

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

Complaint no.: 277 of 2025
Date of decision:- 12.11.2025

Tarun Kumar
R/o: - 331, Scetor-11, Vasundhara,
Ghaziabad, Uttar Pradesh, 201012.

Complainant

Versus

1. M/s. Ansal Housing Limited
Regd. office: 2nd Floor, Ansal Plaza, Sector-1,
Near Vaishali Metro Station, Vaishali,
Ghaziabad, Uttar Pradesh-201010.

**Respondent
no.1**

2. M/s. Samyak Projects Pvt. Ltd.
Regd. Office: 111, Floor-1st, Antriksh Bhawan, 22,
K.G. Marg, New Delhi-110001.

**Respondent
no.2**

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Priyanka Agarwal (Advocate)

Complainant

Amandeep Kadyan (R-1)

Respondents

Shankar Vij (R-2)

ORDER

1. The present complaint dated 22.01.2025 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 as provided under the provision 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 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:

Sr. No.	Particulars	Details
1.	Name of the project	Ansal Heights 86
2.	Location of the project	Sector-86, Gurugram.
3.	Nature of the project	Group Housing
4.	DTCP license no.	License no. 48 of 2011 Dated-29.05.2011
5.	Registered/not registered	Not Registered
6.	Allotment letter	Not on record
7.	Unit no.	C-0803, Type-3BHK. (As on page no. 22 of complaint)
8.	Unit Area	1895 sq.ft. [Sale Area] (As on page no. 22 of complaint)

9.	Flat Buyer's Agreement	26.09.2012 (As on page no. 19 of complaint)
10.	Possession clause	Clause 31 <i>The Developer shall offer possession of the Unit any time, within a period of 42 months from the date of execution of the Agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force-majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 42 months as above in offering the possession of the Unit.</i> [Emphasis supplied] (As on page no. 27 of complaint)
11.	Due date of possession	26.09.2016 [Calculated 42 months from the date of execution of the agreement plus 6 months grace period]
12.	Sale consideration	Rs.64,91,745/- (As on page no. 22 of complaint)

13.	Total amount paid by the complainant	Rs.71,92,698.47/- (As per Customer Ledger dated 03.12.2021 on page no. 39 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - I. That the respondents launched a residential group housing project in the name and style of "Ansal Heights 86" located at Sector-86 Gurugram, and heavily advertised it through mass media.
 - II. That the complainant was subjected to unethical trade practice as well as subject of harassment, Flat buyer agreement clause of escalation cost, many hidden charges which will forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided.
 - III. That the executed Builder Buyer Agreement between the respondents and complainant, mentions in Developer's representations, that the Confirming Party- 1 has transferred his rights to jointly promote, develop and market the proposed project being developed with respondent those all arrangements create doubt & suspicion. M/s Ansal Housing & Construction Ltd has legal right to collect money from allottees against the C-0803, Tower-C, "Ansal Heights, 86", Gurugram and have legal & valid license to develop the project.
 - IV. That based on promises and commitment made by the respondent, the complainant booked a 3 BHK flat admeasuring super area 1895 sq. ft.

along with 2 covered Car parking space, and was then allotted a unit bearing no. C-0803, Tower-C in Residential Project "Ansal Heights 86", Sector 86, Gurugram, Haryana.

- V. That the the Flat Buyer Agreement was executed between M/s Ansal Housing Ltd., M/s Samyak Projects Pvt. Ltd. and the complainant on 26.09.2012. The respondent created a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.
- VI. That the total cost of the said flat is Rs.72,20,519.50/- including PLC, EDC, IDC, Car Parking and Club Membership excluding taxes (as per BBA Annexure-A on page No. 17 of BBA) and the complainant paid total amount against sale consideration of Rs.71,92,698.47/- including taxes by the complainant in time bound manner.
- VII. That according to the statement of account, the complainant paid a sum of Rs.71,92,698.47/- (including taxes) to the respondent till date and the respondent demanded more than 95% amount without doing appropriate work on the said project, which is illegal and arbitrary.
- VIII. That as per section 19 (6) the Act, 2016, the complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement and even signed a one sided Buyer's Agreement after demanding more than 30% amount of total sale consideration. The buyer was bound to sign the BBA and agreed to the one sided clause of BBA like Escalation cost, Force majeure, clause of due date of possession, PLC, club charges, other hidden charges.
- IX. That the complainant booked apartment on 03.12.2011 (more than 10

year ago) and as per the clause 31 of the Agreement dated 26.09.2012, the respondents were liable to handover the possession of the complainant's unit within 42 months from the date of start of construction or from the date of execution of the BBA, whichever is later. Thus, the due date of possession comes out to be 26.03.2016.

