



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint nos.:	803 of 2024
Date of filing:	24.06.2024
Date of first hearing:	13.08.2024
Date of decision:	15.01.2026

Shveta Chaudhary W/o Sh. Praveen Chaudhary,
R/o House No. 455, Jagdish Colony, Ballabgarh,
Faridabad, Haryana-121002.

Currently residing at-
Tower 2/ GC, Ground Floor, Sector- 86,
Faridabad, Haryana- 121002.

....COMPLAINANT

VERSUS

M/s RPS Infrastructure Ltd
through its Managing Director/Chairman
Registered office at 1117-1120, 11th Floor,
Tower-B, DLF Towers Jasola District Centre,
New Delhi-110025

.... RESPONDENT

CORAM:	Parneet S Sachdev	Chairman
	Nadim Akhtar	Member
	Chander Shekhar	Member

Present: -Mr. Gaurav Gupta, counsel for the complainant, through VC.

Mr. Garvit Gupta, counsel for the respondent, through VC.

A handwritten signature in black ink, appearing to be the name "N".

ORDER (PARNEET S SACHDEV- CHAIRMAN)

1. Present complaint has been filed on 24.06.2024 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by the complainant, sale consideration, the amount paid by the complainant and details of project are given in following table:

S.No.	Particulars	Details
1.	Name of the project	“RPS Infinia” situated at 12/6 Milestone, Sarai Khwaja, Mathura Road, Faridabad, Haryana.
2.	Unit no. and area	311, 3 rd Floor, Tower- OXY-5 admeasuring 684 sq ft.
3.	Date of allotment	29.06.2013
4.	Date of Builder Buyer Agreement	28.06.2013
5.	Due date of offer of possession	28.12.2016



6.	Possession clause	<p><i>Clause 18- That the Promoter shall endeavor to offer the possession of the said Unit to the Intending Buyer within a period of 36 months with a grace period of six months from the date of execution of this Agreement or from the date of getting requisite sanctions from the Concerned Authorities, for commencement of construction of the project, whichever is later, exclusive of the time taken by Competent Authorities towards various approvals such as issuance of the Occupation Certificates /Completion Certificates, Fire NOC etc. with a reasonable extension of time. This is further subject to force majeure circumstances, or any other circumstances not anticipated and beyond the control of the Promoter and on timely receipt of all payments and other charges due/demanded being payable up to the date of offer of possession according to the payment plan opted by the Intending Buyer. The possession of unit shall be offered in raw/ bare shell condition with exterior finish.</i></p>
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		<i>After obtaining the possession of unit the Intending Buyer shall get the various jobs done as per his requirement and at his own expenses in accordance with Fit-Out Policy of said complex declared from time to time, with prior written approval of the Promoter.</i>
7.	Basic sale price	₹ 40,61,250/- (as per Buyer's Agreement dated 28.06.2013)
8.	Amount paid by complainant	₹39,17,894/-
9.	Offer of possession	Yes, on 29.09.2024

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that the respondent was developing an IT Park Project under the name "RPS Infinia", situated at 12/6 Milestone, Sarai Khwaja, Mathura Road, Faridabad, Haryana, and had invited applications for allotment of IT/ITES units of various sizes in the said project.

4. Relying upon the representations made by the respondent, complainant applied for booking of an IT/ITES unit bearing No. 311, 3rd Floor, Tower OXY-05, admeasuring 684 sq. ft., vide application form dated 28.12.2012, and deposited a sum of ₹3,50,000/- towards the booking amount. A copy of the application form dated 28.12.2012 is annexed as Annexure C-1 with complaint.

5. It is stated that thereafter the respondent continued to raise demands and the complainant deposited amounts from time to time. According to the complainant, a total amount of ₹8,36,700/- stood deposited by 08.05.2013, even prior to issuance of the allotment.

6. Subsequently, the parties entered into a Builder Buyer Agreement dated 28.06.2013, wherein the basic sale price of the unit was fixed at ₹40,61,250/-, and the total sale consideration was fixed at ₹43,34,850/-. As per the complainant, no amount beyond the said consideration was contractually payable to the respondent.

7. As per the terms of the Buyer Buyer Agreement, the respondent agreed to hand over possession of the unit within a period of 36 months from the date of execution of the agreement, along with a grace period of six months, and accordingly, the deemed date of possession was 29.06.2016.

8. The complainant has alleged that the Buyer Agreement contained unfair, one-sided, and arbitrary clauses, and that having already deposited a substantial amount, she had no option but to sign the said agreement.

9. That an allotment letter dated 29.06.2013 was issued by the respondent in favour of the complainant in respect of the said unit. Copies of the Buyer's Agreement dated 28.06.2013 and the allotment letter dated 29.06.2013 have been annexed as Annexures C-2 and C-3 with the complaint respectively.

10. It is the case of the complainant that despite there being no substantial progress in construction and without providing any meaningful updates regarding the status of the project, the respondent continued to demand and collect substantial amounts. According to the complainant, she deposited a total sum of ₹39,17,894/- by 26.09.2016, amounting to nearly 95% of the sale consideration, and only possession-linked charges remained unpaid. A copy of the account ledger has been annexed as Annexure C-4 with the complaint.

11. The complainant has stated that upon repeated follow-ups she discovered that the construction of the project was far from completion even after the expiry of the stipulated possession period.

12. It is further contended that although the deemed date of possession was in the year 2016, the respondent obtained approval of revised building plans for the IT Park Colony only on 19.12.2018, vide Memo No. ZP-618/AD(RA)/2018/34405, as reflected on the website of the Department of Town and Country Planning, Haryana. A copy of the approval letter dated 19.12.2018 has been placed on record as Annexure C-5.

13. It is averred that in the absence of any communication regarding completion or possession, the complainant addressed an email dated 15.07.2023 to the respondent seeking a statement of account, which was provided to her on 24.11.2023. Copies of the said email and statement of

account are annexed as Annexures C-6 and C-7 with the complaint., respectively.

