HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**632 of 2024**
Date of filing:	**17.05.2024**
First date of hearing:	**29.07.2024**
Date of decision:	**11.12.2025**

Sneh Lata S/o Sh. Amar Pal,
R/o, House No. 421, Gali no. 4,
Basant Vihar, Karnal Haryana

.....COMPLAINANT

Versus

1. **M/s Aegis Value Homes Ltd**
   Corporate Office at #3, 1st Floor, Gold Floors,
   Sector 33, Karnal – 132001

2. **Mr. Divey Dhamija, Director,**
   M/s Aegis Value Homes Ltd
   registered office at EF-10, Second floor, Inderpuri, Delhi- 110012

3. **Municipal Corporation,** Shakti colony, Karnal, District Karnal, Haryana, through Executive Officer.

4. **State of Haryana through Director Town & Country Planning,**
   SCO 71-75, Bridge Market, Sec-17C, Chandīgarh

.....RESPONDENTS

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

Present: - Mr. Ashwarya Bajaj, Counsel for the complainant through VC.

Mr. Neeraj Goel, Counsel for the respondent through VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 17.05.2024 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	Smart Homes Karnal

2.	Name of the promoter	M/s Aegis Value Homes Ltd
3.	RERA registered/not registered	Registered
4.	Unit no.	A5-506
5.	Unit area	604.3 sq.ft
6.	Date of Apartment Buyer Agreement	03.12.2018
7.	Due date of offer of possession	Within 4 years from the date of approval of building plans or grant of environment clearance whichever is later.
8.	Total sale consideration	₹ 19 lakhs
9.	Amount paid by complainant	₹7,90,000/- (as per pleadings)
10.	Offer of possession (fit-out)	No offer of possession given

B. FACTS AS PER THE COMPLAINT

3. That the complainant booked a flat in the project of the respondent builder naming "The address" for a total consideration of Rs. 20,85,000/-. The complainant entered into an agreement on 31.05.2014 and also paid an amount of approximately 6 lac rupees on various occasions for the said flat. It is submitted here that respondent builder gave false promises to the present complainant that she would get the possession of the flat very soon. It is further submitted here

that the respondent builder being a habitual defaulter did not raise any construction over the site in question and ultimately when the complainant was left with no other opportunity, she was forced to book the present flat in question in the project naming Aegis Smart Homes. The respondent builder assured the complainant that though the earlier project could not be initiated due to some unforeseen circumstances but the complainant would definitely get a flat in the present project very soon. The copy of the subsequent agreement dated 03.12.2018 is annexed herewith as Annexure C-1. Vide which the complainant was allotted the flat having a carpet area of around 604.3 sq. feet for a total, consideration of approximately Rs. 19 lakhs out of which an amount of Rs.7,90,000/- has been paid by the complainant. The copy of the payment receipts depicting the same are also annexed herewith as Annexure C-2 Colly.

4. That the respondent-builder assured the complainant that the possession of the said flat would be delivered to the complainant within 4 years from the date of approval building plans and grant of environmental clearance whichever is later. That the respondent-builder after entering into the agreement with the complainant and taking huge amount did not give any information to the complainant regarding the ongoing construction of the said flat. It is pertinent to mention here that as per section 19 of the Real Estate (Regulation and

Development) Act, 2016 (hereinafter Act 2016) the complainant is entitled to know stage wise time schedule of completion of the project. The complainant when did not receive any information from the respondent-builder after paying such a huge amount of money inquired about the said project, then he was shocked to know that nothing at all has been done by the respondent-builder after taking the money from the complainant.

5. That the respondent-builder while acting in an utterly unlawful arbitrary and illegal manner played a fraud upon the complainant by taking money from him and not even laying a single brick at the project site initially. It is submitted here that the complainant completely lost his confidence in the builder as initially no construction was being carried out. Various complaints were also lodged against the builder for defrauding the home buyers.

6. That the respondent builder is claiming exaggerated amount from the complainant which is wholly unjust and illegal. It is submitted here that the complainant cannot be penalized for the default committed by the respondent. It is further submitted here that the respondent builder is liable to pay compensation to the complainant on the ground of delay in delivery of possession of the flat but in the present case shockingly builder is claiming interest from the complainant which is completely illegal.