- X. That the complainant had opted for construction linked plan, as per which, the complainant was liable to make payment in accordance with the development progress in the project. However, the respondent have already raised the demand of more than 95% of the total sale consideration, which has duly been paid by the complainant and only the last demand towards offer of possession is pending, however, the project in question is still incomplete.
- XI. Furthermore, it is pertinent to mention that the respondent illegally charged an interest penalty of Rs.2,00,000/- from the complainant, despite the fact that the respondent itself is in default.
- XII. That the builder started construction work almost 10 year back still respondent want to more year to complete the project, making adverse effect on the construction quality of project. During the last 10 years period, all the approvals issued by the competent authority got expired in 2018 and till date the respondent has not applied for revalidation of license and approval.
- XIII. That as the booking and allotment of the apartment was done on 2011 and due date of possession as per BBA 26.03.2016 before the GST respectively which was prior to the coming into force of the GST Act, 2016 and it is submitted that the complainant is not liable to give extra tax amount to the respondent and the respondent is also liable pass on anti-profiteering benefit to the complainants.

- XIV. That the respondent has rudely and cruelly dashed the savored dreams, hopes and expectations of the complainant to the ground and the complainant is eminently justified in seeking Delay possession charges from the due date of possession i.e. 26.03.2016 to till date of physical possession of the unit after obtaining Occupation Certificate.
- XV. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured unit in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent. Consequently, injuring the interest of the buyers including the complainant who has spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):-
- Interest for every month of delay of possession at the prevailing rate of interest as per the Act, 2016.
 - Direct the respondent to get the Occupation certificate and immediately hand over physical possession of the unit in a habitable condition with all the amenities mentioned in brochure.
 - Direct the respondent to pay the delayed possession charges on the amount paid of Rs.71,92,698.47/- (including tax) along with pendent lite and future interest from 26.03.2016 to till actual physical possession thereon @24% (as charged by the respondent if delayed by the complainants in any instalment).
 - Direct the respondent to quash the one sided clauses from the BBA.

- v. Pass an order for payment of GST amount levied upon the complainant and taken the benefit of Input Credit by the builder (anti-profiteering).
 - vi. Refund the amount of Rs.2,00,000/- illegally charged as interest by the respondent.
5. Vide proceedings dated 24.09.2025, the respondent no.1 i.e., M/s. Ansal Housing Limited was proceeded against ex-parte and the parties were directed to file written submissions within a period of 15 days.
- D. The respondent no.1 i.e., M/s Ansal Housing and Construction Limited has made the following submissions:**
- I. That the complainants had booked shop bearing no. C-830 in their own name in an upcoming project "Ansal Heights", Sector 86, 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 26.09.2012 was signed between the parties as per claim of the complainant.
 - II. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2012 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.
 - III. 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.

- IV. That the answering respondent has adequately explained the delay. 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.
- V. 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.
- VI. 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 Authority.

- VII. That the complainant had signed and agreed on Builder Buyer Agreement dated 23.10.2019. 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.
- VIII. 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 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."*
- IX. 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.
- X. That in the arbitral proceedings 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.
- XI. That in order to give a complete picture of the dispute ongoing, it is relevant to brief out the facts of the case from the very outset. It is

