HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	557 of 2024
Date of filing:	09.05.2024
First date of hearing:	29.07.2024
Date of decision:	30.04.2026

1. **Mr Sonu Ram S/o Sh. Karan Singh,**
   R/o, Shahar Malpur (64),
   Beholi Samalkha, Panipat-1321001
2. **Mrs. Punam W/o Sh. Sonu Ram**
   R/o, Shahar Malpur (64),
   Beholi Samalkha, Panipat-1321001 .....COMPLAINANTS

Versus

M/s Aegis Value Homes Ltd
Registered office at EF-10,
Second floor, Inderpuri, Delhi- 110012

......RESPONDENT

CORAM:	Parneet S Sachdev	Chairman
	Dr. Geeta Rathee Singh	Member

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

Mr. NeerajGoel, Counsel for the respondent through VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 09.05.2024 by complainants 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 complainants, 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.	405
5.	Unit area	318 sq. ft.

6.	Date of Apartment Buyer Agreement	01.06.2018
7.	Due date of offer of possession	Within 3 years from the date of Apartment buyer agreement- **01.06.2021**
8.	Possession clause in BBA	8.1
9.	Total sale consideration	11,72,040/-
10.	Amount paid by complainant	₹6,52,010/- (As per application dated 16.09.2025 filed by the complainant)
11.	Offer of possession	19.11.2023, 29.10.2024 and 11.11.2024

B. FACTS AS PER THE COMPLAINT

3. That the respondent-promoter launched an affordable housing project in the State of Haryana under the Affordable Housing Policy notified by the State Government for providing residential units to economically weaker sections of society. Being influenced by the representations and assurances made by the respondents, the complainant applied for allotment of a flat in the said project.

4. That pursuant to the allotment, an Agreement to Sell dated 01.06.2018 was executed between the complainant and the respondents, wherein

the total sale consideration of the flat was fixed at ₹11,72,040/- as stipulated under Clause 1 of the said Agreement. A copy of the Agreement dated 01.06.2018 is annexed herewith as Annexure C-1.

5. That in compliance with the terms and conditions of the Agreement to Sell, the complainant paid an amount of approximately Rs. 6,00,000/- to the respondents from time to time. The said amount was paid out of the complainant's hard-earned savings. The copies of the payment acknowledgements and receipts are annexed herewith as Annexure C-2.

6. That after collecting substantial amounts from the complainant and other homebuyers, the respondents failed to carry out construction of the project within the stipulated time period and have not delivered possession of the flat to the complainant till date, in clear violation of the terms of the Agreement to Sell as well as the provisions of the Real Estate (Regulation and Development) Act, 2016.

7. That instead of completing the construction and offering possession of the flat as per the agreed terms, the respondents have illegally and arbitrarily demanded an additional amount of approximately ₹10,00,000/- to Rs. 11,72,040/- from the complainant, without any legal or contractual basis, with the sole intention of extracting more money from the complainant.

8. That the conduct of the respondents is not only arbitrary and illegal but also in complete contravention of the Affordable Housing Policy of the State of Haryana and the provisions of the RERA Act, 2016. The respondents cannot retain the complainant's money indefinitely without either delivering possession of the flat or refunding the amount with applicable interest.

9. That it is pertinent to mention that several complaints have already been filed before this Hon'ble Authority against the respondent company, namely Aegis Value Homes Ltd., wherein this Hon'ble Authority has taken note of the fraudulent and deficient practices adopted by the respondents in respect of the project.

10. That in a similar complaint titled *"Jyoti Chopra Vs. Aegis Value Homes Ltd. & Ors." bearing Complaint No. 649 of 2019*, this Hon'ble Authority vide order dated 31.08.2023 directed the respondents to refund the amount deposited by the complainant along with interest. A copy of the said order dated 31.08.2023 is annexed herewith as Annexure C-3.

11. That despite repeated requests and follow-ups by the complainant, the respondents have neither completed the construction nor offered possession of the flat and are continuing to harass the complainant by raising unjustified monetary demands. The complainant has been

running from pillar to post for more than ten years, suffering immense financial loss, mental harassment, and hardship.

12. That the respondents have failed to discharge their statutory obligations as cast upon them under Sections 11, 18, and other relevant provisions of the Real Estate (Regulation and Development) Act, 2016. The respondents are also liable to comply with directions that may be issued by this Hon'ble Authority under Section 37 read with Section 34(f) of the Act.

