HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2461 of 2023
Date of filing:	01.12.2023
First date of hearing:	08.02.2024
Date of decision:	22.01.2026

Pardeep Kumar

S/o Sh. Mahender Singh

#House no. 1225, Sector-23

Sonipat Haryana- 131001,

.....COMPLAINANT

Versus

1. M/s Aegis Value Homes Ltd through its Director,
   Registered Office, #3,1st floor, Gold Floors,
   Sector-33 Karnal-132001, Haryana India
2. Divey Sindhu Dhamija, Managing Director/HOD/CEO, House no. 1008, Urban Estate, Sector-13, Karnal-132001, Haryana.
3. Raj Dhamija, Director, H.No. 1008, Urban Estate, Sector-13, Karnal-132001, Haryana.
4. Rajat Dhamija, Director, House no. 977, Sector-6, UE, Karnal-132001, Haryana.

.....RESPONDENTS

CORAM: **Parneet Singh Sachdev** **Chairman**
Nadim Akhtar **Member**
Dr. Geeta Rathee Singh **Member**

Present: - Adv. Ramesh Kumar, Counsel for the complainant through VC.
None for the respondents.

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 01.12.2023 by 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 fulfil 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 project, the details of sale consideration, the amount paid by the complainant, date of handing over of the possession, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Aegis Woods Scheme

2.	Name of the promoter	Aegis Value Homes Ltd
3.	RERA registered/not registered	Unregistered
4.	Unit allotted	L-304, 3rd Floor, Lime Tower
5.	Unit area	1000 sq. ft.
6.	Date of allotment	28.10.2013
8.	Date of builder buyer agreement	30.04.2016
9.	Due date of offer of possession	29.06.2018
10.	Possession clause in Allotment letter	Clause 4.2(a) of BBA "within 42 months from date of booking, i.e., 28.10.2013+ 6 months grace period"
11.	Basic sale consideration	₹21,78,000/-
12.	Amount paid by complainant	₹ 16,71,531/-
13.	Offer of possession (fit-out)	No offer of possession given

B. FACTS AS PER THE COMPLAINT

3. That the complainant is the resident of above mentioned address and he is purchaser/allottee of residential flat from respondents in the project named Aegis Values Homes Limited situated near Hotel Noor Mahal, Karnal Haryana in the Project named AEGIS WOODS SCHEME. The current complaint is being filed by the complainant as the respondent failed to deliver/hand over the possession within the stipulated time frame as per the terms and conditions laid down in the agreement.

4. The respondent is the Company incorporated under the provisions of the earlier Companies Act, 1956 (now the Companies Act 2013) and the respondent No. 2 and 3 are the Directors of the respondent Company as per the data received from the Website of HRERA, Panchkula (Regd. No. Temp Project Id: RERA-PKL-486-2019, responsible for day to day business of the Company Respondent No. 1, the respondent had launched the Aegis Value Homes Limited in the name and style of AEGIS WOODS SCHEME (the Project) by way of circulation of private brochure and advertising the said Project as luxury flat near Noor Mahal Hotel, Karnal. Pursuance to the assurances given by the respondent, many buyers had opted to invest their saving in the said project and so as the complainant. For the purpose of sale and promotion of the project, the respondent falsely represented that the Project shall be completed in a time bound manner i.e. 42 months plus 6 months grace period.

5. That the complainant has purchased and was allotted the Unit 2 BHK No. L-304 measuring 1000 Sq.Fts on 3rd floor vide provisional allotment letter 28.10.2013 against application No.5155 with the respondent in their project AEGIS WOODS SCHEME bearing Unit No. L-304 on 3nd Floor of the Lime Tower(Aegis woods Building Complex measuring 1000 sq. ft. in the year 2013 by paying the Booking Amount to the respondent and balance payment was paid to

the respondent as per the payment Plan. Complaint and respondent have executed agreement dated 30* April, 2016. The provisional allotment letter dated 28.02.2014 which was issued in the shape of agreement letter of provisional allotment is appended at ANNEXURE : C1

6. It is relevant to mention here that the total basis sale price of the 2 BHK Flat was Rs. 21, 78,000.00 including the EDC/IDC and other taxes, charges and levies etc. That the complainant had executed the buyer's agreement dated 30 April, 2016. The agreement entered between the respondent and complainant is totally one sided and biased to the builder/developer. This can be inferred from the terms and conditions of the agreement inter-alia the builder is charging hefty amount of interest on the delayed payment from the complainant in paying the instalment as laid down in the Clause No. 22 of the Buyer's Allotment/agreement. This is the classic example of dominant misuse of dominant position by the Builder. That the complainant as on today has paid Rs. 16,71,531.00 against the total price of Rs. 21,78,000.00 of the Flat but the respondents have failed to hand over the possession to the complainant as stipulated in 4.2 (A) of Article 4 of Buyer's agreement. It is submitted that the complainant has paid about 90 % approx of the total sale consideration price and was also ready to pay the remaining amount, but the Developer did not raise any demand

after receipt of Rs.16, 71,531/- to the banks as well as the complainant till date with the reason that the project has not yet been completed and the work on the project is also not going on. Copy of receipts of all the payments made by the complainant till date are annexed as at ANNEXURE: C2 (Colly).