submitted that M/s Samyak Projects Private Limited, is the title holder the plot of land, admeasuring 2.60 acres equivalent to 20 Kanal 16 Marlas comprised under Kewat No. 101 Khata No. 110 Rect. No. 58 Killa No. 20/2 min (1-3), 20/ 1/2min (0-8), 21/1/1 1min (2-9) Rect. No. 59 Killa No. 16/1/2 (0-19), 16/2/1 (2-11), 25/1/2 min (5-17), total land admeasuring 13 Kanal 7 Marlas and Khewat No. 292 Khata No. 316 Rect. No. 59 Killa No. 25/1/3min (0-5) 25/2min (0-8), Rect. No. 62 Killa No. 5min (1-18) total land admeasuring 2 Kanal 11 Marlas and Khewat No. 293 Khata No. 317 Rect. No. 58 Killa No. 20/1/1min(1-8) Rect. No. 59 Killa No. 16/1/1 (3-10) total land admeasuring 4 Kanal 18 Marlas situated in Village Sihi, Tehsil & District Gurgaon in Sector 83 of Gurgaon Manesar Urban Complex Master Plan.

- XII. The respondent no.2 approached the respondent no.1 for development of a commercial project to be developed over the said parcel of land, and pursuant to several discussions, negotiations and after bargain, respondent no.1 entered into a Memorandum of Understanding with respondent no.2 on 12.04.2013, for the purpose of development and construction of a commercial complex on the aforesaid parcel of land.
- XIII. At the time of execution of the MoU i.e., in April 2013, respondent no.1 also paid a Non-Refundable Security Deposit of Rs.4,00,00,000/- to the respondent no.2, as per the understanding of the parties under Clause 13 of the said MoU, receipt of which was acknowledged by respondent no.2
- XIV. 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 respondent no.1 and respondent

no.2 respectively.

- XV. The sharing *ratio* in the MoU was also framed/designed in such a manner, that for the first 75 crores received as sale consideration, respondent no.2 shall get 75% of the same and merely 25% comes to respondent no.1, as per Clause 15 of the MoU. The final sharing *ratio* was 45% to respondent no.2 and 55% to respondent no.1, hence respondent no.1 was entitled to receive a substantial amount at the later stage of the construction.
- XVI. That the respondent no.1 also had financially assisted respondent no.2 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.
- XVII. That the respondent no.1 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, labours etc. are done through cash only and banning the same, adversely affected the construction in the year 2016-17. 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.
- XVIII. In 2016, during the Jat Agitation in Haryana, trains and buses were

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stopped & burnt, which not only prevented innumerable labours from reaching the site but also the tractors & trollies of suppliers which highly affected the pace.

- XIX. 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.
- XX. 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 labourers 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 labourers and also since the Covid -19 was also at its peak, pace was much slower if compared to pre-corona times.
- XXI. When respondent no.2 had enough of the share from the sale proceeds, in order to arm twist respondent no.1, sent a notice for termination dated 10.11.2020, and terminated the MoU dated 12.04.2013.
- XXII. Pursuant to the illegal termination, respondent no.1 approached the Hon'ble Delhi High Court under Section 9 of the Arbitration & Conciliation Act 1996, and sought an interim direction to restrain respondent no.2 from creating any third-party interest. Simultaneously, respondent no.1 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.

- XXIII. 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.
- XXIV. 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).
- XXV. Although, respondent no.1 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 respondent no.2 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.
- XXVI. That in compliance of the Order dated 13.10.2021 of the Arbitral Tribunal, the physical possession of the project site was handed over by respondent no.1 to respondent no.2 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 respondent no.2 *via* Google Drive, *vide* Email dated 21.10.2021.

- XXVII. Furthermore, it was undertaken by respondent no.2, 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.
- XXVIII. During the proceedings held in 11.10.2022, respondent no.1 had informed the Arbitral Tribunal, that some of the allottees of the subject project are approaching it with the grievances' that respondent no.2 is not recognising their rights as flat buyers, and is instigating those allottees to file cases against respondent no.1. On such information, respondent no.2 made a baseless excuse, of there not being a Tripartite Agreement (*between the Samyak, Ansal and the Allottee*), and therefore, the respondent no.2 is not recognising the allottees. This fact is recorded in the Order dated 11.10.2022.
- XXIX. Pertinent to mention, that in terms of the MoU dated 12.04.2013, respondent no.1 was authorised to enter into Agreement(s) with any allottee, and there was no requirement for ratification of the respondent no.2, being a landowner. At the threshold after the execution of the MoU, there were some agreements, wherein, respondent no.2 being the Landowner, had also affixed its seal in the Builder – Buyer Agreements; however, after sometime, respondent no.1 was executing Bilateral Agreements with the Allotees, on the strength of the MoU, as respondent no.2 was not cooperating. Furthermore, those allottees have also made the payments through banking channel to respondent no.1, and all these details, be it the Builder Buyer Agreement and the Customer Ledger, are already provided to respondent no.2 via the Google Drive sent through email on 21.10.2021.

