



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>398 of 2024</b>
<b>Date of filing:</b>	<b>03.04.2024</b>
<b>First date of hearing:</b>	<b>20.05.2024</b>
<b>Date of decision:</b>	<b>21.05.2026</b>

**Ishan S/o Sh. Dharamvir,**

R/o, H.No. 666/3,

Near Sankat Mochan Hanuman Mandir, Insar Bazar,

Panipat-132103

.....COMPLAINANT

Versus

**M/s Aegis Value Homes Ltd**

Through its M.D. & other Directors

Registered office at 55, 2<sup>nd</sup> floor, Lane-2, Westend Marg,

Saidullajab, Near Saket Metro Station, South Delhi, New Delhi-110030

.....RESPONDENT

**CORAM:**

**Parneet S Sachdev**

**Chairman**

**Dr. Geeta Rathee Singh**

**Member**

**Chander Shekhar**

**Member**

**Present:** - Adv. Rahul Sharma, Counsel for the complainant through VC.

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

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**ORDER (PARNEET S SACHDEV-CHAIRMAN)**

1. Present complaint has been filed on 03.04.2024 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.	1207,12 <sup>th</sup> floor, tower A-4
5.	Unit area	638.80sq. ft.



6.	Date of Apartment Buyer Agreement	06.11.2017
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.	Possession clause in BBA	3.1
9.	Total sale consideration	19,89,320/-
10.	Amount paid by complainant	₹21,18,625/- (As per page no. 11 of complaint book)
11.	Offer of possession	10.11.2023 and 30.10.2024

**B. FACTS AS PER THE COMPLAINT**

3. That the complainant is a bona-fide resident as well as a law-abiding citizen of this country, who has approached this Hon'ble Commission for redressal of his grievances and for seeking direction for granting possession to the complainant and for setting aside the Offer to possession dated 10.11.2023 being contrary to the settle condition as

well as prevailing law. A copy of Impugned offer to possession is annexed herein with and marked as Annexure C/1.

4. That the respondent No.1 is a private limited company and is developer of the project sites named "smart Homes Karnal" and also engaged in the business of construction services at all over Haryana and other places, having registered office at 55, 2nd Floor, Lane-2, Westend Marg, Saidullajab, Near Saket Metro Station, South Delhi-110030. The Respondent No. 2 to 4 are the managing director and director of the respondent company and looking day to day business affairs & management of the company thus they are also jointly & severely responsible in the present matter. Copy of master data of the respondent company is annexed herewith as Annexure- CZ.
5. That the respondent No. 5 is Limited Company and Owner of the above said project and has authorized the developer to work and execute the project, where the dispute has arisen between the complainant and the respondent No. 1 to 4 on behalf of respondent No-5. Copy of master data of the respondent No. 5 obtained from the ROC portal is annexed herewith as Annexure C3.
6. That in 2017, the respondents launched a scheme for affordable group housing in Sector - 32 A, Karnal, promising all requisite sanctions and approvals and garnering attention and trust from prospective buyers



like the complainant. Promising adherence to all regulatory requirements, including obtaining necessary sanctions and approvals, Smart Homes Karnal painted a picture of reliability and integrity. Based upon the representation of the Respondent that all the requisite sanctions as well as approvals have been obtained from the competent authorities and that they are owner in possession of the land over which the project is launched, on 20.05.2017, the complainant took a significant step towards by filing an application and making a substantial payment of Rs.95,227.00/-which is 5% initial installment for booking a flat in Smart Home Karnal's Affordable Group Housing Project. This amount, tendered via Cheque No. 561995 issued by PNB Bank. At the time of booking, the amount paid by the Complainant was applied as "Advance against Future Project". A copy of the Acknowledgement Slip dated 20.05.2017 and Acknowledgement Receipt dated 25.05.2017 are annexed herewith for the kind perusal of this Hon'ble Authority as Annexure-C4 & Annexure C-5 (Respectively).