14. Upon perusal of the statement of account dated 24.11.2023, the complainant alleged that the respondent had raised illegal, arbitrary, and unjustified demands, including the following:

- i. **GST-** The complainant has contended that the respondent has demanded GST from her, thereby imposing an additional financial burden of ₹1,39,028/-, which is liable to be quashed. It is asserted that the project was contractually required to be completed prior to the implementation of GST, and where the delay in construction and completion is attributable to the builder, no GST can be demanded from the allottee. Accordingly, the demand of GST amounting to ₹1,39,028/- is liable to be removed from the statement of account.
- ii. **LABOUR CESS-** It is alleged that the respondent has raised a demand towards labour cess amounting to ₹23,940/-, calculated at the rate of ₹35 per sq. ft., without any contractual basis and in the absence of any agreement to this effect. The complainant submits that she never agreed to pay labour cess and, therefore, the said demand is not payable.
- iii. **PREPAID METER CARD DEPOSIT (ADVANCE DEPOSIT AGAINST COMMON AREA MAINTENANCE)-** The

complainant has averred that the respondent, through the statement of account, has demanded an amount of ₹2,01,780/- (inclusive of GST) towards prepaid meter card deposit/advance deposit for common area maintenance, despite there being no agreement or contractual stipulation authorising such a demand. Consequently, the said amount is liable to be deleted from the statement of account.

iv. **INTEREST ON DELAYED PAYMENT-** The complainant has assailed the demand of ₹17,96,951/- towards interest on delayed payments, as reflected in the statement of account dated 24.11.2023, as illegal, arbitrary, and unjustified. It is contended that the complainant had already paid approximately 95% of the total sale consideration by the year 2016, whereas the respondent failed to honour its contractual obligation to hand over actual physical possession within the agreed timeframe. It is further asserted that there is sufficient material on record to demonstrate that the delay in completion of the project is attributable to the respondent, and therefore, the respondent is not entitled to levy interest on delayed payments. It is also pleaded that there was no effective communication regarding the status of the project or the timeline for handing over possession, and that the remaining payments were contractually payable only upon a valid offer of possession. The

complainant has further alleged that the respondent had not obtained the Occupation Certificate from the competent authority. In this regard, reliance has been placed upon the Engineer's Certificate dated 12.04.2024 and the Architect's Certificate dated 13.04.2024, uploaded on the website of this Hon'ble Authority, which indicate that only 84.19% of the work stood completed as on the said dates. Despite the fact that possession was due in 2016, the project remains incomplete, resulting in a delay of more than eight years from the deemed date of possession. Accordingly, the demand of interest on delayed payment amounting to ₹17,96,951/- is liable to be deleted from the statement of account.

v. **ADMINISTRATION CHARGES-** The complainant has further contended that the respondent has demanded Administration Charges amounting to ₹23,600/- (inclusive of GST) through the statement of account dated 24.11.2023, without any contractual sanction or prior agreement. It is submitted that the complainant never consented to pay any amount under this head, and therefore, the said demand is liable to be removed from the statement of account.

15. It is also stated that the complainant had booked the unit for the purpose of running her consultancy services. On the assurance of timely delivery, she took a commercial premises on rent at a monthly rent of ₹25,000/-,



and has continued to incur rental expenses since 2013. The complainant alleges that she has suffered substantial financial loss, mental agony, and harassment due to prolonged delay, despite having paid nearly the entire sale consideration.

16. On the aforesaid grounds, the complainant has sought reliefs including possession/refund, compensation towards rent paid, interest, and compensation for mental agony and litigation expenses, reserving her right to pursue appropriate claims before the learned Adjudicating Officer under the Real Estate (Regulation and Development) Act, 2016.
17. Therefore, being aggrieved by the conduct of the respondent, complainant has filed the present complaint before this Hon'ble Authority for seeking the reliefs as prayed as under.

C. RELIEFS SOUGHT

18. The complainant in her present complaint has sought following reliefs:
 - (i) The present complaint may kindly be allowed.
 - (ii) The respondent be directed to deliver actual physical possession of the unit No. 311 on 3rd Floor, Tower-OXY-5 having approximate super area of 684 sq. ft. in the project "RPS Infinia" of the respondent to the complainant after obtaining Occupation certificate from the competent authorities.

- (iii) The complainant be granted interest at the rate provided in Section 18 of the Real Estate (Regulation and Development) Act, 2016 read with Rule 15 of HRERA Rules 2017 for delay in handing over of possession of the unit from the deemed date of possession till the date of actual physical possession.
- (iv) The respondent be directed to execute registered conveyance deed/sale deed in respect of the unit booked by the complainant.
- (v) The respondent be directed to issue a fresh statement of account to the complainant after removal of illegal demands raised by the respondent as mentioned in para no.11 of the complaint and reflect remaining amount to be paid, if any by the complainant.
- (vi) Any other reliefs which this Hon'ble Authority may deem fit in the nature of circumstances may also be granted to the complainant, in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

As per reply and written submissions dated 10.12.2025, respondent had made following submissions:

19. The respondent submitted that it developed an IT/ITES Park project under the name "RPS Infinia", admeasuring 7.587 acres, situated at 12/6 milestone, Mathura Road, Sarai Khwaja, Faridabad. For the said project, the respondent obtained License No. 19 of 2010 dated 10.03.2010 from

the Department of Town and Country Planning, Haryana, pursuant to which the project was launched.

20. It is the case of the respondent that the complainant voluntarily applied for booking of an IT/ITES unit in the said project vide application form dated 28.12.2012, along with payment of ₹3,50,000/-. As per the terms of the application form timely payment was stipulated to be the essence of allotment and in the event of default, the respondent was entitled to levy interest or terminate the booking.
21. That a Buyer's Agreement was executed between the parties on 18.06.2013, after the complainant having inspected the project documents and agreeing to the terms and conditions therein. Pursuant thereto, an IT/ITES unit bearing No. 0311 in Tower OXY-05, admeasuring 684 sq. ft., was provisionally allotted to the complainant for a basic sale consideration of ₹40,61,520/-, exclusive of statutory and other charges. An allotment letter dated 29.06.2013 was also issued in this regard. Payments were agreed to be made as per a time-linked payment plan.
22. The respondent relied upon Clause 14 of the Buyer's Agreement dated 18.06.2013, which provided that timely payment of instalments was the essence of the contract and that, in the event of default, the respondent was entitled, at its discretion, either to cancel the allotment or to condone

the delay by levying interest at 18% p.a. for delay up to 30 days and 24% p.a. thereafter, compounded annually.