13. That due to the failure of the respondents to deliver possession of the flat within the stipulated period, the complainant is legally entitled to seek refund of the entire amount deposited along with interest, compensation for mental agony, harassment, and litigation expenses.

14. Complainants have filed an applications dated 08.11.2024, 13.08.2025 and 16.09.2025 in support of his pleadings. The Authority has duly taken these applications on record and considered the same for the proper and just adjudication of the matter.

C. **RELIEF SOUGHT**

15. In view of the facts mentioned above, the complainants prays for the following reliefs:

    i. That the respondent-developer be directed to refund the consideration amount paid by the complainant along with interest @ 24% per

annum. A computation sheet depicting the interest and principal amount is as follows:

Date of payment	Amount paid	Interest
01.06.2018	1,15,578/-	1,66,432/
2019	5,36,000/-	6,43,200/

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

iii. That the rate of interest levied on the computation sheet above is the same which the respondent-developer would have otherwise charged from the complainant in case of any default, Section 2(za) of the Act 2016 provides for such levying of rate of interest. It is further submitted before this Hon'ble Authority that the exemplary penalty may be levied on such defaulting promoters, so as to curb the practice of exploitation of innocent buyers.

iv. That 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 Hon'ble 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 Rs.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 FILED IN REGISTRY ON 12.09.2025

16. That Respondent No. 1, through its undersigned counsel, most respectfully submits the present reply to the complaint filed by the complainant and denies all allegations, averments, and contentions raised therein except those specifically admitted herein. The present complaint is misconceived, legally untenable, and liable to be dismissed with costs.

17. That the present complaint has been filed with mala fide intention and without approaching this Hon'ble Authority with clean hands. The complainant has deliberately suppressed material facts and has presented a distorted and incomplete version of events only to gain wrongful relief.

18. That the complainant himself has been in continuous and material breach of the Builder Buyer Agreement dated 01.06.2018 by willfully defaulting in making timely payments as per the agreed payment schedule. The complainant cannot take advantage of his own defaults and seek relief under the provisions of the Real Estate (Regulation and Development) Act, 2016.

19. That despite issuance of several reminders, demand notices, and repeated opportunities, the complainant has failed to clear outstanding dues and complete possession formalities. Therefore, the present complaint is not maintainable in law and is liable to be dismissed.

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

21. That the said project is duly registered under the provisions of the RERA Act vide Registration No. 265 of 2017 dated 09.10.2017 and is being developed strictly in accordance with the Haryana Affordable Housing Policy, 2013. A true copy of the RERA Registration Certificate dated 09.10.2017 is annexed as Annexure R-1/2.

22. That the complainant executed a Builder Buyer Agreement dated 01.06.2018 for Unit No. 705, Tower B1, 7th Floor, having carpet area of 318.90 sq. ft., for a total sale consideration of Rs. 11,72,040/-. A copy of the said agreement is annexed as Annexure R-1/5.
23. That as per Clause 3.1 of the Builder Buyer Agreement, possession of the unit was to be delivered within a period of four years from the date of approval of building plans or grant of environmental clearance, whichever was later.
24. That environmental clearance for the project was granted on 24.10.2017. Accordingly, the scheduled date of possession fell on 24.10.2021. Further, considering the 9-month extension granted by this Hon'ble Authority due to the COVID-19 pandemic, the revised due date of possession became 24.07.2022, subject to timely payment by the allottee and fulfillment of contractual obligations. True copies of building plan approval and environmental clearance are annexed as Annexure R-1/3 and R-1/4 respectively.
25. That the complainant has incorrectly claimed to have paid an amount of Rs. 6,51,578/-. The alleged final statement of account dated 19.11.2023 annexed by the complainant has not been verified by Respondent No. 1 and is strongly disputed.

26. That the complainant has failed to produce authentic documentary evidence such as bank statements or verified payment receipts as required under Regulation 8(dd) of the Haryana Real Estate Regulatory Authority (Adjudication of Complaints) Regulations, 2018.

27. That as per the verified records maintained by Respondent No. 1, the complainant has paid only Rs. 6,52,009/- against total dues of Rs. 13,78,817/-.