7. That in the above stated project Named "Smart Homes Karnal", the Flat/Unit No. 1207, 12th Floor at tower No. A-4 was allotted to the complainant by the respondent No. 1 and the Respondent No. 1 through Respondent No. 2-4 on behalf of respondent No.5 had

provided a payment schedule to the Complainant as per which the said amount has to be remit to the Respondent's. A copy of Payment Schedule is annexed here in with as Annexure-C/6.

8. That at the time of draw, the complainant has deposited the payment of Rs. 2,00,000.00/-in favor of the respondent No. 1 vide chq No. 561996, dated 17.07.2017 and the same is acknowledged by the respondent vide its receipt date 02.08.2017. Copy of receipt of the same is annexed herewith as Annexure-C/Z.
9. That thereafter a Formal agreement was executed between the complainant and the respondent No. 1 on 11.08.2017 and delineate the rights and responsibilities of both parties, outlining the terms and conditions governing the purchase of Flat No. 1207, 12TH Floor, A-4 Tower. This agreement served as a contractual framework, providing clarity and legal certainty to the transaction. Copy of agreement is annexed herewith as Annexure-C8.
10. That the complainant deposited an amount of Rs. 21,18,625.00/ in favor of the Respondent No. 1 till 17.06.2023 as per payment schedule, the complainant made the payment to the respondent No. 1. The transactions continued to unfold with Smart Homes Karnal issuing an acknowledgment receipts time to time. Copy of the

Receipts of payment made is annexed herewith as Annexures C\9 to Annexures C/15.

11. That in furtherance to the Payment demand notice dated 12.05.2023 stipulating a payment of Rs. 3,28,221/- (in which the amount of Rs. 268558.00/-ie payable by the complainant on 17.06.2023 and Rs. 59663.00/- on account of the interest), however, upon careful examination, it became evident that this demand included an excessive and unreasonable amount labelled as "interest." It is imperative to highlight that the imposition of such exorbitant interest charges contravenes. Moreover, it would be pertinent to mention here that such demand by the developer is unjust demand as the period for which the complainant is unable to deposit the scheduled instalment was the period when the country was suffering from the widespread of the covid-19 Pandemic and the Hon'ble Apex court had laid down various relaxation during this period. Farther, the Developer had received the such alleged delay payment without any protest and hence in now being estopped from raising such demand at this stage.
12. That on 10.11.2023, the respondent No. 1 Issue Offer of Possession letter to the complainant and offer the compliant to take over the possession of the said apartment/flat and also in which the respondent No.1 demanded unreasonable charges in the name of External

Electrical Connectivity to the Project Charges, Advance Meter Consumption Charges, Security Deposit Interior, Meter Charges and Labour Cess, to deceive & grab the hard-earned money of the complainant and as such the complainant is awaiting to get actual physical possession of the flat from the last more than 3 years from the deemed date of possession but the respondent has failed miserably to comply with their part of contractual as well as legal obligations and has committed breach of contract with the complainant.

13. That it would be worthy to mention here that the respondent No. 1 was to hand over the possession to the complainant within the period of 4 years from the approval of building plans or grant of environment clearance whichever is later, but the offer to possession was issued to the complainant in the month of the November-2023, which is the 3 years delay on the side of the respondent No. 1, thus the offer to possession issued by the respondent No. 1 is void. In the present case, the Builder/respondent No. 1 got approval and started its construction in the year of 2017 and the deemed date of possession comes to 2021 and the respondent was legally bound to deliver actual physical possession of the flat up to that date.
14. That the complainant contacted the respondent on several occasions at their office and requested to the respondent No. 1 to wave off the

interest charges, which is falsely alleged on him, but they were always turned down on one pretext or the other and all the time informed that soon after the payment of the charges, the actual physical possession of the flat will be handed over and conveyance deed will be executed.