23. It was further submitted that under Clause 18 of the Buyer's Agreement dated 18.06.2013, the respondent had undertaken to endeavour to offer possession of the unit within 36 months from the date of execution of the agreement or from the date of receipt of requisite sanctions/approvals, whichever was later. The said clause, according to the respondent, did not prescribe an absolute or fixed date for possession. Reliance was also placed upon Clause 21, which exempted the respondent from liability for delay caused due to force majeure or circumstances beyond its control.
24. That the complainant had the option to invest in other similarly situated projects within Delhi NCR region yet the same out of her own will and independent vision chose to invest in RPS Infinia after being fully satisfied with all terms and conditions of buyer's agreement.
25. The respondent alleged that the complainant had been in continuous default in making timely payments right from the initial stage of allotment. It was pointed out that against the booking amount of ₹4,06,125/-, the complainant paid only ₹3,50,000/- on 02.02.2013, and the balance amount of ₹56,125/- was paid after a delay of 36 days. Thereafter, several instalments were not paid on the due dates, compelling the respondent to issue repeated demand letters and reminders between 2013 and 2015, and to adjust unpaid instalments in

subsequent demands. Copy of demand letters dated 12.02.2013, 31.05.2013, 03.08.2013, 29.11.2013, 24.01.2014, 20.03.2014, 26.05.2014, 17.07.2014, 16.09.2014, 11.04.2015 and reminder letters dated 08.11.2014 and 03.04.2015 are attached as Annexures R10 (Colly) of the Reply.

26. That the respondent continued with construction and implementation of the project despite such huge defaults on part of the complainant. That the respondent has not only raised demands strictly in terms of the buyers agreement and construction/ payment schedule but also sent multiple reminders to the complainant to rectify the defaults and clear outstanding dues.
27. Owing to the continued defaults, the respondent stated that it was constrained to cancel the allotment vide letter dated 09.10.2015, which was subsequently confirmed vide letter dated 04.11.2015. Thereafter, the complainant approached the respondent, admitting her lapse and seeking restoration of the allotment with an assurance to clear outstanding dues. The respondent restored the allotment in favour of the complainant, while clearly informing her that delay interest would be levied on account of past defaults, to which the complainant allegedly agreed.
28. Despite restoration, the respondent contended that the complainant continued to remain irregular in making payments, and a substantial

portion of the sale consideration and other dues remained unpaid even thereafter.

29. The respondent submitted that notwithstanding the complainant's payment defaults, it continued with construction of the project. However, during the relevant period, the project faced several external impediments, including construction bans imposed by the Hon'ble NGT and the Hon'ble Supreme Court, economic slowdown, liquidity constraints, labour shortages, and the outbreak of COVID-19, all of which adversely impacted construction activity.
30. Additionally, the respondent has averred that the Hon'ble NGT imposed construction ban from 08.11.2016 to 15.11.2016 and from 10.11.2017 to 14.11.2017. Subsequently, Hon'ble Supreme Court ordered a complete construction ban from 04.11.2019 to 09.12.2019 followed by a night construction ban up till 14.02.2020 which caused a substantial shortage of labour and building resources. Thereafter the sudden outbreak of covid further aggravated suspension of physical work. Despite these sudden uncontrollable impediments, respondent diligently pursued development and continued construction of tower T-05.
31. It was further stated that despite the aforesaid circumstances, the respondent completed the construction and applied for the grant of Occupation Certificate on 05.08.2022, which was ultimately granted on 28.03.2024, establishing completion of the project.

32. The respondent also issued an offer of fit-out dated 07.08.2023, informing the complainant that the Occupation Certificate had been applied for. Upon grant of the OC, a formal offer of possession dated 29.09.2024 was issued along with a statement of account. As per the respondent, against a total payable amount of ₹73,69,506/-, the complainant had paid only ₹39,17,894/-, leaving an outstanding amount of ₹41,20,003/-, inclusive of delayed interest and statutory charges.

33. The respondent denied having illegally imposed late payment charges or other demands. It asserted that the demands towards GST, labour cess, prepaid meter card deposit, administration charges, and interest on delayed payments were contractual and statutory in nature and had been duly communicated to the complainant from time to time. It was contended that the complainant, having accepted restoration of allotment with full knowledge of the outstanding dues and interest liability, could not subsequently dispute the same.

34. It was further submitted that despite issuance of the offer of possession, the respondent sent reminder letters dated 27.11.2024 and 11.08.2025, calling upon the complainant to clear outstanding dues and take possession, which she allegedly failed to do.

35. On the basis of the above, the respondent contended that it has duly performed its contractual obligations by completing the project, obtaining the Occupation Certificate, and offering possession, whereas

the complainant continues to remain in default of substantial dues. Accordingly, dismissal of the complaint has been prayed for.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:-

36. Both parties reiterated the submissions made in their respective complaints, replies and supporting documents. The issues arising therefrom have already been addressed and dealt with in the order dated 27.11.2025 passed by this Authority.

F. ISSUES FOR ADJUDICATION

37. Whether the complainant is entitled to get possession of unit along with delay interest in terms of Section 18 of RERA Act of 2016?

G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT:

G.(i) Objections raised by the respondent regarding force majeure conditions.