28. That as on 19.11.2023, the complainant is liable to pay the following outstanding amounts:- Outstanding Principal Amount – Rs. 6,35,608/-, Additional Charges (External connectivity, meters, etc.) – Rs. 59,623/-, Interest on Delayed Payments – Rs. 4,31,577/-, Total Outstanding Amount – Rs. 11,26,808/. That the complainant has been in continuous default since the year 2019 despite issuance of repeated reminders and notices. Payment reminder notices were issued to the complainant on 08.04.2022, 23.05.2022, 16.06.2022, 11.07.2022, 03.08.2022, 13.03.2023, 15.05.2023, 08.05.2024, 07.08.2024, 25.11.2024 and 19.12.2024. Thereafter, last and final notices for cancellation were issued on 19.09.2024 and 08.01.2025. True copies of the said notices are annexed herewith as Annexure R-1/6 and R-1/7.

29. That the project has been duly completed and the Occupation Certificate has been granted by the Director, Town and Country

Planning, Haryana vide Memo No. ZP-1112/JD(SP)/2024/30123-29 dated 20.09.2024 for Towers A1 to A7 and B1 including the complainant's unit. True copies of the application for grant of Occupation Certificate and the Occupation Certificate are annexed herewith as Annexure R-1/8 and R-1/9.

30. That thereafter, Respondent No. 1 issued multiple offers of possession to the complainant as detailed below:

- 19.11.2023 – First Offer of Possession
- 29.10.2024 – Second Offer of Possession
- 11.11.2024 – Third Offer of Possession

True copies of the said possession offers are annexed herewith as Annexure R-1/10.

31. That despite repeated opportunities, the complainant has failed to clear outstanding dues, complete possession formalities, or take delivery of the allotted unit.

32. That Section 18 of the RERA Act provides relief to an allottee only in cases where the promoter fails to complete the project or is unable to deliver possession in accordance with the agreement. In the present case, the project stands completed and Occupation Certificate has already been granted. Therefore, the complainant is not entitled to seek refund under Section 18 of the Act.

33. That the Hon'ble Supreme Court in Newtech Promoters and Developers Pvt. Ltd. vs. State of Uttar Pradesh & Ors. has held that while Section 18 confers an allottee with a right to seek refund in case of delay, such right cannot be invoked where the allottee himself is in default of contractual obligations.

34. That Sections 19(6) and 19(7) of the RERA Act specifically mandate that the allottee is obligated to make timely payments in accordance with the Agreement for Sale. The complainant having failed to comply with his payment obligations cannot seek equitable relief.

35. That under the Haryana Affordable Housing Policy, 2013, allottees are required to adhere to payment schedules and comply with scheme conditions. The complainant has violated essential conditions of the scheme by defaulting in payments and attempting to exit the project without any valid legal basis.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

36. Ld. counsels for both the parties reiterated their submissions as mentioned in the complaint and reply. Further, ld. Counsel for complainants submitted that application stating amended memo of parties stands filed on 20.02.2026 in registry. In addition to the above application, complainants had also placed on record an

application dated 16.09.2025, wherein it is specified that an amount of ₹6,52,010/- stands paid by the complainants qua the unit in question supported by the account statements attached alongwith as Annexure C-4.

F. ISSUE FOR ADJUDICATION

37. Whether the complainants are entitled to the reliefs sought or not?

G. OBSERVATIONS AND DECISION OF AUTHORITY

38. 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 complainants booked an apartment in the real estate project; "Smart Homes Karnal, being developed by the promoter namely; "Aegis Value Homes Ltd.". Thereafter, apartment buyer agreement was executed between the parties on 01.06.2018 for unit bearing no. 705, Tower B-1, admeasuring 318 sq. ft. Further, placing reliance upon the application dated 16.09.2025, the complainants have paid a total amount of ₹6,52,010/- out of the total sale consideration of ₹11,72,040/-.

39. Further, complainants have filed an application on 20.02.2026 in registry, wherein complainants have filed an amended memo of parties. Accordingly, now the relief of refund claimed by

complainants are 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.

H. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT:

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 respondent, 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).*"

The respondent during hearing also stated that since it is an affordable housing policy, complainants were bound to pay as per Timely payment plan. Complainants on the other hand argued that till 2019, payments were made as per demand of respondent, thereafter, taking note that no development over construction has been made by respondent, complainants lost faith in respondent and had stopped making further payments. On perusal of buyer agreement, it is clear that complainants had opted for a Timely Payment Plan (TPP). Further, as per table mentioned at page no. 1 of application dated 16.09.2025, it is clear that complainants had made payments from year 2017- 2023 and payments of ₹2,52,000/- paid on 24.08.2021; ₹57000/- paid on 19.01.2022 and ₹50,000/- paid on 10.02.2023 to respondent were after expiry of deemed date of possession, i.e., 01.06.2021. This shows the intention of the complainants that they were ready to pay even after delay caused on part of respondent. Furthermore, the total sale consideration of unit was ₹11,72,040/- out which ₹6,52,010/- stands paid by the complainants. Meaning thereby, 50% of the payment on part of complainants stands paid to respondent till date.