7. That as per Clause 4.2 (A) of Article 4 of the Buyer's Agreement. It was specifically stated that the construction of the Unit will be completed and physical possession shall be offered to the allottee/complainant within a period 42 months plus 6 months (four years grace period from the date of booking i.e. 28th October, 2013 i.e. the date of application as per Clause 4.2 (A) of Article 4 of Buyer's Agreement. It is also pertinent to mention here that the Buyer's agreement was one sided and heavily loaded in favour of the respondent pointing out the grave Unfair Trade Practices being carried out by the Respondent. Thus, from the simple calculation and bare perusal of the clause 4.2 (A) of Article 4 of the Buyer's Agreement, the agreed time frame of 4 years including grace period for handing over the possession of the Flat to the complainant by the Developer Respondent has already expired on 27"* October, 2017 i.e. 42 months and 6 months plus grace period from the date of booking and the entire project has been delayed inordinately. There is no construction activity or development works going on in the said Project and the

same has come to a complete halt. That the Respondents have duped the hard earned money of the complaint and misused for the purposes other than that of Project. Ld. HRERA, Panchkula has already got conducted the physical survey at site by way of appointing a commission and it has been revealed from the report of the commission that the project is completely at halt and there is no possibility of further construction and construction by the developer. The copy of the Agreement is appended at ANNEXURE C-2.

8. That the Complainant is the bonafide purchaser of the Flat in the said Project and wants to get refund of deposited amount along with 24% compound interest as is claimed by the Developer in case of delayed payment as laid down in Clause 3.6 (A) of Buyer's Agreement. Hence, the complainant is also eligible to claim interest on the deposited amount @ 24% plus compensation for undue harassment and mental torture including pecuniary losses incurred on account of non handing over possession within the stipulated period.

9. The said Unit was purchased by the complainant for his personal use but the Respondents remained deficient in providing services despite strenuous efforts and personal contacts on behalf of the complainant. The respondent builder had illegally collected the money from the complainant as per Schedule of Payment Plan settled between the parties and have deliberately not carried-out the construction work of

the Apartments for his vested interest in accordance with the provisions of Buyer's Agreement.

10. That the complainant being aggrieved against the respondent for not completing the Project and not delivering the possession of Apartment, the complainant paid numerous visits since 2013 & still pillar to post till date to the site as well as Corporate Office Delhi and requested the Respondent to hand over the possession but all in vain. This shows that the respondents) were least bothered to hand over the possession of the Flat which they have already delayed wilfully.

11. That the complainant had at all times made payments against the demands of the Respondents) and as per payment of Schedule of the Agreement pertaining to the Flat, therefore, the fraudulent act and conduct of respondents need to be penalised in accordance with the provisions of the Haryana Real Estate Authority (Regulation Development) Act 2016 (hereinafter being referred "the Act and Rules"),

12. That the act and conduct of respondents is also quite contrary to the mandate as provided under the Haryana Development and Regulation of Urban Areas Act and based upon total misrepresentation and fraud. Thus the complainant is entitled for the relief as sought in the present complaint.

13. That the Respondents have withheld the hard earned money of the complainant for their personal benefits and have used the money for their own other purposes and the same was not invested in the Project, therefore, duping the complainant by way such delaying tactics.

14. That due deficiency in services committed by the respondent, the complainant has suffered huge financial losses, mental agony, and trauma as their hard earned money had been invested in the said Project.

15. That in lieu of the aforesaid facts, it is apparent that as per the provision of the Act 2016, the Respondents have not followed the proper mandate as prescribed, thus, have cheated land defrauded the complainant with malafide intention.

16. That the Respondents have miserably failed to supply/show the copies of all relevant documents pertaining to the Project right from the initial stage till the execution of the construction work such as Certificate of CLU, Title Deed, Permission for Construction, Environment Certificate, List of the Contractors, List of the supplies of construction material etc - the mandatory requirements, despite the repeated requested and personal visit/contact to Corporate Office as well as to the Directors.

17. That in the present case, the mental agony and torture caused to the complainant are beyond limit as the entire illegal act of the respondent

are deliberate and with the sole intention to harass, humiliate and torture in order to gain illegal monetary benefits.

C. RELIEFS SOUGHT

18. Complainant sought following reliefs :

a. Refund the entire sale consideration amount paid by the complainant to refund the loan Amount borrowed with 24% compound interest plus compensation for mental harassment, humiliation, mental torture and pecuniary losses incurred due to non completion of the project and handing over possession, as the complainant having exhausted all hopes of giving possession of Flat by the Developer-Respondent, built another house and is no more in need of the said Flat now and

b. Impose the penalty as prescribed under Section 61 of RERA on the respondent for having contravened the provisions of Section 11 and HRERA Rules, 2017; and

c. Impose the penalty as prescribed Under Section 59 for having contravened the provisions of RERA; and/or

d. Pay legal expenses incurred by the complainant in connection with case to the tune of Rs. 1.50,000; and

e. Initiate appropriate legal action Under Section 69 of the Act against the respondent No. 2, 3 and 4 being the directors, developer, owner of the respondent Company, for breaching the trust of the

innocent person/allottee and cheating them with the intention to gain and usurp their money unlawfully.

D. WRITTEN SUBMISSONS ON BEHALF OF RESPONDENT FILED IN REGISTRY ON 16.04.2024

19. That license no. 1440/2013 dated 08.02.2013 was obtained by JD Universal Infra Limited (herein after referred as mega developer) for setting up a society for an area measuring 24.94 acres falling in the revenue estate of village Phoosgarh, Karnal Haryana. True copy of said license dated 08.02.2013 is annexed as AnnexureR-2. Thereafter, mega developer entered into joint development agreement with respondent for jointly developing the total area of 1.4603 acres. Respondent had paid the complete amount of EDC/IDC to the mega developer.