Respondent stated that the obligation to deliver possession within the period stipulated in the clause 18 of the Buyer Agreement, i.e., within a period of 36 months + 6 months of grace period from the date of execution of agreement or from the date of getting requisite sanctions from the concerned authorities, whichever is later,

exclusive of the time taken by competent Authorities towards various approvals such as issuance of Occupation certificates/ completion certificates, Fire NOC etc. with a reasonable extension of time which makes the due date of possession as 28.12.2016. Further, the respondent by relying on clause 21 of the Builder's agreement has submitted that it exempts the respondent from any liability if the construction of the project is delayed on account of unforeseen circumstances and force majeure situations. Therefore, he has claimed reprieve on the basis of following grounds-

- i. Respondent has submitted that due to economic slowdown, inflationary pressures, volatility in foreign exchange and stock markets together with liquidity crunch and costly debt took a toll on the real estate industry and impacted respondent's project
- ii. Further, the respondent has submitted that the Hon'ble NGT had banned construction in Delhi NCR from 08.11.2016 to 15.11.2016 and then banned construction in Delhi- NCR from 10.11.2017 to 14.11.2017.
- iii. Hon'ble Supreme Court imposed complete construction ban in Delhi- NCR from 04.11.2019 to 09.12.2019 and later, construction was banned from 09.12.2019 to 14.12.2020.

iv. Worldwide COVID-19 pandemic caused nation/ state- wide lockdown which exponentially hampered the construction.

For explaining the delay in construction, respondent had claimed *force majeure* at page no. 5 and 6 of reply citing various natural calamities, government orders, court orders contributing to delay of project. The onus squarely lies with the respondent to explain how mere writing one line in pleading explains the nature of force majeure faced by respondent (except Covid). Further onus also lies upon the respondent to explain how each order directly affected its construction activities. It is the stand of respondent that force majeure provisions covering natural calamities, government orders, court orders affected the project completion.

To apply the doctrine of force majeure, comprehending it is necessary. Force majeure is a French expression which translates, literally, to “superior force”. To appreciate its nuances, jurisprudence of the concept under the Indian Contract Act, 1872 need to be elucidated. In the context of law and business, the Merriam Webster dictionary states that force majeure usually refers to “those uncontrollable events (such as war, labour stoppages, or extreme weather) that are not the fault of any party and that make it difficult or impossible to carry out normal business. A company may insert a force majeure clause into a contract to absolve itself from liability in the event it cannot fulfil the terms of

a contract (or if attempting to do so will result in loss or damage of goods) for reasons beyond its control". Black's Law Dictionary defines Force Majeure as follows, "In the law of insurance, superior or irresistible force. Such clause is common in construction contracts to protect the parties in the event a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care. Typically, such clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance."

In India, it is often referred to as an "act of God". Various courts have, over time, held that the term force majeure covers not merely acts of God, but may include acts of humans as well. The term "*Force Majeure*" is based on the concept of the Doctrine of Frustration under the Indian Contract Act, 1872; particularly Sections 32 and 56. The law uses the term "impossible" while discussing the frustration of a contract, i.e., a contract which becomes impossible has been frustrated. In this context, "*impossibility*" refers to an unexpected subsequent event or change of circumstance which fundamentally strikes at the root of the contract.

As per Section 56 of the Indian Contracts Act (Agreement to do impossible act) states that "a contract to do an act which, after the

contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful." It is the performance of contractual obligations that must become unlawful/impossible, not the ability to enjoy benefits under the contract. *The Supreme Court in Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017) 2017 3 ALL WC 2692* lent further insight into interpreting a Force Majeure situation i.e

- a. Events beyond the reasonable control of one party should not render that party liable under a contract for performance, if that event prevents the party's performance;
- b. The language of the agreement relating to duty to mitigate, best efforts, prudent man obligations to nevertheless perform etc., will all be taken into consideration in understanding the parties' intent;
- c. Force majeure events must be unforeseeable by both parties;
- d. The requirement to put the other party on notice must be met with if the contract provides for notice requirements; and
- e. Burden of proof rests with the party relying on the defense of force majeure for its inability to perform the obligation.

In the present case, applying the aforesaid principles, the plea of the respondent that economic slowdown, inflation, liquidity crunch, or costly debt affected the project is rejected as such factors are inherent risks of the real estate business and cannot be invoked to condone prolonged delay.

Further, the respondent has relied on the NGT Ban notification in Delhi NCR from 08.11.2016 to 15.11.2016 and from 10.11.2017 to 14.11.2017. It is pertinent to note that the deemed date of possession, even after granting the contractual grace period, falls on 28.12.2016. The NGT bans relied upon were for short durations of a few days, and even if taken into consideration they do not materially explain or justify the delay already accrued prior to the due date of possession.

With respect to any claim regarding *force majeure*, it is a settled law that the onus lies entirely on the person making the claim to prove that the event(s) in question was indeed covered by this maxim. Further, the onus gets discharged only by also establishing with evidence that event actually hampered the work of the claimant. In the present case, the respondent has not discharged its onus at all.

However, with regard to Covid, the position is different. Here reference is made to Advisory issued by Authority in its 93rd meeting held on 18.05.2020 wherein time period of maximum 6 months 25.03.2020 to 24.09.2020 was considered as force majeure being

natural calamity affecting the whole world and extension of three months, i.e. 01.04.2021 to 30.06.2021 due to second wave of Covid-19 was considered as force majeure by the Authority in its meeting held on 02.08.2021. Therefore, the Authority holds that the only *force majeure* condition accepted in this case is Covid-19 for 9 months, i.e. 25.03.2020 to 24.09.2020 and 01.04.2021 to 30.06.2021. Therefore, a time period of 9 months is to be excluded from any delay interest calculation.

38. In light of the facts of the case and perusal of documents placed on record, Authority observes that admittedly complainant booked the plot in the project of respondent namely; "RPS Infinia" situated at 12/6 Milestone, Sarai Khwaja, Mathura Road, Faridabad, Haryana and a Builder Buyer Agreement dated 28.06.2013 was executed with respect to the unit no. 311, 3rd Floor, Tower- OXY-5 admeasuring 684 sq. ft. in respondent's project. Consequently, allotment letter was issued with respect to the said unit on 29.06.2013. Till date complainant had paid an amount of ₹39,17,894/- against the total sale consideration of ₹43,34,850. As per clause 18 of the Buyer's agreement dated 28.06.2013, *possession of said plot was to be given within a period of 36 months + 6 months of grace period from the date of execution of agreement or from the date of getting requisite sanctions from the concerned authorities, whichever is later, exclusive of the time taken*

by competent Authorities towards various approvals such as issuance of Occupation certificates/ completion certificates, Fire NOC etc with a reasonable extension of time.

