

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

Complaint no. : 5258 of 2024
Date of filing : 23.10.2024
Date of decision : 04.11.2025

K C Enterprises through its Partner Mr. Jatin
Manghani

Regd. Address: C-36, Basement New Sabzi Mandi
Azadpur Delhi -110033

Complainant

Versus

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

Regd. office: 15 UGF, Indraprakash, 21,
Barakhambha Road, new Delhi -110001

2. M/s Samyak Projects Pvt. Ltd.

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

Respondents

CORAM:

Shri Ashok Sangwan

Member

Shri P S Saini

Member

APPEARANCE:

Sh. Sanjeev Kumar Bhardwaj (Advocate)

Counsel for Complainant

Sh. Amandeep Kadian (Advocate)

Counsel for Respondent no. 1

Sh. Sanya Arora (Advocate)

Counsel for Respondent no. 2

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for

violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Ansal Heights 86
2.	Project location	Sector 86, Gurugram
3.	Nature of project	Residential apartment
4.	RERA registered/not registered	Not registered
5.	Allotment letter	27.08.2014 [pg. 57 of complaint]
6.	Unit no.	C-1303 [pg. 57 of complaint]
7.	Unit measuring	1895 sq. ft. super area [pg. 57 of complaint]
8.	Date of execution of Builder developer agreement (R2 is confirming party)	08.09.2012 [pg. 40 of complaint]
9.	Possession 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 dues by buyer and subject to force majeure circumstances as</i>

		<i>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> [pg. 40 of complaint]
10.	Commencement of construction	01.10.2013 [pg. 65 of complaint]
11.	Due date of possession	08.09.2016 (calculated from the date of execution of buyer agreement)
12.	Basic sale consideration	₹72,61,209/- [pg. 57 of complaint]
13.	Total amount paid by the complainant	₹76,18,176/- (As per SOA dated 12.10.2024 at pg.64 of the complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - a. That the complainant booked residential apartment was booked in an upcoming project viz. 'Ansal Heights 86' at Gurgaon, Haryana on 03.04.2012 in the name of K.C. Enterprises (the complainant) under construction link payment plan. The project was being developed by the respondent.
 - b. That under the construction link payment plan, the complainant was required to make periodical payment of the consideration for the flat on the basis of the stage of construction.
 - c. That on 08.09.2012, the respondent allotted an apartment measuring 1895 sq. ft. in favor of the complainant vide flat No. C-1303 for a sale consideration of Rs. 79,89,984/- plus other charges and executed a flat buyer agreement with first buyer. The

complainant has made the total payment of Rs. 76,18,176/- till date and there is no dispute as the same amount has been shown by the respondent in the customer ledger maintained by them.

- d. That the payments were stipulated in the agreement on milestone basis. However, the respondent on various occasions raised demands for payment without completion of the milestone. The complainant paid the total consideration towards the flat, even before the completion of milestones as contemplated in the application. The complainant has duly honored the demands raised by the respondent. The construction at the site of the project has not been progressed since the last demand was raised by the respondent and consequently the respondent has failed to offer the possession of the flat to the complainant till date.
- e. That the as per the terms of the flat buyer agreement, the respondent was required to handover the possession of the flat to the complainant within 42 months from the date of execution of the agreement with a further grace period of 6 months. Accordingly, after considering grace period also, physical possession of the flat must have been handed over on or before 08.09.2016. However, the project has not been constructed so far and also no occupancy certificate is received.
- f. That the respondent has failed to abide by the terms stipulated in the agreement. The cause of action to file the present complaint is arise on the day respondent failed to give the possession on the given date as per flat buyer agreement and that still continuing as the respondent has not delivered the possession of the flat for occupancy till date. The complainant has diligently discharged all

his obligations as per the application/ agreement, whereas, the respondent has failed to perform its obligations.

- g. That the application/agreement stipulates for 24% interest p.a. compounded quarterly for the delay in payment/installments and therefore, in terms of section 2(za) of the Real Estate (Regulation & Development) Act, 2016, the complainant is also entitled to the same rate of interest for delay period in handing over of physical possession of the flat. Whereas as per terms of the application/agreement, in case the respondent is unable to develop the project within the agreed period of 48 months, it is liable to pay a nominal compensation of Rs. 5/- per sq. ft. per month for the delayed period. The aforesaid condition is unilateral and arbitrary and provisions of RERA should be read in the agreement.
- h. That the complainant has visited office of the respondent many times to complain about delay in the project, however no plausible reply has been received from the respondent. Since the respondent is unable to develop the project and handover physical possession of the flat for occupancy, the complainant is entitled to get compensation on the entire amount Rs. 73,69,576/- paid by him along with interest as applicable in RERA Act and Regulation from the date of each payment.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - a. Direct the respondent to pay interest for the delay in possession/deficiency in service as per Section 18 of the RERA Act.