20. That due to improper assessment of EDC by the DTCP, the said mega developer defaulted in paying the EDC amount as the aforesaid license was granted under TP scheme but the EDC was not calculated as per the said scheme. Due to said default, DTCP revoked the said license which was challenged by the mega developer up till FCR Court, wherein vide its order further time period was granted to said developer for payment of EDC, in compliance of which Rs 5 crore was paid. Facing with the said enhancement in EDC and IDC mega

developer defaulted and failed to deposit the requisite amount due to which the license stands revoked.

21. That the complaint filed by the complainant is defective in nature as all the necessary parties have not been impleaded and as per the settled proposition of law, the present complaint is to be dismissed on the vary ground as no adverse order can be passed against the party without accommodating an opportunity of being heard.

22. That apart from the aforesaid defect, the present agreement was governed by construction linked plan but complainant miserably failed to fulfil his obligation under the agreement of timely payment and due to the said default respondent company was not able to complete the construction work within stipulated time.

23. That the respondent submitted that the complainant cannot rely on the provisions of the RERA qua the agreements that were executed prior to the RERA Act coming into force. It is further submitted that for transactions entered into between the parties prior to RERA Act coming into force, the agreements entered into between the parties shall be binding on the parties and cannot be reopened.

24. That the respondent submitted that the present complaint is barred by limitation as the complaint has been filed after expiry of 3 years. Hence, the present complaint may be dismissed on this ground alone. Further, as per Article 55 of the schedule of The Limitation Act which

provides that the time period to file such complaints is 3 years and the time period to file such complaints begins to run from the date of breach of agreement which is much prior in time as per complainant himself.

25. That it is worthwhile to mention here that the construction of the project commenced in December 2015 and after that, construction of the Project was hampered due to force majeure situations beyond the control of the Respondent which are as follows: -

- Jat Reservation Agitation: The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including city of Gurgaon wherein the project of Respondent is situated for 8-10 days.
- Demonetization of Rs. 500 and Rs. 1000 currency notes: The Real Estate Industry is dependent on un- skilled/semi-skilled unregulated seasonal casual labour for all its development activities. The Respondent awards its contracts to contractors who further hire daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 50 and Rs. 10 with immediate effect. Resulting into an unprecedented chaos which cannot be wished away by putting blame on Respondent.
- GST Implications: It is pertinent to apprise to the Hon'ble Adjudicating Officer that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the Respondent Company due to the impact of Good

and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation in last quarter of 2016.

- Directions/Prohibition by NGT: It is noteworthy that on 09.11.2017, in Vardhaman Kaushik vs Union of India & Ors, the National Green Tribunal New Delhi observed The Tribunal had passed a detailed judgment in the case of Vardhman Kaushik on 10th November, 2016 and had clearly postulated the steps that were required to be taken on long term and short-term basis keeping in view the precautionary principle to ensure that the ill-effects and adverse impact of polluted ambient air quality in the previous year is not repeated in the year 2017.
- Construction Ban: It is noteworthy that in past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities ot curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- Covid-19 Pandemic: It is most humbly submitted that even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall

not be added while computing the delay. It is most humbly submitted that current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project.

E. APPLICATION AND REJOINDER FILED BY COMPLAINANT ON 20.01.2025

26. It is submitted that the respondent no.2,3 and 4 are none else than the Directors of the respondent No.1. Company and they are fully responsible for day to day affairs of the respondent No.1 company and liable to be indemnify the claim of the complainant.

27. That in the complaint itself, in clause (e) of the relief clause of the complaint, the complainant has specifically submitted that "Initiate appropriate legal action U./s 69 of the Act against the respondents No.2,3 and 4 being the Directors of the respondent No.1 company, for breaching the trust of the innocent person/allottee and cheating them with the intention to gain and usurp their money unlawfully.". Hence the claim sought by the complainant against the respondents No.2,3 and 4 is crystal clear.

28. That further more, in para No.2 of the complaint, the complainant has specifically pleaded as under:-

2. The respondent is the Company incorporated under the provisions of the earlier Companies Act, 1956 (now the Companies Act 2013) and the respondent No. 2 and 3 are the Directors of the respondent Company as per the data received from the Website of HRERA, Panchkula (Regd. No. Temp

Project Id: RERA-PKL-486-2019, responsible for day to day business of the Company Respondent No. 1, the respondent had launched the Aegis Value Homes Limited in the name and style of AEGIS WOODS SCHEME (the Project) by way of circulation of private brochure and advertising the said Project as luxury flat near Noor Mahal Hotel, Karnal. Pursuance to the assurances given by the respondent, many buyers had opted to invest their saving in the said project and so as the complainant. For the purpose of sale and promotion of the project, the respondent falsely represented that the Project shall be completed in a time bound manner i.e. 42 months plus 6 months grace period.."

In view of above, the relief sought against the respondents No.2,3 and 4 is apparent on the face of record. The respondents No.2,3, and 4 being Director of the respondent No.1 company are the main responsible persons for day to day affairs of respondent No.1 company.

29. That further more, it is the respondents No.2,3 and 4 who had received the payment from the complainant on behalf of respondent No.1 company but they had failed to handover the possession of Unit as per agreement. Clause (c) of the agreement (page 18 of the paper book). Annexure C1, clarify that the "The developer, in case, the layout plan is not approved or the requisite licence is not granted by the authorities within a period of 18 months, will refund the earnest/advance amount paid by the provisional allottee alongwith interest @ 18% simple interest (12% p./a.) calculated from the date of payment till the date of refund." Hence the respondents No.2,3,and 4

being Director/Developer are fully responsible for day to day affairs of respondent No.1 company and the relief sought against them is clear.