7. That the complainant is a middle class lady who gave her hard earned money with the assurance that she will get the possession of the said flat within four years from the commencement date but it is apparent that the respondent-builder is not willing to give the possession of the flat as per the terms and conditions mentioned in the agreement.

8. That the complainant when inquired about the aforementioned project and the respondent-builder then she was shocked to know that various FIR are pending against the respondent-builder as many innocent buyers were cheated by the respondent-builder. It is pertinent to mention here that the Regd. Office of the respondent-builder at Karnal was locked for the so many months and the respondent-builder is not even responding to the various e-mails sent by the complainant. The complainant has been duped by the respondent-builder just like so many other persons.

9. That the respondent-builder is a habitual offender as it is patent from the aforementioned facts, the respondent-builder never had any intention to deliver the possession of the flat and the sole intention of the respondent-builder was to take money from the innocent persons such like the complainant and never give it back.

10. That the respondent-builder has certainly acted averse to the various provisions enshrined in the Real Estate (Regulation and Development) Act, 2016 and thus is liable to be strictly dealt with by this Hon'ble

Forum. The respondent-builder did not pay any heed to the various e-mails sent by the complainant and did not send even a single intimation regarding the status of the aforementioned project.

11. That the respondent is not going to deliver the possession of the flat and therefore, the complainant entitled to claim the refund of amount paid by him alongwith interest. The section 19(4) which provides for the same is reiterated hereunder for the ready reference of this Hon'ble Court:-

> *(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under the Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made thereunder.*

12. That this Hon'ble Authority in a similar complaint titled as "Jyoti Chopra Vs Aegis" i.e., Complaint No. 649/2019 passed the judgment dated 31.08.2023 wherein the respondent builder is directed to refund the entire amount paid by the complainant with interest. The copy of the judgment dated 31.08.2023 is annexed herewith as Annexure C-3. That the respondent-developer claims to have obtained a license No.02 of 2016 dated 05.03.2016 granted by The Director, Town & Country Planning, Government of Haryana, for construction and development of an affordable group housing Colony as per affordable

policy 2013 on a freehold plot of land measuring approximately 5.6534 Acres (hereinafter referred to as Project Land) situated at Sector 32-A, Tehsil and District Karnal. The respondent developer further claimed that he got the building plan approved vide memo No.ZP-1112/AD(RA)/2017/404 dated 03.03.2017 from the office of DGTCP.

C. RELIEF SOUGHT

13. Complainant sought following reliefs :

i. To give necessary directions to the respondent for refund of the paid amount by the complainant along with interest @ 24 % per annum.

ii. Respondent be directed to pay an amount of ₹ 5 lakhs to the complainant on account of mental harassment being caused due to the illegal and unlawful conduct of the respondent-developer.

iii. Exemplary penalty may be levied on defaulting promoters, to curb the practice of exploitation of innocent buyers.

iv. The bank accounts no. 009511100002634, Andhra Bank, Chandigarh, of the respondent- developer be seized so as the compensation and other penalties levied as per law may be realized. Further any other bank account which may come to the notice of this Authority may also be seized for the purpose mentioned above and for the purpose of escrow Account as provided in Section 4 of the Act, 2016.

v. That in addition to the compensation detailed above further compensation on account of legal expenses and other forced misc. expenses also to be paid for an amount ₹ 2 lacs.

vi. Any other order or direction as this Hon'ble Authority may find reasonable in the facts and circumstances of instant case, may also be granted.

D. REPLY ON BEHALF OF RESPONDENT No.1 FILED IN REGISTRY ON 12.09.2025

14. That the present complaint is fundamentally misconceived and based on completely erroneous and false facts which go to the very root of the complaint. The Complainant has made several material misrepresentations of facts which render the entire complaint liable to be dismissed in limine.

15. That the complainant has wilfully defaulted in making timely payments as per the agreed payment schedule and has been in continuous breach of the Builder Buyer Agreement. Despite multiple reminders, demand notices, and offers of possession, the complainant has failed to clear outstanding dues and take possession of the allotted unit.

16. That in view of the complainant's own defaults and breaches, the present complaint is not maintainable in law and deserves to be dismissed with exemplary costs.

17. That Respondent No. 1 is developing an affordable group housing project namely "Smart Homes Karnal" at Sector-32A, Karnal, Haryana under License No. 02 of 2016 dated 05.03.2016 granted by Director General Town & Country Planning, Haryana. True copy of the said License dated 05.03.2016 is annexed as Annexure R-1/1.