39. This clause invites the Authority to consider a question of considerable interpretative significance. Before examining its substantive effect upon the rights of the parties, it is apposite to recall the well-established principle of statutory construction commonly referred to as the ***Mischief Rule***. Derived from the formulation in *Heydon's Case (1584)*, this principle has long guided courts in common law jurisdictions in discerning the true import of legislative enactments. The rule requires the adjudicator to identify the defect or mischief which the statute was intended to suppress and to construe the provision in a manner that advances the remedy contemplated by the legislature. *It is, in essence, an aspect of purposive interpretation, directing the Court to look beyond the literal wording where such wording, if read mechanically, would frustrate the legislative objective or produce results that are unreasonable or unjust.*
40. Properly applied, the mischief rule ensures that statutory provisions are interpreted so as to give effect to the legislative intent and to prevent the re-emergence of the very mischief the law was enacted to eliminate. This raises a recurring question under the Real Estate (Regulation and Development) Act, 2016, i.e., *Whether such language permits the*

promoter to indefinitely postpone its obligation, or whether courts and authorities may construe the given language strictly?

The answer requires an application of the mischief rule of statutory interpretation, as set out in *Heydon's Case* (1584), which directs the adjudicator to identify -

- (i) the state of the law before the enactment,
- (ii) the mischief that the statute intended to remedy
- (iii) the legislative solution, and
- (iv) the interpretation that would suppress the mischief and advance the remedy.

Before RE(R&D) Act of 2016, Indian real-estate contracts routinely contained ambiguous possession clauses couched in phrases like "best endeavour," "subject to approvals," or "tentatively by," which enabled promoters to defer delivery for years without consequence. The mischief the legislature sought to address was precisely this asymmetry: homebuyers were advancing substantial sums yet had little control or remedy against such delays. For this purpose, sections 11 and 18 of the act places time-bound delivery at the heart of the regulatory framework whereby, Section 11(4)(a) requires the promoter to "responsibly discharge" all obligations as per the terms of the

agreement for sale; and Section 18 obligates the promoter to provide interest etc to the allottee for delay.

41. When the possession clause uses the words “*will endeavour*”, the literal reading suggests a mere obligation of effort rather than a mandatory timeline. However, applying the mischief rule, such an interpretation would defeat the very purpose of RERA, which is to eliminate the opacity and uncertainty that characterised the pre-RERA regime. If the clause were construed to mean that the promoter has no strict obligation to deliver within thirty-six months but only to try, the mischief, i.e, indefinite postponement would re-enter through the back door. Courts have therefore consistently held that promoters cannot dilute statutory rights through contractual drafting. The Hon’ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan* (2019) 5 SCC 725 emphasised that one-sided clauses crafted by builders cannot bind the allottee when they defeat consumer protection; similar reasoning appears in the case *IREO Grace Realtech Pvt. Ltd. v. Abhishek Khanna* (2021) 3 SCC 241, where the Hon’ble Court held that contractual terms must be read in light of the legislative objective of protecting homebuyers.

42. Under this reasoning, the phrase “whichever is later” provides a determinable anchor point, and the addition of “*will endeavour*” cannot

legally convert a mandatory timeline into an aspirational one. RERA, being a benevolent statute, must be construed purposively and any ambiguity must be resolved in favour of the allottee. *The Authority is therefore entitled to read the clause as imposing a definite possession period of thirty-six months along with grace period of six months with the promoter's "endeavour" language having no effect in diluting statutory consequences.*

43. Applying the statutory position above and the ratios of the Hon'ble Apex Court the deemed date of possession is 28.12.2016. Respondent has failed to deliver possession of the flat before or till 28.12.2016 to the complainant. On account of inordinate delay in delivery of possession, complainant under Section 31 has approached this authority by way of filing present complaint on 24.06.2024 in the registry and offer of possession was made to her on 29.09.2024.

44. Now, the issue which remains in this case is that whether the offer of possession dated 29.09.2024 was a valid offer of possession or not? Complainant alleges that complainant did not accept the said offer of possession because same was accompanied with unjustified and illegal demands wherein the total sale consideration was increased and other charges like GST, Labour cess, interest on delayed payments etc were imposed on him.

45. On the other side, stand of the respondent is that complainant had opted for time linked payment plan. Respondent issued various reminders and demand letters to the complainant for paying the amount towards the unit. However, complainant continuously defaulted in making payments on time. Therefore, as per terms of the buyer's agreement the interest levied by the respondent is ledged and complainant is liable to pay the same. Moreover, respondent had received the occupation certificate from the competent authority on 28.03.2024, therefore, offer of possession dated 29.09.2024 is valid offer of possession.

In this regard Authority deems it appropriate go through the terms and condition of the Buyer's agreement dated 28.06.2013. Payment plan is annexed as Annexure-1 to buyer's agreement on page 61 of respondent's reply which reveals that the payment plan is Time linked Plan.

Now, analyzing the Payment Plan, it depicts that on booking of plot complainant had to pay ₹4,06,125/-, and with regard to that complainant paid part payment of ₹3,50,000/- on 02.02.2013. Remaining payment was made on 24.02.2013. Second amount of ₹2,09,312/- was to be paid within 2 months of booking, i.e. till 26.02.2013. However, complainant again paid partial amount of ₹1,52,875/- on 24.02.2013 and balance amount of ₹2,09,000/- was paid

on 08.05.2013. Further, third installment of ₹2,10,905/- was to be paid within 4 months of booking, i.e., till 27.04.2013 whereby complainant made a payment of ₹1,52,563/- on 08.05.2013 and balance amount of ₹1,06,404/- was paid on 22.08.2013. Subsequently, fourth installment of ₹ 3,18,902/- was to be paid within 6 months of booking, i.e., till 26.06.2013 wherein the complainant paid an amount of ₹4,75,000/- on 08.08.2013 and ₹1,01,448/- on 22.08.2013. Further, fifth installment of ₹ 6,34,790/- was to be paid within 8 months of booking, i.e., till 25.08.2013. complainant paid 2,57,546/- on 08.08.2013 and balance amount of ₹5,96,404/- on 22.12.2013. Simultaneously, this pattern continued till the thirteenth installment. Meanwhile the respondent also issued numerous demand letters however, delay was attributed. The same has been inferred from the calculations submitted by the respondent in its reply dated 10.12.2025 on page no. 8. That the last payment was made on 25.01.2016 amounting to ₹3,75,649/- and further next payments on account of twelfth and thirteenth installments which were scheduled to be made by 11.06.2015.