On the other hand respondent was also bound to construct the project as per above stated timely plan. However, actual position as

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stated by respondent in its reply is that occupation for the project was granted by competent Authority on 20.09.2024, meaning thereby, in any case, the construction was delayed as per timely plan, accordingly the deemed date of possession mentioned in Clause 8.1 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 complainants have 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 is not entitled to relief under RERD Act, 2016 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.

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

To deal with above stated objection, it is important to first ascertain the deemed date of possession in the present case. As per clause 8.1

of the builder buyer agreement, timeline for handing over of possession has not been specified by the respondent/promoter. Said clause of the agreement is reproduced below for ready references:

> *"8.1 Schedule for possession of the said Apartment - The Developer agrees and understands that timely delivery of possession of the said Apartment to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(t) of Rules, 2017, is the essence of the Agreement.*
>
> *The Developer assures to hand over possession of the said Apartment as per agreed terms and conditions unless there is delav due to "force majeure", Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. If, the completion of the Project is delayed due to the above conditions, then the Allottée agrees that the Developer shall be entitled to the extension of time for delivery of possession of the said Apartment.*
>
> *The Allottee agrees and confirms that, in the event it becomes impossible for the Developer to implement the project due to Force Majeure and above mentioned conditions, then this allotment shall stand terminated and the Developer shall refund to the Allottee, the entire amount received by the Developer from the allottee within six Months without any interest or compensation. The Developer shall intimate the allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he/ she shall not have any rights, claims etc. against the Developer and that the Developer shall be released and discharged from all its obligations and liabilities under this Agreement."*

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.*

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 assures to hand over possession of the said Apartment as per agreed terms and conditions unless there is delav due to "force majeure", Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project.* "—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.

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—Sections 11 and 18 and the mandatory model agreement—places **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.

When the possession clause uses the words **"agreed terms and conditions"**, the *literal reading suggests a mere obligation of effort rather than a mandatory timeline*. However, applying the mischief rule, such an interpretation would defeat the very purpose of RERA, which is to eliminate the opacity and uncertainty that characterised the pre-RERA regime. If the clause were construed to mean that the promoter has no strict obligation to deliver **within a specific period of time** 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.

Under this reasoning, the phrase "**agreed terms and conditions**" provides a determinable anchor point, and the addition of "**agreed terms and conditions**" 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.

In the present case, builder buyer agreement was executed between the parties on 01.06.2018. However, the agreement does not stipulate any specific time frame for handing over possession. Authority observes that in absence of clause with respect to handing over of possession in the builder buyer agreement, it cannot rightly ascertain as to when the possession of said apartment was due to be given to the complainants. It has been observed that period of 3 years is reasonable time for development of a project and handing over of possession as held by **Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.**

The Authority is therefore entitled to read the clause as imposing a **definite possession period of three years**, with the promoter's "terms and conditions," 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. Applying the statutory position above and the ratios of the Hon'ble Apex Court the deemed date of possession is **01.06.2021.**

Further, with regard to objections raised by the respondent **regarding force majeure conditions.** Respondent for explaining the delay in construction, had claimed *force majeure* at page no. 8-10 of reply citing various natural calamities, government orders, court orders contributing to delay of **555 days in completion of project**. The onus squarely lies with the respondent to explain how mere writing one line in pleading explains the nature of force majure faced by respondent (except Covid). Further onus also lies upon the respondent to explain how each order directly affected its construction activities. It is the stand of respondent that force majeure provisions covering natural calamities, government orders, court orders affected the project completion for 555 days. However, no detailed explanation with regard to the same has been filed by respondent.

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 has merely written one line with regard to force majeure, stating nothing and no explanation has been provided by respondent that how the force majeure effected the construction of the project. In absence of any relevance that how force majeure effected the development and construction of project and mere mentioning 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, due to the various decisions of the Government of India and the Government of Haryana Authority, *force majeure* may be accepted *for a maximum period* of Covid i.e 9 months. Reference is made to Advisory issued by Authority in its 93rd meeting held on 18.05.2020 wherein time period of maximum 6 months 25.03.2020 to 24.09.2020 was considered as force majeure being natural calamity affecting the whole world and extension of three months, i.e. 01.04.2021 to 30.06.2021 due to second wave of Covid-19 was considered as force majeure by the Authority in its meeting held on 02.08.2021. Therefore, the Authority holds that the only *force*

majeure condition accepted in this case is Covid, i.e. 68 days as claimed by the respondent at page no.9 of reply. Accordingly, new, deemed date will be taken as ***09.08.2021*** (1.06.2021 + 2 months 8 days).