18. That the project is duly registered under RERA vide Registration No. 265 of 2017 dated 09.10.2017 and is being developed in accordance with the Affordable Housing Policy 2013 of the Government of Haryana. True copy of the said registration certificate dated 09.10.2017 is annexed herein as Annexure R-1/2.

19. That the possession was to be offered within 4 years from the date of approval of building plans (03.03.2017) as per website or grant of environment clearance (24.10.2017), whichever is later which comes out to be 24.10.2021 and since the completion date falls within the covid notification, the due date after adding 9 months extension granted by this Ld. Authority comes out to be 24.07.2022, subject to timely payments by the allottee, and other conditions mentioned in the agreement. True copies of building plans and environment clearance are annexed as Annexure R-1/3 & R-1/4 respectively.

20. That the present complaint is fundamentally flawed and liable to be dismissed in limine on the following preliminary grounds which go to the root of the matter:

a) **Complainant's Material Default Under Section 19(6) & 19(7) of RERA Act, 2016**

It is submitted that Section 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter "RERA Act") creates reciprocal obligations between promoters and allottees. The complainant having grossly defaulted in his payment obligations under the agreement dated 22.09.2017, cannot seek any relief under the RERA Act. The outstanding amount of Rs. 12,26,370/- as on date clearly demonstrates his wilful breach of contractual obligations as out of basic sale consideration of ₹ 19,89,320/- and **only ₹ 7,62,950/-** has been paid by the complainant.

b) **Estoppel by Conduct and Acceptance**

The complainant having voluntarily entered into the Builder Buyer Agreement and having accepted the terms and conditions thereof, including the payment schedule, is now estopped by his own conduct from seeking contradictory relief. The doctrine of estoppel as enshrined under Section 115 of the Indian Evidence Act, 1872 is clearly attracted in the present case. As held by the Hon'ble Supreme Court in ***Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.,*** the doctrine of promissory estoppel prevents a party from going back on their commitments when the other party has acted upon such representation to their detriment.

c) **Doctrine of Laches and Acquiescence**

The complainant having remained silent for years despite being aware of the project status and his own payment defaults, cannot now suddenly seek relief. The doctrine of laches operates to bar stale claims where there has been unreasonable delay in asserting rights.

21. That the complainant has failed to establish any valid cause of action as the project is substantially complete and ready for possession multiple offers of possession have been issued. The only impediment to possession is complainant's own payment default. The complainant has not made any attempt to clear outstanding dues whereas provided an affidavit to withdraw from the project.

22. That the Respondent No. 1 has demonstrated extraordinary patience and has sent over a number of payment reminder letters to the Complainant between 2017 to 2019, but she has completely ignored all such communications and made absolutely no effort to clear her mounting dues. True copies of the said demand notices are annexed as Annexure R-1/5.

23. That due to her financial incapacity, complainant withdrew from the present project and handed over an affidavit dated 30.10.2019 and asked for refund of the amount and the same has not been disclosed in the present complaint and the same is liable to be dismissed on this

sole ground alone. True copy of the said affidavit dated 30.10.2019 is annexed herein as Annexure R-1/6.

24. That the complaint is founded on false and fabricated allegations of delay in possession, when in fact Occupation Certificate dated **20.09.2024** has been duly granted by the Director, Town and Country Planning, Haryana for Towers A1, A2, A3, A4, A5, A6, A7 & B1 covering 877 dwelling units including the complainant's Unit A5-106 Copy of the said Occupation Certificate dated 20.09.2024 is annexed herein as Annexure R-1/7.

25. That the Complainant has deliberately and with mala fide intention suppressed these material facts to create a false and misleading narrative that possession has been delayed by the Respondent No. 1, when in stark reality the delay is solely attributable to the Complainant's persistent failure to clear her outstanding dues.

26. That the Complainant and other similarly situated allottees have been systematically indulging, in forum shopping by filing multiple proceedings before different forums regarding the same project and substantially similar grievances, which constitutes abuse of the process of law.