46. Relevant table from the written submissions submitted by the respondent is being reproduced below-

SL No	Due Date	Date of Payment/ Calculation	Particulars	Amount Due	Amount Paid	BALANCE Extra	Period of Delayed
1	10-Oct-12	2-Feb-13	Booking	406126	350000	56126	56
	10-Feb-13	24-Feb-13	Booking	56126	200000	152875	22
	20-Feb-13	24-Feb-13	Within 2 months of booking	209312	152875	56437	2
	20-Feb-13	6-May-13	Within 7 months of booking	56437	209000	-152563	71
	27-Apr-13	6-May-13	Within 4 months of booking	210905	152563	58342	11
	27-Apr-13	22-Aug-13	Within 4 months of booking	58342	106464	-48062	3769
	28-Jun-13	22-Aug-13	Within 6 months of booking	310862	48062	270840	57
	10-Jun-13	22-Aug-13	Within 6 months of booking	270840	53186	217654	57
	28-Jun-13	8-Aug-13	Within 6 months of booking	217654	475000	-257346	43
	28-Aug-13	8-Aug-13	Within 3 months of booking	634793	257546	377244	-17
	28-Aug-13	22-Dec-13	Within 3 months of booking	377244	106464	270840	119
	28-Aug-13	22-Dec-13	Within 3 months of booking	270840	480000	-219160	119
	28-Dec-13	22-Dec-13	Within 12 months of booking	529481	219160	307321	1
	22-Dec-13	15-Feb-14	50% EDC & IHC	106464	350000	-243206	58
	20-Dec-13	16-Feb-14	Within 12 months of booking	307321	243506	63725	57
	23-Dec-13	21-Apr-14	Within 12 months of booking	63725	206000	-236275	119
	21-Feb-14	21-Apr-14	Within 14 months of booking	315606	206275	79813	50
	21-Feb-14	10-Nov-14	Within 14 months of booking	79813	230000	-120387	627
	22-Apr-14	10-Nov-14	Within 16 months of booking	316527	120387	197870	967

✓

			Within 16 months of booking	197870	100000	97870	572
			Within 16 months of booking	97870	200000	102130	582
			Within 16 months of booking	210593	102130	108463	522
			Within 16 months of booking	108463	200000	-91637	501
			Within 20 months of booking	315888	91637	224351	441
			Within 20 months of booking	224351	200000	24351	487
			Within 20 months of booking	24351	200000	-175649	523
			Within 22 months of booking	315888	175649	140239	461
			Within 22 months of booking	140239		140239	438
			Within 24 months of booking	210593		210593	3116
			Within 26 months of booking	211592		211592	3087

47. However, the respondent has admitted the amount received from complainant as ₹39,17,894/- in its pleadings and the amount can be verified from the ledger in books of respondent submitted by the complainant in its complaint. Therefore, till 28.12.2016, complainant paid ₹39,17,894/- The sequence of payments, reveals that before the deemed date of possession, i.e., 28.12.2016, complainant had paid an amount of ₹ 39,17,894/- against the sale consideration. However, as per the payment plan willingly chosen by the complainant depict that most

of the payments were to be paid before 11.06.2015. This clearly shows that complainant did not adhere to the payment plan opted by her.

That the respondent has mentioned about delay in timely payments as per clause 14 of BBA. Clause 14 is reproduced below-

" That the timely payment of installments of basic sale price, preferential location charges, EDC & IDC, additional charges and other applicable charges in terms of Buyer's Agreement, is the essence of booking/ allotment. The Intending Buyer shall make all the payments strictly in accordance with the payment plan agreed by him irrespective of the receipt of any written demand notice or any dispute / difference between the Intending Buyer and the Promoter with respect to any matter contained in the Agreement or even otherwise. However, in the event of breach of any of the terms and conditions by the Intending Buyer including default in making timely payment of installments, in such cases the Promoter is authorize to cancel the allotment and forfeit the earnest money. The balance amount if any, shall be refundable to the Intending Buyer without any interest, only after compliance of certain formalities including but not limited to surrender of all original documents/receipts etc, in respect of the said cancelled Unit, simultaneously with the cancellation of allotment of the said Unit and dealer's NOC (No Objection Certificate) by the Intending Buyer. However, the Promoter in its exclusive discretion reserves the right to withdraw the cancellation, condone the delay/default in payment and restore the allotment subject to payment of penal interest @ 18% p.a. on the outstanding amount for the delay up to 30 days from the due date of payment and @ 24% p.a. thereafter to be compounded annually on all outstanding dues, from their respective due dates. It is, however, clearly understood and agreed that the provisions of interest or acceptance of late payments by Promoter shall under no circumstances be construed as any general relaxation in payment of past, present or future dues of the Promoter or any amendment in the terms of payment or to cause prejudice in any way to the rights of the Promoter to proceed and take action under the terms of the Agreement since timely payments shall always remain the essence of the agreement. Further, any default in payment or non-payment of installment shall be considered and deemed to be fundamental breach of the Buyer's Agreement.

Also, it is agreed by the Intending Buyer that, if the amount paid by him

is less than the earnest money then the Intending Buyer undertakes to make good the shortfall of the forfeiture amount.

