

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

**Complaint no.:** 4215 of 2024  
**Date of decision:-** 07.05.2025

1. Sunil
2. Ritesh

**Both R/o:** - RZF-2/56A, Street No.-3,  
Mahavir Enclave, Nasirpur Road,  
New Delhi-110045

**Complainants**

**Versus**

1. M/s. Ansal Housing Limited  
**Regd. office:** 606, Floor-6<sup>th</sup>, Indra Prakash,  
21, Barakhamba Road, New Delhi-110001.
2. M/s. Samyak Projects Pvt. Ltd.  
**Regd. Office:** 111, Floor-1<sup>st</sup>, Antriksh Bhawan, 22,  
K.G. Marg, New Delhi-110001.

**Respondents**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Harshit Goyal

**Complainant**

Amandeep Kadyan(R-1)

**Respondents**

Shankar Vij (R-2)

**ORDER**

1. The present complaint dated 03.09.2024 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 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Ansals HUB 83 Boulevard" at Sector-83, Gurugram.
2.	Project area	2.60 Acres
3.	Nature of Project	Commercial Project
4.	DTCP license	71 of 2010 dated 15.09.2010 Valid upto 14.09.2018 (for 98.781 acres)
5.	Name of Licensee	M/s Vatika Limited (for Total Licensed area of 98.781 acres)
6.	Rera registered	<b>Registered</b> Vide registration no. 09 of 2018 dated 08.01.2018 Valid upto 31.12.2020
7.	Unit No.	F-066, Shop at First Floor (As mentioned in BBA at page no. 25 of complaint)
8.	Unit area admeasuring	200.59 sq. ft. (Carpet Area) (As mentioned in BBA at page no. 25 of complaint)



9.	Allotment letter	Not available
10.	Agreement For Sale	25.06.2018 (As on page no.21 of complaint)
11.	Possession clause	<b>5. Time is Essence</b> The Vendor shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Authority and towards handing over the said unit alongwith parking (if applicable) to the vendee and the common areas to the association of vendees or the competent authority, as the case may be, as provided under Rule2(1)(f) of the Rules, 2017.  (As per BBA at page 32 of complaint)
12.	Due date of possession	<b>30.06.2021</b> (31.12.2020- As mentioned on the RERA's website + 6 months on account of Covid-19) [Note: Vide proceedings dated 19.03.2025, the same was inadvertently recorded as 31.12.2020 and the grace period of 6 months on account of Covid-19 was not added]
13.	Total Sale Consideration (inclusive of BSP, EDC & PLC)	Rs.44,04,526.44/- (As mentioned in BBA at page no. 25 of complaint)
14.	Amount paid by complainants	Rs.17,63,147.02/- [40%] Payment receipt issued by M/s Ansal Housing & Construction Ltd. (As per receipts provided at page no.57 to 61 of complaint)
15.	Payment Plan (Schedule -C)	1. At the time of booking - 40% (basic + allied charges) 2. On offer of possession - 60% (basic + allied charges)

		(As per schedule - C annexed with BBA at page 52 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer for possession	Not offered

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:

- I. That the complainants are innocent allottees of the real estate project namely "Ansals HUB 83 Boulevard" situated at Sector 83, Gurugram being developed by the respondent company.
- II. That the respondent no. 1 is a real estate development company and co-promoter of real estate project in question. The respondent no. 2 is also a real estate development company and co-promoter of the real estate project in question.
- III. That the respondent no 2 entered into an MOU Agreement dated 12.04.2013 with respondent no 1 whereby the development and marketing of the commercial project was undertaken by the respondent no 1 on the project. However, respondent no.2 had terminated the MOU agreement dated 12.04.2013 vide notice dated 10.11.2020 in respect of construction and development of the project in question. Thereafter, respondent no 2 had taken possession of the real estate project in question vide Possession Letter dated 14.10.2021 and was awarded with responsibility of development of the project along with responsibility of receiving and payment of monies to the allottees vide arbitration order dated 31.08.2021
- IV. The Builder Buyer Agreement was duly executed between complainants and the respondent no 1 on 25.06.2018 in respect of booked unit bearing shop no F- 066, First Floor measuring 200.59 sq.ft. carpet area

in the project "Ansals HUB 83 Boulevard" situated at Sector 83, Gurugram.