27. That vide detailed order dated 19.09.2024 in CWP-23885-2024 titled ***"Sheela Vanti and others vs. State of Haryana and others"***, the Hon'ble High Court of Punjab and Haryana has disposed of a writ

petition filed by other homebuyers of the same project "Aegis Value Smart Homes" with specific and comprehensive directions for resolution of similar grievances. Copy of the said order dated 19.09.2024 is annexed as Annexure R-1/8.

28. That the Hon'ble High Court in the said order has specifically observed and directed as follows:

"concerns/ grievances of the petitioners are being examined and every possible endeavour would be made to redress them, at the earliest. Accordingly, it is submitted that in such circumstances, it would rather be expedient if the petition is disposed of at this stage, to enable the respondent authorities to reach a conclusive decision and pass appropriate orders, in accordance with law."

29. That the Hon'ble High Court further specifically directed:-

* Comprehensive examination of concerns/grievances of homebuyers by authorities.

* Scheduled meeting before Chief Town Planner, Haryana on 24.09.2024 at 11:00 A.M.

* Appropriate orders to be passed within two weeks after such hearing

* Specific provision that if authorities fail to resolve disputes within stipulated time, petitioners can approach Haryana Real Estate Regulatory Authority.

That the Hon'ble High Court has thus laid down a comprehensive and systematic mechanism for resolution of disputes related to this specific

project, and the Complainant should have awaited the outcome of those administrative proceedings as mandated by the High Court rather than prematurely filing the present complaint.

That the present complaint amounts to blatant forum shopping and seeking multiple reliefs for the same cause of action, which is a deplorable practice condemned by Courts and constitutes clear abuse of the process of law.

30. That the Complainant has been in persistent, continuous and wilful default of het fundamental payment obligations since 2019 despite multiple opportunities, reminders and final notices to rectify the same.

31. That as per Section 19 of the RERA Act, 2016, which deals with "Rights and Duties of Allottees", the allottees have specific duties including:

> *"payment regarding the apartment/plot, liability towards interest for delay in payment, responsibility to take possession, participate in formation of association and registration of conveyance deed etc."*

That the Complainant has completely failed to discharge her fundamental duties as an allottee as envisaged under Section 19 of the RERA Act, 2016.That instead of appreciating this substantial enhancement and benefit, the Complainant has chosen to willfully default on her payment obligations and has now filed this frivolous

and mala fide complaint merely to avoid legitimate cancellation proceedings.

32. That the present complaint is not maintainable in law being fundamentally based on complete wrong facts, incorrect unit details, false payment claims, deliberate suppression of material facts, and forum shopping.

33. The present complaint is also liable to be dismissed with cost on the following grounds:

i. Section 11(5) - Promoter's right to cancel allotment:-

As per Section 11(5) of the RERA Act categorically provides as under:

"The promoter may cancel the allotment only in terms of the agreement for sale: Provided that the allottee may approach the Authority for Retief if he is aggrieved by such cancellation und such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause"

That Clause 2.6 of the Builder Buyer Agreement specifically provides for cancellation in case of payment default:

"In the event of any delay in making timely payment of installments on the part of the Allottee, the Allottee shall be liable to pay an interest on the amount due. If the Allottee still defaults in making payment... the allotment of the Said Apartment shall stand cancelled."

ii. Section 19 - rights and duties of allottees:-

As per Section 19(6) of the RERA Act provides:

"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."

Section 19(7) further provides:

"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)."

That these provisions cast a statutory obligation upon allottees to make timely payments, and failure to do so attracts consequences including interest and potential cancellation.

iii. Force majeure

That the project faced unprecedented and extra ordinary circumstances beyond the respondent's control, totalling 555 days of documented delays depicted in tabular manner below:-

S.No.	Period	Authority	Nature of ban/ Restriction	Duration
1.	11-11-2017	National Green Tribunal	Construction ban- air pollution	7 days
2.	04-11-2019	Supreme Court	Complete construction ban	36 days
3.	09-12-2019	Supreme	Partial ban(day time	67 days

		Court	allowed)	
4.	25-03-2020	Govt. of India	Covid-19	68 days
5.	14-11-2021	Delhi Govt.	Construction ban-Pollution	8 days
6.	24-11-2021	Supreme Court	Re-imposed construction ban	28days
7.	22-09-2022	NCLT	Corporate Insolvency Process	120 days
8.	26-10-2022	CAQM	Smart Homes specific closure	68 days
9.	29-10-2022	CAQM	GRAP Stage III ban	17 days
10.	04-12-2022	CAQM	Construction ban-AQI	47 days
11.	16-11-2023	CAQM	GRAP Stage III ban	48 days
12.	17-11-2024	CAQM	GRAP Stage IV ban	41 days
Total			Force majure Days	555

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

34. Ld. counsels for both the parties reiterated their submissions as mentioned in the complaint and reply. Further, ld. Counsel for

complainant submitted that application for clarifying the payment made stands filed on 16.09.2025 in registry.