- XXX. A perusal of the Order dated 11.10.2022, makes it abundantly clear, that the Arbitral Tribunal, had explicitly directed respondent no.2 to not create any third party rights over any unit, until and unless this issue of bilateral agreement is resolved.
- XXXI. Furthermore, on 04.05.2023, in order to resolve the abovementioned, it was further directed by the Arbitral Tribunal to respondent no.2 to visit the office of respondent no.1 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 respondent no.2 also visited the Office of respondent no.1 on 17.05.2023; however, despite verifying all the documents, neither any clarity was given by respondent no.2, nor respondent no.2 desisted from its *mala fide* actions.
- XXXII. 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 respondent no.2. The attempt to sign addendum agreements with allottees by respondent no.2 is unnecessary and unwarranted. At the time of handing over the project site to respondent no.2, it was expressly mentioned, that respondent no.2 shall be entitled to only enter into agreements with new allottees and not with existing allottees. The agreements entered by respondent no.1 with the existing allottees are valid and subsisting, and therefore, there is no requirement signing any addendum agreement.
- XXXIII. The Arbitral tribunal in its Order dated 02.09.2022, has made it clear, that respondent no.2 shall communicate with the existing allottees only to the extent of collecting sale considerations from them. The act

of respondent no.2 to execute addendum agreement with the allottees goes completely against the Order(s) and undertaking given to the Arbitral Tribunal.

- XXXIV. 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 respondent no.2. It was further directed that respondent no.2 within a week of receiving such information, shall submit its comment with respect to those allottees, to which the dispute remains.
- XXXV. Undisputedly, the said list, along with all necessary credentials were supplied to respondent no.2 *vide* email dated 16.09.2023, however, till date, i.e., almost 7 months since supplying of such information, it has not replied or filed any comment citing objection to any such allotment. Hence, since it is unrebutted, it means that respondent no.2 has admitted all the allotment.
- XXXVI. Despite the abovementioned, respondent no.2 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.
- XXXVII. On 14.10.2023, when the project site was handed over to respondent no.2 for the balance construction work, respondent no.2 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 respondent no.2 was very limited, and it does not entitle respondent no.2 to issue cancellation letters to the allottees. By issuing these cancellation letters to the allottees, respondent no.2 has violated the Order dated 02.09.2022 of

the Arbitral Tribunal.

XXXVIII. Cancelling allotments are nowhere aiding the pace of construction, and is not only creating havoc amongst the allottees. The respondent no.2 was obligated to only complete the construction, and the project has not been handed over to respondent no.2; however, respondent no.2 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

XXXIX. The act of respondent no.2 to cancel the allotments and create third party rights is beyond the authority given by the Arbitral Tribunal, and therefore, all the acts of respondent no.2 to cancel the allotment and the creation of the third-party rights may be held as void, and illegal.

E. Reply on behalf of the respondent no.2 i.e., M/s. Samyak Projects Private Limited

6. The respondent no.2 i.e., M/s. Samyak Projects Private Limited has made following submissions:

- I. That the complainant filed the above-mentioned complaint against respondent no.2 i.e., M/s Samyak Projects Pvt. Ltd with respect to the Unit no. C-0803 in the project namely "Ansal Heights 86", Sector-86, Gurgaon.
- II. That it is submitted that the respondent no. 2 i.e. Samyak Projects Private Limited, having acquired the rights to develop the land on which the present project was to be constructed, entered into a Memorandum of Understanding "MOU" dated 06.09.2011 with respondent no.1 with respect to the construction and development of the present project under the name and style of "Ansal Heights-86" in Sector 86 of Gurgaon,

Manesar Urban Plan 2021. However, superseding the said MOU, the respondent no. 1 and 2 entered into a Joint Venture Agreement "JVA" dated 24.05.2013