30. That further more, now the written statement has already been filed on behalf of all the respondents and the said query no more exist. If the respondents No.2,3, and 4 would not have responsible for day to day affairs of respondent No.1 company and not liable for any action, then written statement would not have been filed on behalf of all the respondents rather it would have been filed on behalf of respondent No.1 only but the written statement has been filed on behalf of all the respondents which include respondents No.2.3 and 4.

31. That further more, Mr,. Sandeep Sharma son of Pawan Kumar, who has filed the written statement, has been authorized to file written statement by the Board of Directors i.e. respondents No.2,3 and 4.

In view of the submissions made above, it is respectfully prayed that this application may kindly be allowed and in pursuance to the order dated 14.11.2024, the relief sought against the respondents No.2,3 and 4 is hereby clarified which may kindly be read as part of the complaint.

32. Complainant in its rejoinder denied filing of any complaint before this Authority prior to the present complaint. Case cited by respondent, i.e.

complaint no. 607/2021 does not pertain to the complainant. Respondent has failed to annex the complaint to establish that complaint no. 607/2021 is filed by complainant in question.

33. Complainant vide an application filed in registry on 08.07.2025 wherein copy of the cancelled cheque has been placed on record in compliance of order dated 08.05.2025.

34. **Rejoinder:** That the contents of paras No.1 and 28 of the preliminary objections of written statement filed by the respondents as stated are wrong and incorrect, hence denied. It is reiterated that the complainant is the resident of above mentioned address and he is purchaser/allottee of residential flat from respondents in the project named Aegis Values Homes Limited situated near Hotel Noor Mahal, Karnal Haryana in the Project named AEGIS WOODS SCHEME. The current complaint is being filed by the complainant as the respondent failed to deliver/hand over the possession within the stipulated time frame as per the terms and conditions laid down in the agreement. The respondent is the Company incorporated under the provisions of the earlier Companies Act, 1956 (now the Companies Act 2013) and the respondent No. 2 and 3 are the Directors of the respondent Company as per the data received from the Website of HRERA, Panchkula (Regd. No. Temp Project Id: RERA-PKL-486-2019, responsible for day to day business of the Company Respondent No.1, the respondent

had launched the Aegis Value Homes Limited in the name and style of AEGIS WOODS SCHEME (the Project) by way of circulation of private brochure and advertising the said Project as luxury flat near Noor Mahal Hotel, Karnal. Pursuance to the assurances given by the respondent No.2,3 and 4 being Directors/Developer, many buyers had opted to invest their saving in the said project and so as the complainant. For the purpose of sale and promotion of the project, the respondent falsely represented that the Project shall be completed in a time bound manner i.e. 42 months plus 6 months grace period. The complainant has purchased and was allotted the Unit 2 BHK No. L-304 measuring 1000 Sq.Fts on 3rd floor vide provisional allotment letter 28.10.2013 against application No.5155 with the respondent in their project AEGIS WOODS SCHEME in the year 2013 by paying the Booking Amount to the respondent and balance payment was paid to the respondent as per the payment Plan. The Complainant and respondent have executed agreement dated 30th April, 2016. The provisional allotment letter dated 28.10.2013 was issued in the shape of agreement letter of provisional allotment. It is relevant to mention here that the total basic price of 2 BHK Flat was Rs.21,78,000/- including the EDC/IDC and other taxes, charges and levies etc. The complainant had executed the buyer's agreement dated 30th April, 2016. The agreement entered between the respondents and

complainant is totally one sided and biased to the Clause - 22 builder/developer. This can be inferred from the terms and conditions of the agreement inter-alia the builder is charging hefty amount of interest on the delayed payment from the complainant. This is the classic example of dominant misuse of dominant position by the Builder. The complainant as on today has paid Rs. 16,71,531.00 against the total price of Rs. 21,78,000.00 of the Flat but the respondents have failed to hand over the possession to the complainant as stipulated in 4.2 (A) of Article 4 of Buyer's agreement. It is submitted that the complainant has paid about 90% approx of the total sale consideration price and was also ready to pay the remaining amount, but the Developer did not raise any demand after receipt of Rs. 16,71,531/- to the banks as well as the complainant till date with the reason that the project has not yet been completed and the work on the project is also not going on. As per Clause 4.2 (A) of Article 4 of the Buyer's Agreement, completed and physical possession shall be offered to the allottee/complainant within 42 months plus 6 months (four years) grace period from the date of booking i.e. 28.10.2013. It is also pertinent to mention here that the Buyer's agreement was one sided and heavily loaded in favour of the respondent pointing out the grave Unfair Trade Practices being carried out by the Respondent. Thus, from the simple calculation and bare perusal of the clause 4.2