- b. Impose interest on the amount already paid by the complainant to the respondent at the rate of 24% from the due date of possession till the actual date of possession.
- c. Award compensation for mental agony, distress, and inconvenience caused to complainant due the respondent's failure the contractual obligations.
- d. Direct the respondent to cover all legal costs incurred by the complainant in pursuing this complainant.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 1.

- 6. The respondent no. 1 has contested the complaint on the following grounds
 - a. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable against the answering respondent as the BBA was executed on 08.09.2012 and the complainant is approaching the Authority in 2024. The present complaint is liable to be dismissed on this ground alone.
 - b. That the complainant has locus-standi and cause of action to file the present complaint. The complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 08.09.2012, which is evidentiary from the submissions made in the reply.

- c. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The construction work of the project is swing on full mode and the work will be completed within the prescribed time period as given by the respondent to the Authority.
- d. That without prejudice to the aforesaid and the rights of the respondent, the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in Civil Writ Petition No.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal thereby restraining the excavation work causing Air Quality Index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the major factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The sudden restriction on withdrawals led the respondent unable to cope with the labor pressure. However, the respondent is carrying its business in letter and spirit of the villa buyer agreement as well as in compliance of other local bodies of Haryana Government.

- e. That the respondent is carrying his business in letter and spirit of the builder buyer agreement but due to COVID"19 the lockdown was imposed throughout the country in March, 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent. That similar lockdown was imposed in the year 2021 which extended to the year 2022 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- f. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the ongoing construction of the project.
- g. That it is submitted that the complaint is not maintainable or tenable under the eyes of law as the Complainant has not approached this Authority with clean hands and has not disclosed the true and material facts related to this case of complaint. The complainant, thus, has approached the Authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as *S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1* in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not

only the opposite party, but also upon the Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.

h. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. That merely because the Act applies to ongoing projects which are registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking refund, interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the builder buyer's agreement. The interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the builder buyer's agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in a case titled as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298, the liberty to the promoter/developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para No.86 and 119 of the above said citations are very much relevant in this regard.

i. That several allottees have defaulted in timely remittance of payment of installment which was an essential, crucial and an indispensable

requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effect on the operation and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite the default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. The construction of the project is completed and ready for delivery, awaiting occupancy certificate which is likely to be completed by the year 2022.

- j. The Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the builder buyer's agreement, vide which complainants were agreed to pay in addition to basic sale price of the unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainant further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
- k. That in the interest of justice and under the cited circumstances, this Authority may graciously be pleased to dismiss the complaint as the same is not maintainable and is based on false and vexatious grounds, with costs.

E. Reply by the respondent no. 2.

7. The respondent no. 2 filed written submission on 30.09.2025 and has contested the complaint on the following grounds.

- That the respondent no. 2 i.e. Samyak Projects Private limited, having acquired the rights to develop land on which the present project was to be constructed, entered into a memorandum of understanding dated 06.09.2011 with the respondent no. 1 i.e. Ansal Housing Limited in respect of construction and development of the project under the name and style of "Ansal Heighta-86" with respect to the land admeasuring 102 Kanals 15 marlas (12.843 acres) failing in rect. No. 14, 15 & 19, situated in the revenue estate of village Nawada Fathepur, Tehsil and District Gurgaon, Haryana.
- That the respondent no. 1 and no. 2 entered into a Joint Venture Agreement dated 24.05.2013. Further as per the clauses of the MOU, the entire scheme of development of the proposed project on the said scheduled property was to be carried out by respondent no. 1 i.e. Ansal Housing Limited, at its own cost and expense including development of internal development services, commercial areas and other related developments, after taking all necessary approvals, sanctions/permissions etc.
- That as per the clause 5 of MOU, the entire scheme of development of the project shall be carried out by the developer i.e. M/s Ansal Housing Limited and at its own cost and expenses. It was the sole responsibility of respondent no. 1 to develop the project and handover the possession to the allottees. It was the respondent no. 1 who received the consideration amount from all the allottees.