40. Arguments of both the parties were heard at length. As has been admitted between both the parties, upon executing agreement dated 01.06.2018 a unit bearing no. 705, Tower B-1, 1BHK, 7th floor, admeasuring 318 sq. ft. had been allotted to complainants in the project of the respondent namely "Smart Homes Karnal" situated at Sector 32A, Karnal, Haryana. Deemed date of possession is 09.08.2021. Respondent has failed to deliver possession of the flat before or till 09.08.2021 to the complainants. On account of inordinate delay in delivery of possession, complainants under Section 19(10) had clarified his intent to withdraw from the project by way of filing present complaint on 09.05.2024 in the registry

41. From the above, it is evident that the respondent failed to deliver the possession of the unit to the complainants 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 complainants, 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.

42. Moreover, it is appropriate to refer to judgment passed by Hon'ble Apex Court in case "Pioneer Urban Land & Infrastructure Ltd. Versus Govindan Raghavan" held as under

> *"We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant - Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and* ***offering possession of the flat to the Respondent - Purchaser within the time stipulated in the Agreement****, or within a reasonable time thereafter. The Respondent - Flat Purchaser* ***could not be compelled to take possession of the flat,*** *even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent - Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the respondent - Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent - Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with interest"*

Hence, it is a settled law that if the builder is not able to deliver the possession of the flat in time then he cannot force the complainants to take possession and is liable to refund the money of buyer with interest.

43. Further, complainants have stated that he had paid 50% of sale consideration as per agreement on time and account ledger annexed

at page no. 5 to 14 of application dated 16.09.2025 depicting paid amount has been placed on record. The respondent only received the Occupation Certificate on 20.09.2024, which was three years three months after the deemed date of possession.

44. Subsequently, the respondent made three offers of possession to the complainants i.e., on 19.11.2023, 20.10.2024, and 11.11.2024. The initial offer of possession dated 19.11.2023 were made without obtaining occupation certificate, an offer bad in law, hence not valid. The other subsequent offers of possession dated 20.10.2024 and 11.11.2024 was made after obtaining occupation certificate but complainants under Section 19(10) had clarified their intent to withdraw from the project by way of filing complaint on 09.05.2024 i.e., before the issuance of offers of possession. Hence, both the subsequent offers of possession hold no sanctity.

45. The facts set out in the preceding paragraph demonstrate that respondent had failed to fulfil its obligation to handover possession by 01.06.2021 i.e. deemed date of possession. Keeping the hard earned money of allottees without justification establishes the malintent 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.

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(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.*"

47. Therefore, the Authority finds it to be a fit case for allowing refund in favour of complainants. The complainants 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"."*

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. 30.04.2026 is **8.80.%**. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. **10.80 %**.

49. 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 **10.80% (8.80% + 2.00%)** from the date of various payments till actual realization of the amount.

50. 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., 30.04.2026 at the rate of **10.80%**, as per the details given in table below:

Sr. No.	**Principal Amount (in ₹)**	**Date of payment**	**Interest Accrued till 30.04.2026 (in ₹)**
1.	55,578/-	02.06.2017	53,528/-
2.	60,000/-	10.04.2018	52,248/-
3.	1,77,432/-	15.01.2019	1,39,809/-
4.	2,52,000/-	24.08.2021	1,27,580/-

5.	57,000/-	19.01.2022	26,361/-
6.	50,000/-	10.02.2023	17,398/-
Total:	**₹ 6,52,010/-**		**₹ 4,16,924/-**
Total amount	**₹ 6,52,010/- + ₹4,16,924/-=10,68,934/-**		

51. Further, with regard to the reliefs sought by the complainants mentioned in Para 15 (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

52. The complainants are 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

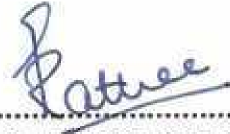
53. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

i. Respondent is directed to refund the entire amount along with interest @ **10.80** % to the complainants as specified in the table provided above in Paras no.50 of this order).

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.

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 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.



DR. GEETA RATHEE SINGH
[MEMBER]

PARNEET S SACHDEV
[CHAIRMAN]