- V. As per clause 5 of the Builder Buyer Agreement dated 25.06.2018, the respondents were liable to deliver the possession of the booked unit within timeline mentioned in RERA Registration Certificate bearing 9 of 2018 of 31.12.2020. The due date of delivery of possession of 31.12.2020 has already expired. However, the respondents failed to deliver possession of the booked unit and obtain Occupation Certificate till date. The respondents have also failed to pay accrued delayed possession charges for the period of delay in delivery of possession to the complainants till date.
- VI. The respondent no 2, issued a Public Notice dated 04.05.2023 requesting the allottees to submit all documents in respect of booked unit for the purpose of 'Verification of Allottees' of the project in question. The complainants had duly submitted all documents in respect of booked unit vide Reply Letter dated 06.05.2023 sent by Indian Postal Services on 08.05.2023 to the respondents.
- VII. As per the agreed payment plan attached as "Schedule C" of the Agreement dated 25.06.2018, the total sale consideration of the booked unit was to be paid in 40:60, 40% at the time of booking and 60% at the time of offer of possession.
- VIII. As per the agreed payment plan, the complainants had already paid Rs.17,63,147.02/- out of agreed total sale consideration of Rs.44,04,526.44/- to the respondent no 1 on a timely basis.

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

4. The complainants have sought following relief(s):-

- i. Direct the respondents to pay delayed possession charges at the prescribed rate of interest to the complainants from the due date of possession to the offer of possession along with interest.
- ii. Direct the respondents to handover possession of the unit along with Occupancy Certificate in favour of the complainants.
- iii. Direct the respondents to execute and register the sale deed in favour of the complainants.

**D. Reply filed on behalf of respondent no.1 :**

5. 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. F-066 in an upcoming project "Ansal Boulevard", Sector 83, Gurugram of the answering respondent. Upon the satisfaction of the complainants, a Builder Buyer Agreement was executed between the parties on 25.06.2018.
- II. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2018 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 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 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.

- IV. That the complainant had signed and agreed on Builder Buyer Agreement dated 25.06.2018. That perusal of the said agreement would show that it is a *Tripartite Agreement* wherein respondent no.2 i.e., M/s. M/s Samyak Projects Pvt. Ltd is also a party .
- V. That the perusal of the Builder Buyer Agreement would show that respondent no.2 not only possesses all the rights and unfettered ownership of the said land, 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."*

- VI. That the respondent no. 2 in terms of its arrangement with the answering respondent could not develop the said project well within time as was agreed, the delay, if any, is on the part of respondent no.2 and not on the part of respondent no.1, because the construction and development of the project was undertaken by respondent no.2.
- VII. That in an arbitral proceeding before the Ld. Arbitrator Justice A.K

Sikri, respondent no.2 has taken over the present project for completion of the project and the answering respondent has no locus or saying in the present project.

- VIII. 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 respondent no.2 is the title holder the plot of land, admeasuring 2.60 acres situated in Village Sihi, Tehsil & District Gurgaon in Sector 83 of Gurgaon Manesar Urban Complex Master Plan.
- IX. That the respondent no.2 approached the answering respondent for development of a commercial project to be developed over the said parcel of land, and pursuant to several discussions, negotiations and after bargain, the answering respondent 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 a the afore said parcel of land
- X. 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/- (Rupees 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.
- XI. 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.
- XII. The sharing *ratio* in the MoU was also framed/designed in such a

manner, that for the first 75 crore received as sale consideration, the respondent no.2 shall get 75% of the same and merely 25% comes to respondent no.1. 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.

- XIII. That respondent no.1 also had financially assisted respondent no.2 to the tune of Rs.32.5 crore, to get abovementioned parcel of land transferred from the erstwhile owner in respondent no.2's name.
- XIV. That the answering respondent was constructing the project at a rapid pace, however, respondent no.2 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.
- XV. Apart from the aforesaid, Orders passed by the National Green Tribunal whereby mining of sand was banned in Haryana and Rajasthan in 2014 - 15 badly affected the pace of construction in the year 2014 and 2015. The Hon'ble Punjab & Haryana High Court in the year 2012-2015 had banned the ground water extraction in the reign of Haryana, reason of which the water supply completely stopped in the construction site. This compelled the answering respondent to get the supply of water from tankers etc. which goes without saying, was very less in supply if

compared to earlier. In 2016, during the Jat Agitation in Haryana, trains and buses were stopped & burnt, which not only prevented innumerable labours from reaching the site but also the tractors & trollies of suppliers which highly affected the pace. 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.

- XVI. In addition to the abovesaid, the nation came to a standstill after the outbreak of Covid-19 in the entire world. The period wherein the lockdown was imposed and wherein the laborers' migrated to their native places, made it impossible to have any kind of construction from March 2020 - August 2020. That, even after August 2020, the pace of the construction was not very rapid, given the fact that there was shortage of laborers' and also since the Covid -19 was also at its peak, pace was much slower if compared to pre-corona times. The abovementioned conditions were beyond the control of the respondent and will come under the ambit of '*Force Majeure*' event.
- XVII. That 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. 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. Parallely, 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.