(A) of Article 4 of the Buyer's Agreement, the agreed time frame of 4 years including grace period for handing over the possession of the Flat to the complainant by the Developer Respondent has already expired on **27th October, 2017 ie**. 42 months and 6 months plus grace period from the date of booking and the entire project has been delayed inordinately. There is no construction activity or development works going on in the said Project and the same has come to a complete halt. The Respondents have duped the hard earned money of the complaint and misused for the purposes other than that of Project. Ld. HRERA, Panchkula has already got conducted **the physical survey at site by way of appointing a commission** and it has been revealed from the report of the commission that the project is completely at halt and there is no possibility of further construction and construction by the developer. The Complainant is the bonafide purchaser of the Flat in the Possession said Project and wants to get refund of deposited amount along payment 24% compound interest as is claimed by the Developer in is claimed by case of delayed payment as laid down in Clause 3.6 (A) of Buyer's Agreement. Hence, the complainant is also eligible to claim builder the allotter interest on the deposited amount @ 24% plus compensation for undue harassment and mental torture including pecuniary losses incurred on account of non handing over possession within the stipulated period. The said

Unit was purchased by the complainant for his personal use but the Respondents remained deficient in providing services despite strenuous efforts and personal contacts on behalf of the complainant. The respondents builder had illegally collected the money from the complainant as per Schedule of Payment Plan settled between the parties and have deliberately not carried-out the construction work of the Apartments for his vested interest in accordance with the provisions of Buyer's Agreement. The complainant being aggrieved against the respondents for not completing the Project and not delivering the possession of Apartment, the complainant paid numerous visits since 2013 & still pillar to post till date to the site as well as Corporate Office Delhi and requested the Respondent to hand over the possession but all in vain. This shows that the respondents) were least bothered to hand over the possession of the Flat which they have already delayed wilfully. The complainant had at all times made payments against the demands of the Respondents) and as per payment of Schedule of the Agreement pertaining to the Flat, therefore, the -HRERA Act fraudulent act and conduct of respondents need to be penalised in -HRERA, accordance with the provisions of the Haryana Real Estate Authority (Regulation Development) Act 2016 (hereinafter being referred "the Act and Rules"), Rules. The act and conduct of respondents is also quite contrary to the mandate as

provided under the Haryana Development and Regulation of Urban Areas Act and based upon total misrepresentation and fraud. Thus the complainant is entitled for the relief as sought in the present complaint. The Respondents have withheld the hard earned money of the complainant for their personal benefits and have used the money for their own other purposes and the same was not invested in the Project, therefore, duping the complainant by way such delaying tactics. Due deficiency in services committed by the respondent, the complainant has suffered huge financial losses, mental agony, and trauma as their hard earned money had been invested in the said Project. In lieu of the aforesaid facts, it is apparent that as per the provision of the Act 2016, the Respondents have not followed the proper mandate as prescribed, thus, have cheated land defrauded the complainant with malafide intention. The Respondents have miserably failed to supply/show the copies of all relevant documents pertaining to the Project right from the initial stage till the execution of the construction work such as Certificate of CLU) Title Deed, Permission for Construction, Environment Certificate, List of the Contractors, List of the supplies of construction material etc - the mandatory requirements, despite the repeated requested and personal visit/contact to Corporate Office as well as to the Directors. In the present case, the mental agony and torture caused to the complainant are beyond limit

as the entire illegal act of the respondent are deliberate and with the sole intention to harass, humiliate and torture in order to gain illegal monetary benefits. From the facts stated above, it is clear that the possession of flat was not handed over on the scheduled date. There is no concealment of fact in the complaint. In order to mislead this Hon'ble Authority and to circumvent the process of law, the respondents have pleaded false averments in para No.3(d) which is internal matter of respondents and the complainant has nothing to do with the same. All the payments have been made by the complainant as per agreement and demand raised by the respondents. The agreement is not registered and not framed as per format. All the ongoing project, if any, were required to be registered within 3 months from the date of applicability of RERA Act. The respondents have committed breach of trust and have willfully violated the terms and conditions of the agreement. The complainant has continuous cause of action and it is incorrect to say that the time period for filing complaint is 3 years. Since the possession of flat was not handed over to the complainant on scheduled date, the complainant has continuous cause of action and has filed the complaint within limitation. It is also settled proposition of law that before offering possession of the residential unit/plot, the builder/developer is legally bound to obtain completion certificate from the competent authorities. An allottee is

not obliged to take possession of a residential plot/flat, unless it is complete in every respect, including the completion certificate. In this case, neither the completion certificate in respect of the project was obtained by the respondents not possession of unit delivered on scheduled date. Hence it is clear that the completion certificate having not been received, the respondents could not have offered legal possession of the apartment to the complainant. Furthermore, Section 14 of Punjab Apartment and Property Regulation Act, 1995 (in short,"PAPRA") deals with responsibility of the builder/promoter to obtain completion and occupation certificate from the competent authority, which reads as under:

"14. It is the responsibility of the promoter-

(i) in the case of apartments, to obtain from the authority required to do so under any law completion and occupation certificates for the building and if a promoter, within a reasonable time, after the construction of the building, does not apply for an occupation certificate from the aforesaid authority, the allottee of an apartment may apply for an occupation certificate from the said authority; and

(ii) in the case of a colony, to obtain completion certificate from the competent authority to the effect that the development works have been completed in all aspects as per terms and conditions of the licence granted to him under section 5. (2) The authority referred to in sub-section (1) shall, after satisfying itself about the agreement of sale between the promoter and the allottee, and the compliance of the building regulations and all other formalities, issue an occupation certificate."