35. Further, complainant in its complaint has impleaded total 4 respondents. However, it is not clarified as to what reliefs are sought against each of them. This query was raised before the ld. counsel for complainant at time of arguments. To this, he replied that relief of refund be awarded against respondent no. 1 only and no other relief pertains to any other respondent. Accordingly, no direction is passed against respondent no. 2,3 and 4 in this order.

F. ISSUE FOR ADJUDICATION

36. Whether the complainant is entitled to the reliefs sought or not?

G. OBSERVATIONS AND DECISION OF AUTHORITY

37. The 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 the complainant booked a flat in the real estate project; "Smart Homes Karnal, being developed by the promoter namely; "Aegis Value Homes Ltd.". Complainant has only annexed a covering page of builder buyer agreement at page no. 11 of the complaint, from which, Authority could only ascertain the date on which builder buyer agreement was executed, which comes to 03.12.2018. Inspite of

various opportunities, neither the complainant nor the respondent have produced the entire document. The Authority has no option, but to adjudicate as per documents on record. Further, complainant in her pleadings has stated that an amount of ₹ 7,90,000/- stands paid to the respondent till date. Details of the paid amount in tabular manner has been stated at page no. 6 of the complaint, total of the said amount comes to ₹7,51,950/-. Furthermore, an application was also filed by complainant on 04.11.2025 depicting the total paid amount along with account statement. As per said application total amount paid is shown as ₹6,51,950/-. However, as per receipts annexed at page no. 16-19 of complaint and as per page no. 5 of the application filed on 04.11.2025, the total amount paid by complainant comes to ₹7,51,950/-. On the other hand, respondent at page no.4, para 9(a) admits the amount paid by complainant of ₹ 7,62,950/-.

38. The Authority observes that the total amount paid by complainant is neither clarified in pleading nor in the application filed by complainant on 04.11.2025. However, respondent has admitted that complainant had paid an amount of ₹7,62,950/- out of total sale consideration of ₹ 19,89,320/-. Authority deems appropriate to take the total paid amount as ₹ 7,51,950/- for adjudication. Receipts annexed at page no. 16-19 of the complaint book and statement of

account annexed with application filed on 04.11.2025 are also being considered for arriving at dates of payment etc.

39. Further, with regard to the other details of the unit in question such as unit no, total sale price, area of the unit, deemed date of possession, it is important to note that neither the complainant nor the respondent had annexed the complete copy of builder buyer agreement, which is a necessary document to understand the basic details and terms and conditions agreed upon between parties. In absence of the builder buyer agreement, the details mentioned in the receipts annexed at page no. 16-19 of the complaint and pleadings of the respondent are taken into consideration. As per receipts, complainant had booked a unit bearing no. A5-506 admeasuring 604.3 sq.ft. As per, para 8 of reply, respondent was under an obligation to offer the possession within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. The due date of possession should thus be 24.10.2021. Since the completion date falls within the covid notification, the authority will have to consider this force majeure event also. It is important to note that herein respondent is claiming benefit of Covid-19 as stated in tabular manner at page no. 12 of reply, for 68 days.

40. In view of above, Authority holds that the delay as sought by respondent for Covid is of 68 days is accepted from 24.10.2021 to

31.12.2021. Accordingly, in present case deemed date will be taken as

31.12.2021.

