paying any delay payment charges nor responsible for handing over physical vacant possession to the complainant after obtaining occupation certificate from the component authority under entered into a contract with Ansal i.e., respondent no 1.
- xviii. It is therefore most respectfully prayed that this Learned Authority may be pleased to dismiss the complaint as against the applicant in the interest of justice.
- xix. That the allottees is interested in the refund of the amount paid by them to the erstwhile AHL. The present respondent no. 2 shall may be refund the actual amount paid by any such allottees without any interest, only to settle the matter as the applicant is not legally bound to indemnify the loss, as it was the sole duty of the AHL.

13. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties as well as the written submission of the complainant.

**F. Jurisdiction of the authority:**

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14. The authority observes that it has territorial as well as 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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 allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee 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 complainant at a later stage.

**G. Findings on objections raised by the respondent**

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

13. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by 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, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and demonetization. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 21.04.2019 (including a maximum extension of 6 months as grace period). The events such as various orders by Punjab and Haryana High Court were prior to execution of agreement and NGT ban and demonetization were for a shorter duration of time and were not continuous as there is a delay of more than 6 years and do not impact on the project being developed by the respondent. Even today no occupation certificate has been received by the respondent. Thus, the promoters/respondents cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.
14. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown came into effect on 23.03.2020 whereas the due date of handing over of possession was (21.04.2019) much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession. Hence, the plea taken by the respondent stands rejected.

**H. Findings on relief sought by the complainant:****H.I Direct the respondents respondents to pay interest for every month of***A*

delay @ 24% p.a.

**H.II Direct the respondents the respondents to complete the project in expeditious manner and offer the possession along with all the promised amenities and facilities and to the satisfaction of the complainant.**

15. The complainant was allotted a unit in the project of respondent "Ansal Hub 83 Boulevard", in Sector 83, Gurugram for a total sum of Rs. 35,30,232/-. An agreement to sell dated 21.04.2015 was executed between the respondent no. 1 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 11,73,594/-.
16. However, in the said BBA it is specifically written that the respondent no. 1 & 2 have entered into a memorandum of agreement. 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 obtaining all the required sanctions and approval sanctions and approval necessary for commencement of construction, whichever is later.
17. 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.

18. 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.
19. The authority is of the view that the builder buyer's agreement was signed by the complainants and the respondent no. 1. In the builder buyer agreement, it was specifically mentioned that respondent no. 2 (land owner) and respondent no. 1 (developer) entered into a MoU dated 12.04.2013 whereby the development and marketing of the project was to be done by the respondent no. 1 in terms of the license/permissions granted by the DTCP, Haryana. Although the respondent no.2 i.e., Samyak Projects Pvt. Ltd. cancelled the agreement vide termination notice dated 10.11.2020 and the matter is subjudice before the arbitral tribunal appointed by Delhi High Court vide order dated 22.01.2021. It is relevant to refer the definition of the term 'Promoter' under the section 2(zk) of the Real Estate (Regulation and Development) Act, 2016.

*"2. Definitions.-*

*(zk) "promoter" means*

*a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

*XXXXXXXXX"*

20. The authority observes that landowner is covered by the definition of promoter under sub clause (i) or (ii) of section 2(zk). A person who constructs or causes to be constructed a building or apartments is a promoter if such building or apartments are meant for the purpose of selling to other persons. Similarly, a person who develops land into a project i.e., land into plots is a promoter in respect of the fact that whether or not the person also constructs structures on any of the plots. It is clear that a person develops land into plots or constructs building or apartment for the purpose of sale is a promoter. The words, "causes to be constructed" in definition of promoter is capable of covering the landowner, in respect of construction of apartments and buildings. There may be a situation where the landowner may not himself develops land into plots or constructs building or apartment himself, but he causes it to be constructed or developed through someone else. Hence, the landowner is expressly covered under the definition of promoter under Section 2 (zk) sub clause (i) and (ii).
21. Further, the authority observes that the occupation certificate for the project is yet to be received and the project stands transferred to the respondent no. 2 who is now responsible to complete the same. In absence of any final arbitration award the Authority cannot deliberate up on the ratio of financial liability between the promoters. In view of the above, the liability under provisions of Section 18(1) of the Act & Rules read with builder buyer



agreement shall be borne by both the respondents jointly and severally and the liability to handover the unit shall lie with respondent no. 2.