15. That furthermore, it is crucial to note that despite issuing an offer of possession, Smart Homes Karnal failed to provide any environmental clearance certificate and occupation certificate to the complainant. These certificates are essential documents that validate the legality and suitability of the property for occupancy. Moreover, the flat allocated to the complainant remains under construction, rendering it uninhabitable. Despite the unfinished state of the property, the respondent has been persistently demanding unreasonable charges from the complainant.
16. That due to delay on respondent's part to make a valid offer of possession after obtaining completion certificate, the complainant has become entitled for interest on the amounts deposited by him calculated at the rate provided in Section 18 of the Real Estate (Regulation and Development) Act, 2016 from the deemed date of possession till the date of delivery of actual physical possession of the plot.

17. That prior to the visits made by the complainant, the respondent never bothered to contact the complainant to put before him true set of facts, never informed their inability to deliver actual physical possession of the plot or apprised the complainant about the development at the project but simply kept on receiving more and more money from the complainant.
18. That during all these years, the respondent was under illegal enjoyment of hard earned money of the complainant, earning monetary benefits out of it and it was the complainant who was deprived for a sufficient longer duration to make use of the flat booked with the respondent.
19. That the complainant is a bona-fide purchaser of the flat in the project of respondent who purchased it in order to fulfil his need and dream of having a flat in his name, who despite after this much delay, is ready to continue with the booking and get the possession of the said flat and do not want to withdraw from the project.
20. That the project in question is situated at Karnal which is well within the territorial jurisdiction of this Hon'ble Authority and this Hon'ble Authority is having jurisdiction to try and entertain this complaint.
21. That the cause of action to file this complaint arose when the respondent failed to deliver actual physical possession of the plot and

as such there is continuing cause of action as till date the possession of the plot has not been handed over to the complainant.

22. That Complainant craves leave of this Hon'ble Authority and reserves its right to file such additional documents, correspondence as may be required for effective adjudication of this complaint or may become necessary to enable us to prove its claim. Further the complainant reserves its right to amend/add/alter/supplements its complaint, if necessary and/ or to file additional pleadings, as may be require during adjudication of this present complaint. The complainant also seeks permission of this authority to file such additional or revised or alternative quantification of the complaint and/or interest and/or cost of the proceeding as may be necessary.
23. That the advance copy of the Complaint has already sent to the respondent's e-mails address as prescribed by this Hon'ble Authority.
24. That the complaint is within limitation and not barred under the law of limitation.

**C. RELIEF SOUGHT**

25. In view of the facts mentioned above, the complainant prays for the following reliefs:

1. It is humbly prayed before this Hon'ble Authority/Tribunal to direct the respondent No. 1 to 5, refund the entire amount deposited by



the complainant or deliver actual physical possession of the Flat/Unit No. 1207, 12t Floor, Tower-A4 to the complainant after obtaining completion certificate from the competent authorities.

2. To Direct the respondent No. 1 to 5 to pay interest at the rate provided in Section 18 of the Real Estate (Regulation and Development) Act, 2016 for delay in handing over of possession of the plot from the deemed date of possession till the date of actual physical possession.
3. Issuance of latest statement of account to the complainant reflecting remaining amount to be paid, if any.

**D. REPLY ON BEHALF OF RESPONDENT FILED IN  
REGISTRY ON 12.09.2025**

26. That the present complaint is filed with unclean hands and lacks bona fides. The complainant has deliberately suppressed material facts from this Hon'ble Authority and has presented a distorted version of events.
27. 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.

28. 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.
29. 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.
30. 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.
31. That the complainant applied for allotment of a 2 BHK apartment in the said project and was allotted Unit No. 1207, 12<sup>th</sup> floor, Tower A-4 having carpet area of 538.70 Sq.ft. through a transparent draw of lots held on 07.07.2017.