48. It is an admitted position that the complainant had defaulted in making certain part payments within the stipulated time and that the allotment was cancelled by the respondent vide letter dated 04.11.2015. However, it is equally evident from the record that the said cancellation was subsequently withdrawn and the allotment stood restored, though no formal written communication evidencing such restoration has been placed on record and thereafter the respondent continued to raise further demands upon the complainant. This Authority is of the considered view that while the complainant is liable to pay interest on the delayed payments, such interest cannot be levied at exorbitant rates as stipulated in the Buyer's Agreement, and in order to maintain parity between the allottee and the promoter, the interest on delayed payments shall be chargeable at the same rate at which the promoter is liable to pay interest for delay in handing over possession, namely, at the rate equivalent to the SBI highest Marginal Cost of Lending Rate (MCLR) plus two per cent, which as on date is 8.80 plus two percent, i.e, 10.80. Further, in respect of the other charges as challenged by the complainant, following is being observed-



i. **GST**- Amounts against said interest demanded by the respondent is arbitrary because the deemed date of possession in the present case was 28.12.2016, whereas the Goods and Services Tax (GST) regime came into force w.e.f. 01.07.2017. Since the delay in offering possession is wholly attributable to the respondent, the complainant cannot be burdened with taxes, charges or financial liabilities which were not applicable as on the deemed date of possession. Any demand raised on account of GST or other consequential charges, arising solely due to the respondent's delay in completion and offer of possession, is therefore unjustified and cannot be fastened upon the complainant. Accordingly, **such demands are held to be not payable by the complainant.**

ii. **LABOUR CESS**- It is alleged that the respondent has raised a demand towards labour cess amounting to ₹23,940/-, calculated at the rate of ₹35 per sq. ft., without any contractual basis and in the absence of any agreement to this effect. On perusal of the Buyer's Agreement, this Authority finds merit in the said contention. The respondent has failed to point out any specific clause in the BBA authorising levy or recovery of labour cess at the rate demanded. Mere incorporation of a general clause

permitting recovery of statutory taxes, cesses or charges *as and when demanded*, cannot, by itself confer an unfettered right upon the respondent to impose such levy in the absence of clear disclosure, quantification and contractual stipulation.

iii. PREPAID METER CARD DEPOSIT (ADVANCE DEPOSIT AGAINST COMMON AREA MAINTENANCE)-

The complainant has averred that the respondent, through the statement of account, has demanded an amount of ₹2,01,780/- (inclusive of GST) towards prepaid meter card deposit/advance deposit for common area maintenance, despite there being no agreement or contractual stipulation authorising such a demand.

The respondent's demand towards aforementioned charges is not supported by any specific provision in the Buyer's Agreement.

Further, *Clause 4* as relied by the respondent does not contemplate advance collection of any prepaid meter deposit. A general phrase like "other additional charges etc." cannot be used as a blank cheque to invent new financial liabilities. The said demand is therefore arbitrary and is liable to be set aside.

iv. **INTEREST ON DELAYED PAYMENTS-** The issue has already been adjudicated in aforesaid paragraphs. As per section 19 (7) of RERA Act of 2016 read with Rule 15 of HRERA Rules, 2017, such interest shall be calculated at the rate prescribed in Rule 15 of HRERA Rules, 2017. Therefore, complainant can be made liable to pay interest only to the extent as prescribed in RERA Act, 2016.

v. **ADMINISTRATIVE CHARGES-** The complainant has contended that the respondent has demanded Administration Charges amounting to ₹23,600/- (inclusive of GST) through the statement of account dated 24.11.2023, without any contractual sanction or prior agreement. On perusal of the Buyer's Agreement, particularly Clause 4, it is evident that the agreement permits recovery only of specifically charges such as IDC, EDC, PLC, ECC/EEC, electricity distribution costs, and statutory levies. There is no clause in the Agreement authorising the levy of "Administrative Charges," nor is any rate, or basis for such charges disclosed. The respondent cannot rely upon general expressions such as "*other additional charges*" to impose new, unquantified, and unilateral financial liabilities upon the allottee.

Therefore, in the absence of any contractual stipulation permitting recovery of administrative charges, the said demand is liable to be set aside.

Also, in reference to this reliance can be placed upon Section 19 of RERA Act of 2016, which mentions about Rights and Duties of Allottees.

Relevant Section is as under:

Section 19: Rights and duties of allottees:

- 6) *Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.*
- (7) *The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).*

49. Authority vide its order dated 27.11.2025, gave a final opportunity to the respondent to file written submissions. In compliance of the same, respondent had filed submissions dated 10.12.2025, mentioning that till date complainant had paid an amount of only ₹39,17,894/-, and on account of non-payment of the outstanding dues by the complainant an

outstanding amount of ₹41,20,003/-, inclusive of delayed interest and statutory charges stands due on part of complainant. Relying upon the Section 19(6), (7) of RERA Act, Clause 14 of Agreement to sell, interest levied by the respondent is valid and hence, the offer of possession dated 29.09.2024 issued by the respondent is valid one and complainant is liable to pay the said interest.

50. Authority observes that deemed date of possession in the present case was 28.12.2016, possession of plot was offered to complainant on 29.09.2024. There is delay of 7 years, 7 months and 1 day in offering possession by the respondent to the complainant. Complainant herein is entitled to delayed possession charges which is provided under the proviso to Section 18 (1) of the Act,

Section 18 (1) proviso reads as under :-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....
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”.

51. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(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;

52. 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., 15.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

53. Payment of delayed possession charges at the prescribed rate of interest. Interest for every month of delay, till the handing over of possession at such rate, as 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".*

54. In view of aforesaid observations and reasoning, the Authority hereby concludes that the complainant is entitled for the delay interest from 28.12.2016(deemed date of possession) to 29.09.2024 (i.e, the date of valid offer of possession). Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of offer of possession at the rate of 10.80% till date and said amount works out to ₹27,47,463/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 29.09.2024 (in ₹) excluding force majeure period				
			28.12.2016 DDOP or date of payment whichever is later to 24.03.2020	25.03.2020 to 24.09.2020	25.09.2020 to 31.03.2021	01.04.2021 to 30.06.2021	01.07.2021 to 29.09.2024
1.	39,17,894	28.12.2016	13,71,413	No interest	2,17,942	No interest	13,76,050
Total:	39,17,894		13,71,413	No interest	2,17,942	No interest	13,76,050
Total=Rs 27,47,463/-							

55. In respect of the relief relating to execution of conveyance deed, this Authority observes that the complainant has consistently expressed willingness to take possession of the plot along with execution of the conveyance deed. It is further observed that the conveyance deed will be executed only after deciding the payables and receivables. The respondent has placed on record its calculations vide written submissions dated 10.12.2025; however, the rate of interest applied therein has not been specifically disclosed. In view of the findings recorded hereinabove, whereby the issue of delayed payments as well as the levy of other charges as challenged by the complainant stands adjudicated, and the applicable rate of interest has been determined accordingly, the respondent is directed to issue a fresh, revised statement of account, strictly in accordance with the present order, after adjusting all adjudicated charges and interest as on the date of issue of revised statement of account. Upon issuance of the said revised statement of account and subject to discharge of their respective obligations by both parties within the stipulated time, the respondent shall proceed with handing over possession and execution of the conveyance deed, in accordance with law.