41. Further respondent has challenged the maintainability of the complaint on various grounds such as:

i. **Objections raised by respondent that under section 19 (6) and 19 (7) of the Real Estate (Regulation and Development) Act, 2016, obligation to make payment against the unit was on complainant. Therefore, the Complainant cannot seek any relief under the provision of the Real Estate (Regulation and Development) Act, 2016 or rules framed thereunder.**

With regard to this objection raised by the respondents, Section 19(6), 19(7) of the Real Estate (Regulation and Development) Act, 2016 are reproduced below:

> 19(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."*

As per section 19 (7) of the Real Estate (Regulation and Development) Act, 2016-

> *"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)."*

It is observed by the Authority that neither counsel for both the parties has argued upon the above said objection during hearing nor has placed on record copy of builder buyer agreement, which contains the terms

and conditions for demanding and making payments in a specified time. In present case, as explained in para 39 and 40 of this order, respondent was under an obligation to make offer of possession maximum by 31.12.2021. However, as per records, no such offer of possession has been made by respondent till date to complainant. Rather occupation for the project has been obtained on 20.09.2024 by respondent. The sequence of above dates shows that respondent itself has delayed the project. Hence, above objection raised by respondent holds no merit in it, accordingly same is rejected.

ii. **The respondent contends that the complaint is barred by laches, and estoppels by conduct and acceptance in the Flat Buyer Agreement (FBA).**

The respondent has raised an objection that complainant had voluntarily entered into builder buyer agreement and had accepted the terms and conditions thereof, including opting for possession of the booked unit in question. Now, complainant is estopped by his own conduct. Further, to deal with respondent's objection of laches and Acquiescence, it is important to refer to a judgment passed by *Hon'ble Apex court in the case of Union of India v N Murugesan, (2022) 2 SCC 25* The Hon'ble Apex Court has elucidated the following principles governing delay, laches and acquiescence

> *"20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on*

many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the Court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The question of prejudice is also an important issue to be taken note of by the Court."

Acquiescence suggests tacit or passive acceptance. It is an implied and reluctant consent to an act. In other words, such an action would qualify as a passive assent. *Thus, when acquiescence takes place, it presupposes knowledge against a particular act.* This is a very important underlying aspect of acquiescence. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. The court has also observed about acquiescence:

"As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original

terms... Hence, what is essential, is the conduct of the parties. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis."

Further, laches can only be invoked when there is no statutory bar on the claim. Laches is an equitable defense, or doctrine. The word laches is derived from French meaning "remissness and slackness". A defendant who invokes the doctrine is stating that the claimant has delayed in asserting its rights, and, because of this delay, is no longer entitled to bring an equitable claim. This failure violates the maxim of equity that *"Equity aids the vigilant, not the negligent."*

However, delay alone is not enough to prevent a claimant obtaining relief. The consequence of the delay must be that it would be unfair for the court to give relief, usually because the defendant has changed its position because of the delay. *The party asserting laches has the burden of proving that it is applicable.*

The Hon'ble Supreme Court, in the aforementioned judgement laid down the following test for invoking laches

> *"22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the Court apart from the change in position in the interregnum."*

Laches is distinguishable from the statute of limitation, which prevents a party from asserting claims after the designated limitations period has expired. This doctrine provides a court with the discretion to deny relief to a claimant, even if their claim is ostensibly valid, where there has been an unreasonable delay in its assertion. This delay must prejudice the opposing party's position. It is pertinent to note that mere passage of time is insufficient to invoke laches. The cornerstone of this doctrine lies in the unreasonable nature of the delay on the part of the plaintiff and the resultant prejudice caused to the defendant, rendering the grant of the sought-after relief inequitable. However, if the plaintiff can furnish a satisfactory explanation for the delay, such as lack of knowledge of their rights, the court may be inclined to excuse the delay. The Hon'ble supreme Court in the decision had discussed the above maxims and the contract stated as below:

> *We have already dealt with the principles of law that may have a bearing on this case.* ***There is no element of an unequal bargaining power involved. Nobody has forced the respondent to enter into a contract.*** *He indeed was an employee of the society for 23 years..."(emphasis provided).*

From the above explanations it is amply clear that for invoking the maxims of delay, laches and acquiescence the

- overall conduct
- the quantum of delay
- the knowledge of a particular act

- unequal bargaining power etc are all to be considered.
- Further, the one who has invoked laches must bear the burden of proving it.