32. That a Builder Buyer Agreement was executed between the parties on 06.11.2017 for a basic sale consideration of Rs. 19,89,320/-. True copy of the said agreement dated 06.11.2017 is annexed herein Annexure R-1/3.
33. That as per agreed payment schedule, the complainant was required to make payments in instalments spread over 36 months from the date of draw. The payment schedule was clearly defined and agreed upon by the complainant.
34. 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.
35. That the possession was to be offered within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later, subject to timely payments by the allottee, and other conditions mentioned in the agreement. True copies of building plans and environment clearance are annexed herein as **Annexure R-1/4 & r-1/5** respectively.
36. That the complainant has made a total payment of Rs. 21,18,625/- against the total consideration, leaving a substantial amount

outstanding as per the latest statement of accounts. True copy of the statement of account is annexed herein as **Annexute R-1/6**.

37. That the complainant has consistently defaulted in making timely payments as per the agreed schedule, attracting interest charges as stipulated in the agreement at the rate of 15% per annum.

38. That despite numerous demand notices sent by the respondent, the complainant failed to clear the outstanding dues and comply with the payment obligations. Following are the payment default details:

- Multiple instalments were paid with significant delays.
- Interest charges have accrued due to delayed payments.
- As per the latest demand dated 30-10-2024, an amount of Rs. 3,46,759/- remains outstanding.

True copies of the demand notices are annexed herein as **Annexure R-1/7**.

39. Offer of possession and complainants refusal:

- First offer of possession (10.11.2023): Respondent issued the first Offer of Possession letter dated 10.11.2023. Total outstanding amount demanded: Rs. 2,19,275/-. Complainant failed to respond or clear dues within the stipulated 30 days. True copy of the said offer of possession is annexed herein as **Annexure R-1/8**.



- Updated Offers and Reminders: Multiple payment reminder letters were sent on various dates. Latest Offer of Possession dated 30.10.2024 with outstanding amount of Rs. 3,42,165/-.
  - Complainant has continuously ignored all offers and demands
  - Complainant's Unjustified Refusal: Despite apartment being ready for possession, complainant has refused to take possession. No valid grounds provided for refusing possession. Complainant's conduct amounts to breach of agreement.
40. That the construction of the project faced unprecedented challenges due to force majeure conditions including:
- i. COVID-19 pandemic and nationwide lockdowns (2020-2021)
  - i. Shortage of labor and construction materials
  - iii. Government restrictions on construction activities
  - iv. Supply chain disruptions
41. That these circumstances were beyond the control of the respondent and entitled the respondent to claim extension of time as per the Builder Buyer Agreement.
42. That the present complaint is labile to be dismissed on the following grounds:
- A. Section 19 OF RERA - Allottee's Obligations

- i. That Section 19 of the RERA Act, 2016 clearly stipulates the obligations of allottees, including:
- a) Timely payment of amounts due under Section 19(6).
  - b) Payment of interest for delayed payments under Section 19(7).
  - c) Taking physical possession within prescribed time under Section 19(10).
- ii. That the Hon'ble Kerala High Court in Gopakumar B.Nair vs. K.V. Sugunan & Others has held that allottees are liable to pay interest for delayed payments and promoters have the right to claim such interest.
- iii. That as per the Haryana RERA regulations and recent precedents, the prescribed rate of interest for delayed payments by allottees is 11.10% per annum.
- iv. That in Venetian LDF Projects LLP vs. Rajni Singh (Appeal No. 755 of 2024), the Haryana Real Estate Appellate Tribunal affirmed that promoters can charge interest at prescribed rates for payment defaults by allottees.
43. The following force majeure situation accrue in the construction of the project in question which are as follows:

S.N	Period	Authority	Nature of ban/ Restriction	Duration
o.				

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 Court	Partial ban(day time allowed)	67 days
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 majeure Days	

ii. That the Hon'ble Courts and RERA Authorities across the country have recognized COVID-19 as a force majeure event entitling developers to extension of time.

iii. That the Haryana RERA in several recent orders has granted relief to developers for delays caused during the COVID-19 period.

#### 44. REFUSAL TO TAKE POSSESSION

i. That once a valid offer of possession is made by the promoter after obtaining necessary approvals, the allottee is bound to take possession within the stipulated time.

ii. That Section 19(10) of RERA mandates allottees to take physical possession within two months of offer of possession.