- III. As per the clauses of the JVA, the entire scheme of development of the proposed project on the said Scheduled Property was to be carried out by respondent no.1 i.e. M/s. Ansal Housing Limited, at its own cost and expense including development of internal development services, commercial areas and other related developments, after taking all necessary approvals, sanctions/ permissions etc.
- IV. That it is equally important and pertinent to mention that as per clause 4.3 of JVA, , M/s Ansal Housing Limited shall be liable as mentioned as follows:
- "The Developer shall be responsible for compliance of all terms & conditions of the Licence and the provisions of Haryana Development and Regulation of Urban Area Act 1975 and rules made thereunder as well as Punjab Scheduled Road and Controlled Area Restriction of Unregulated Development Act 1965 or any other Bye-laws, Rules, Regulations, Orders etc. till the grant of final completion certificate to the Colony or relieved of the responsibility by DCP, Haryana whichever is earlier."*
- V. That as per the clause 9.2 of the said JVA it is the sole responsibility/ obligation of the respondent no.1 towards the buyers/allottees.
- VI. That as per clause 5 of MOU, the entire scheme of development of the project was to be carried out by M/s Ansal Housing Limited and at its own cost and expenses.
- VII. That as per the MOU, it was the sole responsibility of respondent no.1 to develop the project and handover the possession to the allottees. It is also submitted that it was respondent no.1 who received the consideration amount from all the allottees.
- VIII. That as per clause 37 of the Builder Buyer Agreement it is specifically mentioned that respondent no.1 only will pay the complainant for delay

in offering the possession.

- IX. It is also further submitted that there are no specific allegations in the complaint against the respondent no.2.
- X. The Authority has in its various decisions observed that M/s Samyak Projects is neither the primary party, nor has direct nexus in respect of the consideration of the unit with the decree holder. Moreover, it is the obligation of the party who has been benefited by the amount of consideration. Hence, it shall prejudice the interest of respondent no.2 as it has not received any amount toward the completion of the said project by respondent no. 1.
- XI. Moreover, it is further submitted that Arbitration proceedings with respect to the said project are pending before the sole Arbitrator Hon'ble Justice A.K. Sikri. It is equally important to bring to the knowledge of the Authority that a status quo has been maintained on the project by the Sole Arbitrator vide interim order dated 31.08.2021 till the final award is passed.
- XII. That there is no privity of contract between the respondent no.2 and complainant as it was the sole responsibility of the respondent no.1 to deliver the units to the allottees. Moreover, a status quo has been imposed by the learned Arbitrator on the project, the unit cannot be handed over to the complainant.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

F. Jurisdiction of the authority:

8. 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

9. 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

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)(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;

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

G. Findings on objections raised by the respondents**G.1 Objection regarding delay due to force majeure circumstances**

11. The respondent no.1 has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Punjab and Haryana High court, Hon'ble NGT, shortage of labour, demonetisation, outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the 'Flat Buyer Agreement was executed between the parties on 26.09.2012. As per clause 31 of the Agreement dated 26.09.2012, the due date for offer of possession of the unit

31.

The Developer shall offer possession of the Unit any time, within a period of 42 months from the date of execution of the Agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by Buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the Developer over and above the period of 42 months as above in offering the possession of the unit.

[Emphasis supplied]

12. As per clause 32 of the Flat Buyer Agreement dated 26.09.2012, the respondents undertook to offer possession of the unit to the complainant within a period of 42 months from the date of execution of the Agreement or within 42 months from the date of obtaining the required sanctions or approvals, whichever is later. The due date is construed from the date of execution of the agreement as the same is expressly available and the grace period of six months is also allowed to the respondents, being unqualified. Thus, the due date of possession comes out to be 26.09.2016.

13. The respondent no.1 have submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, shortage of labour etc but these were for a short period of time and are the events happening every year. The respondents were very much aware of these event and thus, they cannot be given any leniency based on the aforesaid reasons.

G.II Objection regarding no privity of contract between the respondent no.2 and complainant and that neither the respondent no.2 is a confirming party to the agreement for sale nor has ever received any consideration from the complainants.