- XVIII. That the petition under Section-9 of the Arbitration & Conciliation Act 1996, was converted into an application under Section- 17 of the Act, and the interim relief which was sought before the Hon'ble High Court was therefore sought before the Learned Sole Arbitrator. During the pendency of the abovementioned application, the Arbitral Tribunal vide Procedural Order No. 04 dated 05.03.2021, directed both the parties to submit their respective proposal for taking over the task of completion of the balance construction work of the project. In compliance of such direction, both the parties had submitted their respective proposal(s).
- XIX. That vide order dated 31.08.2021, the Arbitral Tribunal dismissed the application of respondent no.1, and refused to stay the notice of termination. In para 57 and 58 of the Order dated 31.08.2021, the Arbitral Tribunal referred about the proposals submitted by both the parties, proposing their action plan for completion of the balance construction work in relation to the project.
- XX. The Arbitral Tribunal's intent behind seeking the best proposals from both the parties for completing the balance construction was to somewhere pass an order on equity, which could have been passed only by consent of both the parties. An order without consent '*for ensuring the unobstructed, unhindered and unimpeached pace of construction*' could not be passed by the Arbitral Tribunal owing to the embargo of Section 28(2) of the Arbitration Act.
- XXI. 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, respondent no.1 without *prejudice* to its legal rights, remedies and claims, consented (by filing an application) to the proposal submitted for completion of the balance construction work of project, to ensure that the dispute between the respondents must not hamper the interest of the project.

- XXII. In compliance of the order dated 13.10.2021, 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.
- XXIII. 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. During the proceedings dated 11.10.2022, respondent no.1 informed the Arbitral Tribunal, that some of the allottees of the project are approaching respondent no.1 with the grievances' that respondent no.2 is not recognizing their rights as buyers, and is instigating those allottees to file cases against respondent no.1. On such information, respondent no.2 made a baseless excuse that there is no Tripartite Agreement (*between the Samyak, Ansal and the Allottee*), and therefore, it is not recognizing the allottees. This fact is recorded in the Order dated 11.10.2022.
- XXIV. Pertinent to mention, that in terms of the MoU dated 12.04.2013,

respondent no.1 was authorized 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 allottees (on the basis 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.

XXV. All these facts were put forth before the Arbitral Tribunal. On 11.10.2022, when the issue of not recognizing the allottees was taken up, the Arbitral Tribunal passed order directing the respondent no.2 to not create any third-party rights over any unit, until and unless this issue of bilateral agreement is resolved.

XXVI. 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 satisfy itself with the genuineness of all bilateral builder buyer agreement. On the directions of the Arbitral Tribunal, the representatives of respondent no.2 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.

XXVII. Pertinent to mention, pursuant to the meeting held on 17.05.2023, despite not finding any lacuna on any transaction, respondent no.2

- started persuading the allottees to sign an Addendum Agreement with it. The attempt to sign addendum agreements with allottees by respondent no.2 was unnecessary & unwarranted. At the time of handing over the project site 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 & subsisting, and therefore, there is no requirement of signing any addendum agreement.
- XXVIII. 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.
- XXIX. 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 to respondent no.2 that within a week of receiving such information, shall submit its comment with respect to those allottees, to which the dispute remains.
- XXX. Undisputedly, the said list, along with all necessary credentials were supplied to respondent no.2 *vide* email dated 16.09.2023. However, till date, respondent no.2 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.
- XXXI. 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. Furthermore, it is also important to mention, that on 14.10.2023, when the project site was handed over to respondent no.2 for the balance construction work, it 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 the Samyak 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 part of which is reproduced herein below for the sake of ready reference-

*"8. In view of the aforesaid statement made by the respective counsel, it is directed that the **Respondent shall be free to approach the customers and demand the monies which are payable under the agreements entered into with them.** It is also directed that the money so collected shall be deposited in the Escrow Account which has already been opened by the Respondent and shall be utilised solely for the completion of the Project. **It is made clear that the overall responsibility is of the Respondent to generate the funds and, of course, in the process, the funds collected from the customers could be made use of by the Respondent in the manner mentioned above.** It is also directed that the Claimant shall cooperate with the Respondent to enable the Respondent to get in touch with the customers. It is also made clear that while approaching the customers, the Respondent may bring to the notice of these customers orders of this Tribunal that the Respondent is permitted to complete this Project and collect the money from the customers. However, while doing so, the Respondent shall refrain from making any disparaging statements qua the Claimant. It is also made clear that the Claimant shall not enter into any correspondence with the customers that it still continues to be in the Project."*

XXXII. Due to these blatant violation of the order(s) by Samyak, Ansal has filed two application(s), which are pending as on date:

- (i) Application seeking status quo ante of the project site, and seeking a direction to hand over the project back to Ansal for

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completing the balance work, as Samyak has failed to complete it; and

- (ii) Application seeking action of contempt against Samyak for deliberating violating the orders of the Arbitral Tribunal.