H. DIRECTIONS OF THE AUTHORITY

56. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to issue fresh statement of account issued in compliance of directions passed in this order incorporating therein delay interest of ₹ 27,47,463/- to the complainant towards delay already caused in handing over the possession till the date of this order. However, the same is to be calculated by the respondent till the date, revised statement of account is issued.
- (ii) Complainant is directed to accept possession within 30 days of receipt of fresh Statement of Account.
- (iii) Further respondent is directed to execute conveyance deed within 90 days after handing over of valid legal possession to the complainant.
- (v) The rate of interest is chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/ Promoter which is the same

rate of interest which the promoter shall be liable to pay to the allottees.

(vi) The respondent shall not charge anything more from the complainant which is not part of the agreement to sell.

Disposed off. File be consigned to the record room after uploading of the order on the website of the Authority.

.....
CHANDER SHEKHAR
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET SINGH SACHDEV
[CHAIRMAN]

**Separate order containing dissenting view is attached below:

1. We, the undersigned have the privilege of going through the order authored by Hon'ble Chairman of the Authority and are in complete agreement with the findings on all issues except exemption on account of force majeure and delay interest in captioned complaint.
2. Respondents have pleaded that deemed date of possession was subject to the force majeure events such as NGT Bans and COVID-19. Details of said events have been summarized in the table below:-

Sr. No.	Details of Ban on Construction	Duration/Time Period
1.	Order passed by NGT	08.11.2016 to 15.11.2016 10.11.2017 to 14.11.2017
4.	Order dated 04.11.2019 passed by Hon'ble Supreme Court	04.11.2019 to 09.12.2019 09.12.2019- 14.02.2020
5.	Nationwide lockdown in order to curb COVID-19 w.e.f 25.03.2020 to 24.09.2020 and second wave of COVID-19 w.e.f 12.04.2021 to 24.07.2021	184 & 103 days

Deemed date of possession in the present case is 28.12.2016. Therefore, question arises for determination as to whether any situation or circumstances which could have happened after to this date, due to which the respondent could not carry out the construction activities in the project can be taken into consideration? Also to look at the aspect as to whether the said situation or circumstances were in fact beyond the control of the respondents or not? There is delay on



the part of the respondents and the various reasons given by the respondents such as the NGT order, Covid outbreak etc. are not convincing enough for two-fold reasons, firstly, as respondents had claimed that NGT orders passed in year 2016, 2017 and 2019 have been one of the cause for delay in construction activity of the project. It is pertinent to mention here that respondent herein are in business of real estate sector and are well aware of fact that certain bans on construction activity of the project duly hampers the construction progress at site. The deemed date of possession has been provided by respondents considering all such factors. Moreover, the NGT Ban was just before the deemed date of possession and for few days further, any event that subsequently occurred after 2016 could not have hampered the deemed date/construction work that was to be completed till the year 2016. Secondly, respondent himself had promised to deliver possession of the unit to complainant by 28.12.2016 so any delay if has occurred during completion of apartment, the respondent cannot burden it upon complainant. Complainant is not at fault for trusting respondent by depositing the amount to respondent in return of delivery of possession of unit. Therefore, now, the respondent cannot be allowed to take advantage of the delay on their part by claiming the delay in statutory approvals/directions.

A handwritten signature in black ink, appearing to read 'Vishal Goh'.

As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in the case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (I) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.”

3. The plea of the respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.
4. In view of aforesaid observations, complainant is entitled to delay interest ranging from deemed date of possession 28.12.2016 to the



date of valid offer of possession, i.e offer made after obtaining occupation certificate from the competent authority (29.09.2024) in terms of Rule 15 of HRERA Rules, 2017. Calculation of delay interest is incorporated in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 29.09.2024 (in ₹)
1.	39,17,894/-	28.12.2016	32,84,204
Total:	39,17,894/-		32,84,204/-
Amount payable by respondents -			Rs. 32,84,204 /-

5. Fact remains that respondent has not issued any possession letter to the complainant till date after receipt of occupation certificate. Complainant has got to know about receipt of occupation certificate only after filing of present complaint that too on receipt of reply. During pendency of the complaint, respondent did not even bothered to issue proper and valid offer of possession duly supported with occupation certificate. Moreover, the proviso to Section 18 of the RERA Act,2016 clearly entitles the allottee to receive delay interest till handing over of possession. Same is reiterated below for reference:-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....



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".

6. In view of aforesaid observation, the plea of respondent does not hold any merit and is therefore rejected.
7. Accordingly, parties are directed as follows:-
 - i. Respondent is directed to issue fresh statement of account issued in compliance of directions passed in this order incorporating therein delay interest of ₹32,84,204/- to the complainant towards delay already caused in handing over the possession till the date of this order. However, the same is to be calculated by the respondent till the date, revised statement of account is issued.
 - ii. Complainant is directed to accept possession within 30 days of receipt of fresh Statement of account.
 - iii. Further respondent is directed to execute conveyance deed within 90 days after handing over of valid legal possession to complainant.
 - iv. The rate of interest is chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/ Promoter which is the same

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rate of interest which the promoter shall be liable to pay to the allottees.

v. The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

With the aforesaid directions, the cases stands Disposed of. File be consigned to record room after uploading on the website of the Authority.



.....
CHANDER SHEKHAR
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]