14. The respondent no.2 has raised an objection that the respondent no.2 is not a party to the agreement and the agreement was executed between complainant and respondent no.1 and thus, there is no privity of contract between the complainant and the respondent no.2. The Authority observes that a Builder Buyer Agreement has been executed between the complainant, respondent no.1 and respondent no.2.
15. The Authority is of the view that there is privity of contract between the respondent no.2 and the complainant and it is the joint responsibility of both the respondents to complete and handover the unit to the complainant and also pay delayed possession charges to the complainant.

H. Findings on the relief sought by the complainant.

H.I Interest for every month of delay of possession at the prevailing rate of interest as per the Act, 2016.

H.II Direct the respondent to get the Occupation certificate and immediately hand over physical possession of the unit in a habitable condition with all the amenities mentioned in brochure.

H.III Direct the respondent to pay the delayed possession charges on the amount paid of Rs.71,92,698.47/- (including tax) along with pendent lite and future interest from 26.03.2016 to till actual physical possession thereon @24% (as charged by the respondent if delayed by the complainants in any instalment).

16. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainant was allotted a flat bearing no. C-0803, Type-3BHK, in the project "Ansal Heights" situated in Sector 86 of the respondents for a sale consideration of Rs.64,91,745/-. The Flat Buyer's Agreement dated 26.09.2012 was executed between the complainant and the respondents and therein the respondent no. 2 was the confirming party. As per clause 31 of the Agreement dated 26.09.2012, the respondents were obligated to complete the construction of the project and hand over possession of the subject unit by 26.09.2016. The occupation certificate for the project has not yet been obtained by the respondents from the competent authority.
17. The complainant intend to continue with the project and is 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. -

(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 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)

- 18. Due date of possession and admissibility of grace period:** As per clause 31 of the agreement dated 26.09.2012, the possession of the allotted unit was supposed to be offered within a period of 42 months from the date of execution of the Agreement or within 42 months from the date of obtaining the required sanctions or approvals, whichever is later. The due date is construed from the date of execution of the agreement as the same is expressly available and the grace period of six months is also allowed to the respondents, being unqualified. Thus, the due date of possession comes out to be 26.09.2016.

- 19. Payment of delay possession charges at prescribed rate of interest:** The complainant is 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]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

20. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases. 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., 12.11.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
21. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (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;"*
22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.85%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

23. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 31 of the agreement dated 26.09.2012, the possession of the subject unit was to be delivered by 26.09.2016. However, till date neither the occupation certificate has been received by respondents nor possession has been handed over to the complainant.
24. The Authority is of considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement dated 26.09.2012. Accordingly, it is the failure of the respondents to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
25. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents is established. As such, the allottee shall be paid by the respondents interest for every month of delay from the due date of possession i.e., 26.09.2016 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., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H.IV Direct the respondent to quash the one sided clauses from the BBA.

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26. The Authority observes that the complainant has failed to explain the said relief by not elaborating upon the requisite clauses of the buyer's Agreement which are one sided. Thus, the said relief becomes vague and is hereby declined.

H.V Pass an order for payment of GST amount levied upon the complainant and taken the benefit of Input Credit by the builder (anti-profiteering).

27. The complainant has sought the relief with regard to direct the respondent to give anti-profiteering credit/input tax credit to the complainants and charge the GST as per rules and regulations, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below.

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

28. As per the above provision, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. In the event, the respondent/promoter has not passed the benefit of ITC to the buyers of the unit in contravention to the provisions of section 171(1) of the HGST Act, 2017. The allottee is at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

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H.VI Refund the amount of Rs.2,00,000/- illegally charged as interest by the respondent.

29. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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.

I. Directions of the authority

30. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondents are directed to hand over the ^{actual} physical possession of the unit to the complainant within 2 months after obtaining occupation certificate
- ii. The respondents are jointly and severally directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 26.09.2016 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., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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.

- v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. The arrears of such interest accrued from 26.09.2016 till the date of order by the Authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules..
- vii. The respondents are directed to execute Conveyance Deed in favour of the complainant within a period of three months after obtaining the Occupation Certificate, on the payment of the requisite stamp duty, charges etc.
- viii. The respondents shall not charge anything from the complainant which is not the part of the agreement.
31. Complaint stands disposed of.
32. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12/11.2025