35. However, in the present case, no completion certificate and occupation certificate, if any, issued by the competent authority has been produced by the respondents on the record, which itself is

violation of above reproduced Section 14 of PAPRA. It is matter of great concern that in the absence of any evidence to prove that the project in question was complete in all respects by schedule date and also in the absence of any completion certificate, it can not be presumed that the possession offered was complete, which is not sustainable in the eyes of law. Since possession was not offered on scheduled date as such, the respondents cannot expect the allottee to keep on making payment in the absence of completion of construction and development work. If the allottee after making payment of substantial amount stops making payment of remaining small amount due to be paid at the time of possession only, when he/she came to know that the company is not in a position to deliver possession of their respective units/plots, as there will be a huge delay in completing the construction and development activities, he is well within the right to do so, in view of principle of law laid down by the Hon'ble Supreme Court of India in ***Haryana Urban Development Authority Vs. Mrs. Raj Mehta, Appeal (Civil) 5882 of 2002, decided on 24.09.2004***, wherein it was held that "...if the builder is at fault in not delivering possession of the units/plots by the stipulated date, it cannot expect the allottee(s) to go on paying instalments to it.

In this case, if the petitioners after making substantial payment of more than 95% allegedly stopped to make the remaining payment,

they were right in doing so and on account of this reason, they cannot be burdened with any kind of penalty, holding charges or delayed interest as charged by the opposite party..." In this case, failure of the respondents to provide complete/effective possession of the unit within the stipulated period amounts to deficiency in service. It is also matter of common parlance that for purchasing the plot, the purchasers take loans from their family members, relatives and friends or financial institutions. In some cases, the purchasers live on rent in the absence of timely delivery of possession. On account of delay in actual delivery of possession within the stipulated period the complainant has suffered mental agony, hardship and financial loss at the hands of the developers/builders-respondents. In the case titled as ***Lucknow Development Authority v. M K Gupta (1994) 1 SCC 243***, the Hon'ble Supreme Court discussed about the extent of the jurisdiction of the Consumer Fora to award just and reasonable compensation for the harassment and agony suffered by a consumer. Recently in ***Civil Appeal No.6239 of 2019 (Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. v. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd. and Ors.)*** decided on 24.08.2020, while discussing the above authorities and discarding the one-sided terms of the Buyer's Agreements, the Hon'ble Supreme Court awarded simple interest @6% per annum on the amount

deposited by the complainants therein, in addition to the penalty amount, as prescribed in the agreement for delay in delivery of possession till delivery of actual and physical possession of the unit. In view of the observations of the Hon'ble Supreme Court in the above noted case, coupled with the provision of penalty @Rs.5/- per sq. ft. per month of the super built up area of the said unit as per Clause 14(d) of the Apartment Buyer's Agreement, is not sufficient to compensate the complainant for the delay in delivery of possession and the mental agony, harassment and financial loss suffered by the complainant on account of this reason. In view of the aforementioned facts, the complaint prays for the relief mentioned below and issue of necessary directions to the respondents:

a. Refund the entire sale consideration amount paid by the complainant to refund the loan Amount borrowed with 24% compound interest plus compensation for mental harassment, humiliation, mental torture and pecuniary losses incurred due to non completion of the project and handing over possession, as the complainant having exhausted all hopes of giving possession of Flat by the Developer-Respondent, built another house and is no more in need of the said Flat now and

b. Impose the penalty as prescribed under Section 61 of RERA on the respondent for having contravened the provisions of Section 11 and HRERA Rules, 2017; and

c. Impose the penalty as prescribed Under Section 59 for having contravened the provisions of RERA; and/or

d. Pay legal expenses incurred by the complainant in connection with case to the tune of Rs. 1.50,000; and

e. Initiate appropriate legal action Under Section 69 of the Act against the respondent No. 2, 3 and 4 being the directors, developer, owner of the respondent Company, for breaching the trust of the innocent person/allottee and cheating them with the intention to gain and usurp their money unlawfully.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

Ld. counsel for both the parties reiterated their submissions as mentioned in complaint and reply alongwith written submissions.

G. ISSUE FOR ADJUDICATION

Whether the complainant is entitled to refund of amount deposited by her along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF AUTHORITY

36. Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that it is not a disputed fact that complainant booked a unit in the project of the respondent namely "Aegis Woods Scheme", Karnal and letter of provisional allotment letter dated 28.10.2013 was issued for unit no.L-304, 3rd floor, Lime Tower admeasuring 1000 sq.ft. Against the basic sale price of ₹21,78,000/-, complainant has already paid a total amount of ₹16,71,531/-.

37. Complainant is aggrieved by the fact that despite making timely payments against the basic sale price, respondent neither handed over the possession of the unit within the stipulated timeline, nor refunded the amount paid by complainant.

38. The respondent promoter has also not disputed allotment of the unit, issuance of the letter of provisional allotment dated 28.10.2013 and deemed date of handing over of possession for the unit. Respondent had filed its written submission on 16.04.2024 mentioning therein that the construction and development of the project got delayed due to various force majeure events and has raised issue of limitation, application of RERA Act,2016 on agreement/allotment executed in year 2013.

39. With regard to plea raise by respondent that complaint filed by the complainant is defective in nature as all the necessary parties have not been impleaded. On perusal of file, it is observed by the Authority that both the important documents i.e., allotment letter as well as builder buyer agreement were executed between the present complainant and the respondent. Documents revealed that no other party was ever involved in allotment of the unit in question. Hence mere raising a doubt without proving the same with appropriate documents makes no point in favour if respondent. Hence same is rejected.