22. 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 herein intends to continue with the project and is seeking delayed possession charges against the paid-up amount as provided under the section 18(1) of the Act. 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, —*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or  
(b) 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 of 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)**

23. In the present complaint, the complainant is seeking delayed possession charges along with interest on the amount paid. Clause 30 of the flat buyer agreement provides for handing over of possession and is reproduced below:

***The Developer shall offer possession of the Unit any time, within a period of 42 months from the date of execution of this 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 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.*

24. As per above-mentioned clause the promoter has proposed to handover the possession within a period of 42 months from the date of execution of this 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 execution of agreement i.e., 21.04.2015 in absence of date of commencement of construction. The period of 42 months expired on 21.10.2018. Since in the present matter the agreement incorporates unqualified reason for grace period / extended period of 6 months in the possession clause accordingly, the grace period of 6 month is allowed to the promoter being unqualified. Hence, the due date comes out to be 21.04.2019.
25. It is matter of record that respondent no. 2 filed an affidavit dated 03.09.2024 to state that third party rights against the unit in question has already been created and the said unit has already been sold to another allottee. Furthermore, upon perusal of documents placed on record the Authority observes that the complainant have paid an total amount of Rs. 11,73,594/- against sale consideration of Rs. 35,30,232/-. According to payment plan opted by the complainant, 30% of the sale consideration was to be paid before offer of possession and remaining 70% on offer of possession and accordingly, the complainants have paid 34% of the sale consideration before offer of possession which shows that the complainant has no default on his part and the termination issued by the respondent no. 1 is invalid and hence hereby set aside.



26. It is a matter of record that Respondent No. 2 has filed an affidavit dated 03.09.2024, wherein it has been stated that third-party rights in respect of the unit in question have already been created, and the said unit has been sold to another allottee. Upon perusal of the documents placed on record, it is observed by the Authority that the complainant has paid a total sum of Rs.11,73,594/- towards the total sale consideration of Rs.35,30,232/-. As per the payment plan opted by the complainant, 30% of the sale consideration was required to be paid prior to the offer of possession, and the remaining 70% was to be paid upon the offer of possession. The records reveal that the complainant has paid approximately 34% of the sale consideration prior to the offer of possession, thereby evidencing that there is no default attributable to the complainant. Accordingly, the termination of the allotment by respondent no. 1 is found to be invalid and is, therefore, hereby set aside.

27. **Admissibility of delay possession charges along with 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.*

28. 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

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and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

29. 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—*

- (i) 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;*
- (ii) 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;"*

30. 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., 18.09.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
31. On consideration of the documents available on record and submissions made regarding contravention of 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 builder buyer agreement. The respondent did not offer possession of the subject unit on time. It is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the builder buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee is liable for interest at the rate of 10.85%

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(the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 for every month of delay from due date of possession i.e., 21.04.2019 till offer of possession plus 2 months or actual handover whichever is earlier after obtaining the occupation certificate from the competent authority, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.

**I. 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):
- i. Cancellation letter dated 09.02.2024 is set aside being bad in eyes of law. As the third-party rights are created qua the unit, the respondents are directed to allot similarly situated alternate unit of same size at the same rate and same area admeasuring to the complainants.
  - ii. The respondents /promoters jointly and severally are directed to pay interest to the complainant against the paid-up amount of Rs. 11,73,594/- at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 21.04.2019 till the date of offer of possession plus two months after obtaining the occupation certificate or actual handing over possession whichever is earlier, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.
  - iii. The respondent is directed to offer the valid offer of possession of the allotted unit within 2 months after obtaining occupation certificate from the competent authority and thereafter execute conveyance deed in favor of complainant within 3 months from the date of obtaining occupation certificate.

- iv. The complainant w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- v. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges within 30 days and thereafter the complainant are directed to pay outstanding dues, if any, within next 30 days and the respondent shall handover the physical possession of the allotted unit complete in all aspects as per specifications of builder buyer's agreement.
- vi. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vii. The respondent shall not charge anything which is not the part of BBA.
- viii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

33. Complaint stands disposed of.

34. File be consigned to the registry.

  
**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.09.2025