XXXIII. That 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 these 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 submitted the following by way of written reply:

- I. That the complainant filed the present complaint against the respondent no.2 i.e., M/s Samyak Projects Pvt. Ltd. with respect to unit no. F-066 in the project namely "BOULEVARD 83", situated in Sector-83, Gurugram.
- II. That the complaint is liable to be dismissed at the outset as the complainant has no cause of action against respondent no.2. Moreover, the complainant has approached this court with unclean hands.
- III. That the complaint is misconceived, devoid of merits, and is liable to be dismissed outright as no Builder Buyer Agreement was executed between respondent no.2 and the complainant and there is no privity of contract between them. The complainant has failed to establish any legal relationship or obligation between respondent no.2 and complainant.
- IV. That the Agreement to sell was executed between respondent no.1 and the complainant wherein the respondent no.2 was neither a party to the agreement to sell nor the same was executed in its presence. Hence, no

cause of action accrued in the favour of the complainant as against the respondent no.2.

- V. That the respondent no.2 is not a confirming party to the alleged transaction or agreement. The complainant has erroneously dragged respondent no.2 into this dispute, which is essentially between the complainant and respondent no.1. It is further submitted that there is no Privity of Consideration with the complainant.
- VI. That no consideration and communication has ever been received by respondent no.2 from the complainant and the same were received by the respondent no.1 at all times. Moreover, it is a settled proposition of law that without consideration an agreement is Nudum Pactum i.e., Void Ab Initio.
- VII. That the complaint appears to be a result of collusion between the complainant and respondent no.1, aimed at wrongfully implicating respondent no.2 and extracting undue benefits. The respondent no.2 has no connection, either directly or indirectly, with the complainant in respect of the subject matter of the complaint.
- VIII. That the respondent no. 2 has no liability or obligation towards the complainant, as there is no legal or contractual relationship between the parties. It is also submitted that the complainant and respondent no.1 are acting in connivance with each other for the fulfilment of their ulterior motives and harm the reputation of the respondent no.2 for the reasons best known to them.
- IX. That it is a settled position of law that one who seeks equity must do equity. That there being no privity of contract between the complainant and respondent no.2, the complaint shall be dismissed.

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;*

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

12. 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 'Agreement For Sale' was executed between the parties on 25.06.2018. As per clause 5 of the Agreement dated 25.06.2018, the due date for offer of possession of the unit was in terms of the schedule for completion of the project as disclosed at the time of the registration of the project with the Authority. As per the data available on the Authority's website, the completion date of the project is mentioned to be 31.12.2020.

Thus, the due date of possession comes out to be 31.12.2020. 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, the promoter/ respondent cannot be given any leniency based on the aforesaid reasons. The respondent no.1 has further stated that due to the outbreak of Covid-19 the project was stalled. The Authority is of the view that the Authority through notification no. *9/3-2020 dated 26.05.2020*, had already provided a six months extension for projects with completion dates on or after 25.05.2020 , due to force majeure conditions caused by the Covid-19 pandemic. Since this extension has already been accounted for, any further delay beyond the specified period is unjustified. Therefore, the due date of handing over possession was 30.06.2021.

**G.II Objection regarding no privity of contract between the respondent no.2 and complainants 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.**

13. The respondent no.2 has raised an objection that the respondent no.2 is not a confirming party in the agreement for sale and thus, there is no privity of contract between the complainants and the respondent no.2. The Authority observes that an Agreement For Sale has been executed

between the complainants and the respondent no.1 and the respondent no.2 is a confirming party the said agreement. As per the Agreement, respondent no. 2(land owner) and respondent no. 1(developer) entered into a MoU dated 12.04.2013 whereby the development, marketing and selling of the project was to be done by the respondent no. 1 in terms of the license/permissions granted by the DTCP, Haryana. The respondent no.1 and respondent no.2 entered into a separate MoU whereby they agreed mutually on certain terms including but not restricted to the profit sharing percentage in respect of the project. Though respondent no.2 did not receive any consideration directly from the complainants but have received the same through a channel whereby respondent no.1 collected the amount from the complainants and the same was shared in the proportionate as was agreed between both the respondents. Thus, it cannot be said that the respondent no.2 is not a confirming party to the Agreement For Sale and the contention of the respondent regarding no privity of contract and consideration between the respondent no.2 and complainants is hereby rejected.