40. With regard to respondent plea that complainant had not paid as per construction link plan opted with builder buyer agreement. As per pleading of complainant he has paid an amount of Rs. 16,71,531/- from year 2013-2017 to respondent out of basic sale price of Rs. 21,78,000/- which approximately comes to 85% of the total amount payable on part of complainant. Further, it is important to mention the Construction link plan opted by complainant annexed at page no. 74 of builder buyer agreement, same is reproduced below for references:

At the time of booking	2 lacs
Within 30 days (complete booking amount)	Complete 20% of BSP

On commencement of construction	10% of BSP+ST
On commencement of basement slab	10% of BSP+25% of EDC,IDC,PLC+ST

In consonance to the above plan, complainant has annexed provisional allotment letter dated 28.10.2013, wherein at page no.22, receiving of amounts of ₹ 2,00,000/- dated 09.11.2023 and 2,25,000/- dated 27.01.2014 has been annexed. Second payment from complainant was supposed to paid 20% of the Basic sale price within 30 days. However, complainant had paid an amount of ₹ 2,25,000/- on 20.01.2014 to respondent. Accordingly, Further payments were made by complainant of ₹2,37,590/- on 07.05.2015; 3,56,665/- on 11.07.2015; ₹11,000/- ON 04.09.2013; 1,69,200/- on 26.05.2016; 3,02,600/- on 20.09.2016 and last paid amount of ₹ 1,69,476/- on 06.02.2017.

The above transaction shows that complainant had paid the initial 2 payments on time and thereafter payments were made with certain delays. On the other hand respondent was also bound to construct the project as per above stated timely plan. However, actual position as stated by respondent in its reply is that construction of the project was commenced in December 2015 and after that construction was

hampered due to certain force majeure situation, which ultimately led to stoppage of the work. Meaning thereby, in any case, the construction was delayed as per timely plan, accordingly the deemed date of possession mentioned in clause 4.2(a) of builder buyer agreement also got expired.

Further, it is important to note that the clauses pertaining to builder buyer agreement stated above and Section 19 of the RERD Act, 2016 cannot be read in isolation. Builder buyer agreement is one comprehensive document and as per said document, responsibility of the promoter was to complete the project by the timeline provided therein. However, respondent has failed to do the same. This failure on the part of the respondent at one stroke takes away the duty of full payment from the domain of allottees.

In case of ***Nathulal v. Phoolchand***, *AIR 1970 SC 546, the Hon'ble Supreme Court categorically held that where the obligations of the parties are* ***reciprocal and inter-dependent****, the performance of one party is conditional upon the prior performance of the other, and therefore,* ***a party who has failed to perform his part of the contract cannot compel performance from the opposite party****. The Court further observed that unless the vendor was* ***ready and willing to perform his own obligations****, he was not entitled to insist upon the purchaser fulfilling his part of the contract."*

Above stated judgment squarely applies to the present case, as the complainant cannot be expected to perform or continue performance

of his obligations once the respondent has already committed breach of its primary contractual duties of not constructing unit booked on the date promised as per agreement. Accordingly, the complainant was fully justified in withholding further payments in view of the respondent's default.

Further, it is important to note that complainant has made various payments as stated above out of the total sale consideration and played his part of the builder buyer agreement. However, respondent, on the other hand has failed to complete construction on prescribed time or failed to perform his part of the act.

In view of the above facts the respondent's claim that the complainant has not paid as per the payment plan holds no merit and is unsustainable. Failure to meet statutory obligations by the Promoter entitles the buyer to seek relief under RERD Act, 2016, such as compensation for delays or refund with interest.

41. With regard to plea raised by the respondent that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on 28.10.2013 when the complainant was allotted unit no. L-304, Lime Tower in Aegis Wood Scheme. It is observed that issue regarding operation of RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in ***Civil***

Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others.

Relevant part is reproduced below for reference:-

> *"52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.*
>
> *53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.*
>
> *54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."*

42. Respondent has also taken objection that complaint is grossly barred by limitation. Reference in this regard is made to the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise wherein it was held that Limitation Act does not apply to quasi-judicial bodies. Further, in this case the promoter has till date failed to fulfil his obligations because of which the cause of action is re-occurring. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not Courts.

43. It is the stand of respondent that force majeure conditions like-Jat Agitation of February 2016, Demonization in November 2016, GST Act, 2017, Prohibitions by NGT in year 2017 and 2019 and COVID-19 Pandemic affected the project completion. The due date of possession in the present case as per clause 4.2(a) of builder buyer agreement dated 30.04.2016, states that within 42 months from the date of booking i.e 28.10.2013, which works out to28.4.2017, if we add grace period of 6 months then it comes out to 28.10.2017. Therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this

date due to which the respondent could not carry out the construction activities in the project can be taken into consideration. Looking at this aspect as to whether the said situation or circumstances was in fact beyond the control of the respondent or not. The obligation to deliver possession within a period of 42+6 months from date of allotment, i.e. **28.10.2017** was not fulfilled by respondent. There is delay on the part of the respondent and for said delay respondent has mentioned various conditions as illustrated above in this paragraph. It is important to point out here that some force majeure conditions are before the deemed date of possession and conditions like NGT order prohibiting construction activity of 2019, and ceasing of construction activities during the COVID-19 period are after the deemed date of possession. Out of said factors, only three conditions i.e. Jat Agitation (8-10 days), Demonetization (4 months), NGT ban (30-45 days) vide order dated 19.07.2016 and 07.11.2017 falls before the deemed date of possession exclusive of grace period, i.e. 28.10.2017. Total period of bans comes out to 160 days approximately as pleaded by respondent. It is pertinent to mention here that respondent in addition to commitment period has already sought grace period of 180 days to deliver possession. Said grace period is duly incorporated in agreement with a purpose to cover these kind of activities/bans hampering the construction of project. Time period of ban of 160 days

gets duly covered in said grace period by allowing the same to respondent. Further, factors like ban by NGT on 04.11.2019 and Covid-19 Pandemic are not convincing enough as the due date of possession was 28.10.2017 (inclusive of grace period of 6 months) referred by the respondent pertains to November,2019. Therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (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 septemeber,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.* "