45. COUNTER-CLAIM: That as per the latest statement of accounts dated 30.10.2024, following amounts are due and payable by the complainant:

Particulars	Amount (Rs.)
Basic Sale Price Balance	62,014
External Electrical Charges	22,637
Advance Meter Charges	27,814
Security Deposit	20,000
Meter Charges	6,490
Labor Cess	16,823
Interest on delayed Payments	1,86,387
Total Outstanding	3,42,165

That the complainant is liable to pay additional interest charges for continued default at the prescribed rate.

46. That due to complainant's refusal to take possession despite valid offers, holding charges are applicable as per the agreement terms. That the complainant is also liable for maintenance charges and other statutory dues from the date of offer of possession.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

47. During the course of the hearing, the learned counsels for both parties reiterated the arguments set forth in their respective pleadings. Counsel for the complainant further referred to **Page 16** of the complaint, noting that the complainant had originally sought alternative reliefs: delivery of possession or, in the alternative, a refund of the total amount paid.

In light of the fact that the project has already been delayed by several years, the complainant now expressed a formal intent to withdraw from the project. Consequently, the complainant is now exclusively seeking *the refund of the total amount paid*, along with the applicable interest as per the statutory provisions.

48. Further, Complainant in its complaint has impleaded total 5 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. 2,3,4 and 5 in this order.

**F. ISSUE FOR ADJUDICATION**

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

**G. OBSERVATIONS AND DECISION OF AUTHORITY**

50. 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 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 06.11.2017 for unit bearing no. 1207, Tower A4, admeasuring 638 sq. ft. The complainant alleges a total payment of ₹21,18,625/- against a total sale consideration of ₹19,89,320/-. Regarding this claim, the Authority observes that as recorded in the order dated 05.03.2026, the complainant was formally notified that the receipts currently on file do not substantiate the total amount claimed to have been paid and



complainant was granted a specific opportunity to submit the missing payment receipts to the Registry by **16.03.2026**. As per office record, the complainant has failed to file any such supporting documentation to date, despite the extension of time provided.

51. As per page no.11 of complaint book complainant had made following payments:

Amounts Paid	Date of payment	Mode of payment	Proof payment annexed in complaint book at Page nos.
95,227/-	01.08.2017	Cheque	29
2,00,000/-	02.08.2017	Cheque	32
2,00,000/-	11.08.2017	Net banking	60
2,50,768/-	15.02.2018	Cheque	62
2,95,200/-	05.09.2018	Cheque	65
2,71,756/-	13.05.2019	Cheque	67
2,68,558/-	20.11.2019	Cheque	69
<b>2,68,558/-</b>	<b>11.10.2021</b>	<b>Cheque</b>	<b>Not annexed</b>
2,68,558/-	17.06.2023	Cheque	71
Total- <b>21,18,625/-</b>			

Bare reading of the payment schedule reveals that the complainant has failed to annex the receipt for **₹2,68,558/-**, allegedly paid via cheque dated **11.10.2021**. Conversely, the respondent has submitted a Statement of Account (**Page 77 of the reply**), which acknowledges a

total payment of ₹21,18,625/-. However, a discrepancy exists regarding the 2021 transaction:

- **Complainant's Claim:** ₹2,68,558/-
- **Respondent's Admission:** ₹2,48,664.80

Given that the complainant has not provided documentary evidence (receipts) to substantiate the higher figure, the Authority deems it appropriate to rely on the amounts verified by the record. Accordingly, the total paid amount shall be considered as ₹20,98,731.80 (calculated as the undisputed base of ₹18,50,067/- plus the admitted 2021 payment of ₹2,48,664.80)

#### **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, complainant was bound to pay as per Timely payment plan. Learned counsel for complainant on the other hand argued that till 2023, more than total sale consideration stands paid by the complainant. It is the respondent who did not develop the project on time and still raised numerous illegal demands even after receiving more than the sale consideration and without making any development on the project site. Taking note that no development over construction has been made by respondent, complainant lost faith in respondent and had stopped making further payments. On perusal of buyer agreement, it is clear that complainant had opted for a Timely Payment Plan (TPP). Further, as per table mentioned at page no. 11 and receipts annexed on page no. 32, 59-71 of complaint book, it is clear that



complainant had made payments from year 2017- 2023 and last payment of ₹2,48,558/- was paid on 17.06.2023 to respondent, which was after expiry of deemed date of possession, i.e., **31.12.2021**. This shows the intention of the complainant that he was ready to pay even after delay caused on part of respondent.