**H. Findings on the relief sought by the complainants.**

- H.I Direct the respondents to pay delayed possession charges at the prescribed rate of interest to the complainants from the due date of possession to the offer of possession along with interest.**
- H.II Direct the respondents to handover possession of the unit along with Occupancy Certificate in favour of the complainants.**
- H.III Direct the respondents to execute and register the sale deed in favour of the complainants.**

14. The above said reliefs are interconnected, thus are being dealt together. In the present complaint, the complainants booked a shop bearing no. F-006, on the first floor in the project "Ansal Hub 83 Boulevard" situated in Sector 83 of the respondents for a sale consideration of Rs.44,04,526.44/- and they have paid a sum of Rs.17,63,147.02/- till date. An Agreement For Sale dated 25.06.2018 was executed between the complainants and respondent no. 1 wherein respondent no. 2 was the confirming party. As per clause 5 of the Agreement dated 25.06.2018, respondent no. 1 was obligated to complete the construction of the project and hand over possession of the subject unit within the time schedule as is stated at the time of registration to the Authority. The date mentioned on the Authority's website is 31.12.2020. The Authority is of the view that the Authority through notification no. *9/3-2020 dated 26.05.2020*, had already provided a six months extension for projects with completion dates on or after 25.05.2020, due to force majeure conditions caused by the Covid-19 pandemic. The extension of six months on account of Covid-19 is granted to the respondents. Thus, the due date of possession comes out to be 30.06.2021. The occupation certificate for the project has not yet been obtained by the respondents from the competent authority.
15. The 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.

16. 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.

17. The Authority is of the view that the Agreement For Sale dated 25.06.2018 was signed by the complainants and the respondent no. 1. The respondent no. 2 is a confirming party to that Agreement. In the Agreement dated 25.06.2018 it was specifically mentioned that respondent no. 2 (land owner) and respondent no. 1 (developer) entered into separate agreements 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 sub judice 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*

- (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*

(iii) xxxxxxxx

18. Further, the Authority observes that the occupation certificate for the project is yet to be received and the project was transferred to the respondent no. 2 who was responsible to complete the same. As per order of the Learned Sole Arbitrator dated 02.09.2022, the respondent no.2 was obligated to complete the construction of the project within a period of nine months i.e., by the end of June 2023, the said period has lapsed and the project is not yet complete.
19. In view of the above facts and circumstances as well as the fact that the arbitration proceedings between respondent no.1 and respondent no.2 are still ongoing, the Authority is of the considered view that 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 also lie with the respondents.
20. The complainants intend 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. -*

(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)*

**21. Due date of possession and admissibility of grace period:** As per clause

5 of the agreement dated 25.06.2018, the possession of the allotted unit was supposed to be offered within a stipulated timeframe that has been disclosed at the Authority's website i.e., 31.12.2020. Further, a unqualified grace period of 6 months is granted to the respondents over and above 31.12.2020. Hence, the due date comes out to be 30.06.2021 including grace period of 6 months on account of Covid-19.

**22. 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:

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**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.*

23. 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.
24. 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., 07.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
25. 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;"*

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

27. 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 5 of the agreement dated 25.06.2018, the possession of the subject unit was to be delivered within stipulated time schedule i.e., by 30.06.2021 . However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the complainants till date.

28. 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 agreement dated 25.06.2018. Accordingly, it is the failure of the respondents/promoters to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

29. 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/promoters is established. As such, the allottees shall be paid by the promoters interest for every month of delay from the due date of possession i.e., 30.06.2021 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**I. Directions of the authority**

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/promoters jointly and severally are directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 30.06.2021 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondents are directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate

- 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., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.
  - iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - v. The arrears of such interest accrued from 30.06.2021 till the date of order by the authority shall be paid by the promoter to the allottees 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 allottees before 10th of the subsequent month as per rule 16(2) of the rules..
  - vi. The respondents are directed to execute Conveyance Deed in favour of the complainants within a period of three months after obtaining the Occupation Certificate, on the payment of the requisite stamp duty, charges etc.
  - vii. The respondents shall not charge anything from the complainants 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: 07.05.2025