Moreover, the respondent has not given any specific details with regard to latest stage of construction of unit. Construction status with latest photographs has not been placed on record to support the fact that respondent has fulfilled its obligations and it is complainant who is shying away from his duties/obligations. Had it been the case that the respondent has completed the project within reasonable time of expiry of deemed date of possession the situation would have been different. As of today, the construction is not going on at site since year 2016 as stated by respondent at page no. 20 of reply. Mere pleading of force majeure conditions without fulfilling its obligations, the respondent cannot be allowed to take benefit of his own wrong. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

44. Further it is important to refer to clause- 6 of the letter of provisional allotment letter at page no. 24 of complaint book, the allottee was liable to pay further amount of basic sale price only after approval of the layout plan and grant of all valid licenses by the authorities to the developer regarding which an intimation was to be given by the developer in due course of time. It is important to mention here that on the one hand vide the said letter of provisional allotment, the

promoter had allotted unit no.L-304, on 3rd floor measuring 1000 sq.ft. in the project " Aegis Wood Scheme", Karnal, whereas on the other hand, the promoter in clause-6 of the same allotment letter mentioned that the allotment is provisional as the layout/ building plans of the complex have yet not been approved by the competent authority and as such a valid licence has yet not been issued to the developer, meaning thereby that the promoter had provisionally allotted a unit to the complainant without even having a valid licence to construct and develop the project in question. Thus, the promoter allotted a unit and collected payment against it even without having the competency and requisite permission to do so.

45. Further, as per clause-4.2(a) of the builder buyer agreement, possession was to be handed over within a period of 42 months from the date of allotment, i.e., 28.10.2013 plus six months grace period, i.e., by, 28.10.2017, However, the respondent promoter failed to complete the project and hand over the possession by the said date. Also, during course of hearing respondent has not disclosed a specific date for completion of project. Therefore, respondent failed to fulfill its duty to hand over possession of unit on time. This provides a right in favour of complainant to withdraw from the project and avail the relief of refund.

46. Further, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

> *"25.The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. As complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.

47. 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;*

48. Consequently, as per website of the state Bank of India i.e., https://sbi.co.in, the highest marginal cost of lending rate (in short MCLR) as on date, i.e., 11.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.95%.

49. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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".*

50. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERD Act,2016 and the complainant is entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the complainant interest from the date the amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of ₹16,71,531/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on 22.01.2026 works out to 10.80.% (8.80% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.80% till the date of this order as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 22.01.2026
1.	11,000/-	07.10.2013	14,617/-
2.	2,00,000/-	09.11.2013	2,63,816/-
3.	2,25,000/-	27.01.2014	2,91,533/-
4.	2,37,590/-	09.05.2015	2,75,016/-
5.	3,56,665/-	21.07.2015	4,05,144/-
6.	1,69,200/-	10.06.2016	1,75,927/-

7.	3,02,600/-	20.09.2016	3,05,498/-
8.	1,69,476/-	06.02.2017	1,64,129/-
Total amount to be refunded by respondent to complainant= ₹16,71,531/- + 18,95,680/- = **35,67,211/-**			

51. Further, with regard to the reliefs sought by the complainant mentioned at page no. 14 of the complaint i.e. (b) and (c) of this order, the complainant has not clarified how the above stated reliefs could be granted under Section 31 of the RERD Act, 2016. Moreover, complainant did not pressed upon these reliefs during the hearing. Therefore, the Authority deems it appropriate not to adjudicate on these reliefs.

52. Further, the complainant is seeking compensation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. & ors."* (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore,

the complainant is free to approach the Adjudicating Officer for seeking the relief of compensation.

53. Further, with regard to the relief (e) sought by the complainant mentioned at page no. 14 of the complaint book, to take appropriate action under Section 69 of the Act against the respondent no. 2,3 and 4 being the directors, developer, owner of the respondent company, for breaching the trust of allottee. it is not out of the place to mention that complainant itself in his pleadings has stated that respondent no.2,3 and 4 are working directors of the company and has received payments from complainant on behalf of respondent no.1 and also one reply has been filed on behalf of all 4 respondents, which makes the case that respondent no.2,3 and 4 are equally liable for breach of respondent no1. Meaning thereby all these pleadings also proves that these directors are part of the company i.e. respondent no.1 with whom all the relevant documents such as allotment letter and builder buyer agreement has been executed. When the said respondent no.1 has been held liable for breach of contract as stated above in this order, it automatically covers the liability of respondent no.2,3 and 4 since they are the directors of the company in question. Hence, no separate action is required to be initiated under section 69 of the Act.

I. DIRECTIONS OF THE AUTHORITY

54. Hence, the Authority hereby passes this order and issues following

directions under Section 37 of the Act 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 refund the entire amount of ₹16,71,531/- along with interest of ₹ **18,95,680/-** to the complainant. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.

.....
DR. GEETA RATHEE SINGH
[MEMBER]

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET S SACHDEV
[CHAIRMAN]