In the present case, the core relief sought by the complainant is to direct the respondent to refund the paid amount on account of failure of respondent to offer possession within the time prescribed i.e., 31.12.2021. As per records, respondent admits the paid amount of ₹7,62,950/-, however he has failed to offer possession till date even after receiving occupation certificate on 20.09.2024. Further, respondent has relied upon an affidavit dated 30.10.2019 annexed at page no. 52-53 of reply, stating that complainant in year 2019 has sought withdrawal form project on account of financial hardship. However, respondent has not placed on record any communication or action taken on the said request of the complainant till date. Fact remains that respondent withholds the paid amount of the complainant till date. Now after awaiting for more than two years, hoping that since respondent had not acted upon refund request of complainant, may be possession would be given soon. It is only when all hope of receiving a dream home faded that the complainant decided to exit from the project, a right explicitly provided by Section 18 of the RERD ACT. The present complaint has been filed on 17.05.2024 before the Authority. Even until the filing of the complainant, the

respondent had miserably failed to offer possession to complainant. Moreover, as elucidated by the Hon'ble Apex Court, none of the parameters of Delay or Laches is applicable in this case. There is no inordinate delay, no acquiescence and absolutely no circumstances that would imprison the complainant within these maxims. On the other hand, the respondent has absolutely failed to discharge even the basic onus of proving laches, which he has alleged. Hence, this objection raised by respondent is not sustainable.

iii. **Objections raised by the respondent regarding force majeure conditions.**

Respondent stated that the obligation to deliver possession within the period stipulated in the Flat Buyer Agreement, i.e., within 4 years from the date of approval of building plans (03.03.2017) or grant of environment clearance (24.10.2017), whichever is later makes the due of possession as 24.10.2021. As already discussed, the promoter has sought another 68 days reprieve on account of Covid.

For explaining the delay in construction, respondent had claimed *force majeure* at page no. 11 and 12 of reply citing various environmental restrictions, construction bans and judicial interventions. The onus squarely lies with the respondent to explain how each of the mentioned orders of authorities (except Covid) lies within the definition of *force majeure*. 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 conditions given above i.e. Prohibitions by NGT in year 2017 and 2019, COVID-19 Pandemic etc affected the project completion.

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, labor 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 fulfill 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. In the case of Alopi Parshad and Sons Ltd vs Union of India, AIR 1960 SC 588 and the landmark Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017) – 2017 3 AWC 2692 SC, the Supreme Court of India has categorically *stated that mere commercial onerousness, hardship, material loss, or inconvenience cannot constitute frustration of a contract. Furthermore, if it remains possible to fulfil the contract through alternate means, then a mere intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated.*

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 AWC 2692 SC lent further insight into interpreting a Force Majeure situation i.e

- 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;
- 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;
- *Force majeure events must be unforeseeable by both parties;*
- The requirement to put the other party on notice must be met with if the contract provides for notice requirements; and

- *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, respondent have merely cited issues related to environmental restrictions, construction bans and judicial interventions but has failed to explain its effect on the construction of project. Respondent neither has explained how his construction work was covered under above stated situations nor has substantiated its *force majeure* claim with concrete evidence or documentation. Also, constructions bans etc are regularly imposed during periods of extreme pollution. Since these are events that are easily foreseen, the obvious presumption is that they are inbuilt into the contract i.e the due date of possession is calculated with the aforementioned knowledge. Therefore, mere mention of various issues in arguments does not meet the rigours of the statute. Therefore the respondents cannot be allowed to take advantage of the delay on their part by claiming delay in statutory approvals/directions. As a result, this plea stands rejected.

Further with regard to force majeure on account of COVID-19, in the present case is concerned, same stands dealt with in para 39 and 40 of this order.

42. Arguments of both the parties were heard at length. As has been admitted between both the parties, upon executing agreement dated 03.12.2018, a unit bearing no. A5-506, admeasuring 604.3 sq. ft had been allotted to complainant in the project of the respondent namely "Smart Homes Karnal" situated at Sector 32A, Karnal, Haryana. As per para 8 of reply, "*.....the developer will endeavour to offer possession of the said apartment to the allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later.*"

43. 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.

44. 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. The clause—*"the developer will endeavour to offer possession ... within a period of four years from the date of approval of building plans or grant of environment clearance whichever is later"*—raises a recurring question under the Real Estate (Regulation and Development) Act, 2016:

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.

45. Before RERA, 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. RERA's architecture i.e Sections 11 and 18 and the mandatory model agreement place **time-bound delivery** at the heart of the regulatory framework. 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.

46. When the possession clause uses the words **"will endeavour"**, the *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 four years 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 *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.