- d. That as per clause 37 of the BBA it is specifically mentioned that the developer i.e. M/s Ansal Housing Limited will pay the complainant for delay in offering the possession.
- e. That upon termination on MOU between the parties the respondent no. 2 invoked arbitration proceedings against the respondent no. 1 and the same with respect to the said project are pending before the Sole Arbitrator Hon'ble Justice A.K. Sikri. That a status quo has been maintained on the project namely "Ansal Height 86" by the Arbitral Tribunal vide order dated 31.08.2021.
- f. That if a court orders to maintain the status quo on the property it means affects the two components of the property that comes under the purview of status quo 'the possession' and 'the title'. When the status quo is ordered then the person who is holding the possession and title shall retain such possession and title until the suit is disposed of or such status quo is vacated. That if any right created, or any possession parted with by any respondents who are party to the said arbitration proceedings shall amount to contempt of court proceedings.
- g. That the proceedings shall be put Sine Die till the matter is finally decided by the Arbitrator. That any order passed by this Authority till status quo is not vacated will amount to gross miscarriage of justice.
- h. That the Authority, in its various decisions, has observed that M/s Samyak Projects is not the primary party and does not posses a direct nexus concerning the consideration for the unit with the decree holder. Furthermore, it is essential to note that the obligation rests with the party who has benefited from the

consideration amount. Therefore, any action in this regard would unduly prejudice the interest of respondent no. 2, who has not received any payment towards the completion of the said from respondent no.1.

- i. That there exists no privity of contract between respondent no. 2 and the complainant, as the entire responsibility for allotment and delivery of the unit vested solely with respondent no. 1. In view of the status quo order imposed by the learned Arbitrator with respect to the project, the delivery of the unit to the complainant is legally restrained and cannot effectuated at this stage.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

F. Jurisdiction of the Authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

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

F.II Subject-matter jurisdiction

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

Section 11

.....
(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

G. Findings on the relief sought by the complainants.

G.I. Direct the respondent to pay interest for the delay in possession/deficiency in service as per Section 18 of the RERA Act.

G.II. Impose interest on the amount already paid by the complainant to the respondent at the rate of 24% from the due date of possession till the actual date of possession.

13. The above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.
14. In the present matter the complainant was allotted unit no. C-1303, admeasuring 1895 sq. ft. (super area) in the project "Ansal Height 86" Sector 86 by the respondent-builder for a sale consideration of ₹72,61,209/- and they have paid a sum of ₹76,18,176/-. An allotment letter was executed by the respondent no. 1 in favour of allottee on 27.08.2014 and Builder developer agreement was executed on 08.09.2012 wherein respondent no. 2 was the confirming party. As per clause 31 of the BBA, respondent no. 1 was obligated to complete the construction of the project and hand over the possession of the subject unit within 42 months from the date of execution of agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The period of 42 months is calculated from the date of execution of buyer agreement. Further, the Authority allows 6 months grace period being unqualified. Accordingly, the due date of possession comes out to be 08.09.2016. The Occupation Certificate for the project has not yet been obtained from the competent Authority.
15. The Authority is of view that the BBA were signed by the complainant and the respondent no. 1 and the respondent no. 2 is a confirming party to that BBA. In the agreement it was specifically mentioned that

respondent no. 2 (land owner) and respondent no. 1 (developer) entered into an agreement 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. 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

(i) 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

(ii) 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"

16. 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).

17. 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.
18. The complainant intends to continue with the project and are seeking delay possession charges interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules:

"Section 18: - Return of amount and compensation

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -
in accordance with the terms of the agreement for sale or, as
the case may be, duly completed by the date specified therein;
or*

due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

19. Clause 31 of the BBA 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 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 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.”

20. **Due date of possession and admissibility of grace period:** As per clause 31 of the BBA, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 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. The period of 42 months is calculated from the date of execution of BBA. Further, the Authority allows 6 months grace period being unqualified. Accordingly, the due date of possession comes out to be 08.09.2016.

21. Payment of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

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

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

22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 04.11.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e. **10.85%**.

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.—For the purpose of this clause—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e. **10.85%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

26. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 31 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 08.09.2016. However, till date

no occupation certificate has been received by respondents and neither possession has been handed over to the allottee till date.

27. The Authority is of considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainants as per the terms and conditions of the allotment letter and BBA. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 08.09.2016 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.

G.III Award compensation for mental agony, distress, and inconvenience caused to complainant due the respondent's failure the contractual obligations.

G.IV Direct the respondent to cover all legal costs incurred by the complainant in pursuing this complainant.

29. The above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.

30. That complainant is seeking above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)***, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the Adjudicating Officer having due regard to the factors mentioned in section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G.V Execute conveyance deed.

31. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the said respondent has applied for occupation certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining Occupation Certificate from the competent Authority.

H. Directions of the Authority

32. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondents/promoters jointly and severally are 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., 08.09.2016 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, as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- b. The respondents are directed to hand over the actual physical possession of the unit to the complainant within 2 months after obtaining Occupation Certificate from the competent Authority.
- c. The respondents are directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent Authority.
- d. The rate of interest chargeable from the allottees by the promoter, in case of default, if any, shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- e. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- f. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- g. The respondents shall not charge anything which is not the part of BBA.

33. Complaint stands disposed of.

34. File be consigned to registry.



(P S Saini)
Member



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.11.2025