47. 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; 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 four years**, with the promoter's "endeavour" language having no effect in diluting statutory consequences. The mischief rule thus becomes entirely appropriate: by interpreting the clause in a manner that enforces certainty rather than permissive delay, the decision suppresses the mischief RERA sought to eliminate.

48. Applying the statutory position above and the ratios of the Hon'ble Apex Court the deemed date of possession is 31.12.2021. Respondent has failed to deliver possession of the unit before or till 31.12.2021 to the complainant. On account of inordinate delay in delivery of

possession, complainant had filed the present complaint on 17.05.2024 seeking withdrawal from the project.

From the above, it is evident that the respondent failed to deliver the possession of the unit to the complainant within time, thereby not fulfilling its obligation under the agreement. As a result of this delay and the respondent's failure to meet the promised timelines, the complainant, in 2024, decided to withdraw from the project altogether. This decision clearly expressed the complainant's intent to disengage from the agreement due to the respondent's inability to deliver possession as originally stipulated. It is significant to note that the complaint was filed on 17.05.2024 which is prior to the receipt of the occupation certificate obtained by the respondent from the competent authority i.e. on 20.09.2024. This indicates that the complainant had already made up his mind to withdraw from the project before the receipt of occupation certificate. Under RERA Act, 2016 as per Section 18, once the respondent fails to deliver possession within the stipulated time frame, the complainant has the option to withdraw from the project and seek a refund. Further, complainant has stated that he had paid an amount of an amount of ₹7,90,000/- and receipts for the same stands issued by respondent. The respondent only received the Occupation Certificate on 20.09.2024, which was almost three years after the deemed date of possession.

The facts set out in the preceding paragraph demonstrate that respondent had failed to fulfill its obligation to handover possession by 31.12.2021 i.e. deemed date of possession. Keeping the hard earned money of allottees without justification establishes the mal-intent of the respondent. Under these circumstances, the provisions of Section 18(1)(a) of the Act clearly come into play by virtue of which the complainants are entitled to refund of paid amount along with interest on account of default in delivery of possession of booked unit.

49. 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(S). 6745 - 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, allottee has an unqualified right to seek refund of amount paid to the promoter along with interest. Para 25 of this judgementis reproduced below:

> *"25. The unqualified right of the allottee to seek refund referred underSection 18(1)(a) andSection 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."

50. Therefore, the Authority finds it to be a fit case for allowing refund in favour of complainant. The complainant will be entitled to refund of the paid amount from the dates of various payments till realization. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.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;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15:"*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 (NCLR) 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".."

51. 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. 11.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.

52. Hence, Authority directs respondent to pay refund to the complainants on account of failure in timely delivery of possession 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 date works out to 10.85% (8.85% + 2.00%) from the date of various payments till actual realization of the amount.

53. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e., 11.12.2025 at the rate of 10.85 %, as per the details given in table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 11.12.2025 (in ₹)

	(in ₹)		
1	3,51,950/-	05.09.2014 (receipt at page no. 16 of complaint)	4,30,619/-
2.	2,00,000/-	11.07.2014(from application dated 16.09.2025)	2,48,034/-
3.	50,000/-	11.07.2019 (receipt at page no. 17 of complaint)	34,869/-
4.	1,00,000/-	28.06.2019 (receipt at page no. 18 of complaint)	70,124/-
5.	50,000/-	04.07.2019 (receipt at page no. 19 of complaint)	34,973/-
Total:	**7,51,950/-**		**8,18,619/-**

54. With regard to the reliefs sought by the complainant mentioned in Para 11 (iii), (iv) 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.

55. The complainant is also seeking compensation of ₹ 5 lakhs on account of mental harassment and ₹ 2 lakhs on account of litigation expenses. 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 Pvt. 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 advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

56. 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 **₹15,70,569/-** (till date of order i.e., 11.12.2025) to the

complainant and pay further interest beginning from 12.12.2025 till actual realization of the amount at the rate of 10.85%.

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.

iii. The Authority also notes that other relief clauses were not pressed by the complainant. Further, for any compensation, the complainant shall be free to approach the Hon'ble Adjudicating Officer, who is empowered to decide on compensation as per the statute.

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.

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CHANDER SHEKHAR
[MEMBER]

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

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET S SACHDEV
[CHAIRMAN]