On the other hand, respondent was obligated to complete construction in accordance with the stipulated project timeline. The Authority notes that the respondent failed to address the current status of the project in either their written reply or during oral arguments. However, the Authority is cognizant of the respondent's position through the adjudication of **multiple concurrent complaints** filed against this same project, namely "**Smart Homes Karnal.**" In those proceedings, the respondent disclosed that the project is purportedly complete. Occupation Certificate (OC) was obtained via **Memo No. ZP-1112/JD(SP)/2024/30123-29**, dated **20.09.2024**. It is evident that construction was not completed as per the original schedule. Consequently, the **deemed date of possession** as mandated under **Clause 3.1** of the Builder-Buyer Agreement has expired, establishing a clear period of delay prior to the issuance of the Occupation Certificate.



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.

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.**

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. Further, the respondent claimed reprieve on the basis of Covid notification of the government for 68 days as per its own chart filed at page no 7 of reply and reproduced at para 41 of this order.



Further, for explaining the delay in construction, respondent had claimed *force majeure* at page no. 6-11 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 respondent



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 93<sup>rd</sup> 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 from 24.10.2021 to 31.12.2021. Accordingly, deemed date will be taken as **31.12.2021**.

52. Arguments of both the parties were heard at length. As has been admitted between both the parties, upon executing agreement dated 06.11.2017 a unit bearing no. 1207, Tower A4, 12<sup>th</sup> floor, admeasuring 638.80 sq. ft. had been allotted to complainant in the



project of the respondent namely "Smart Homes Karnal" situated at Sector 32A, Karnal, Haryana. Deemed date of possession is 31.12.2021. Respondent has failed to deliver possession of the flat before or till 31.12.2021 to the complainant. On account of inordinate delay in delivery of possession, complainant under Section 19(10) had clarified his intent to withdraw from the project by way of filing present complaint on 03.04.2024 in the registry.

It is evident from the facts that the respondent failed to deliver possession within the stipulated timeframe, thereby defaulting on its contractual and statutory obligations. Due to this persistent delay, the complainant decided to withdraw from the project by way of filing present complaint on **03.04.2024**, significantly predating the **Occupation Certificate (OC)** obtained by the respondent on **20.09.2024**. This timeline confirms that the complainant had exercised their intent to disengage from the agreement while the project was still legally incomplete. Under **Section 18 of the RERA Act, 2016**, if a promoter fails to provide possession in accordance with the terms of the agreement, the allottee possesses an unqualified right to withdraw from the project and seek a full refund. The complainant maintains that the entire sale consideration was paid in a timely manner, as evidenced by the receipts issued by the respondent. In contrast, the



respondent only secured the Occupation Certificate on **20.09.2024** nearly three years after the deemed date of possession. Further, the Authority has evaluated the two offers of possession made by the respondent:

**Offer dated 10.11.2023:** This offer was issued prior to obtaining the Occupation Certificate. It is well-settled law that an offer of possession without an OC *is void ab initio* and holds no legal sanctity.

**Offer dated 30.10.2024:** While this offer was made after the OC was obtained, it was issued approximately six months *after* the complainant had already approached this Authority on **03.04.2024** to seek a refund.

Since the complainant had already legally exercised the right to withdraw due to the respondent's default, any subsequent offers of possession are irrelevant. The complainant's right to a refund was crystallized at the time of filing the complaint, as the project remained incomplete at that juncture.

53. The facts set out in the preceding paragraph demonstrate that respondent had failed to fulfil 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 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 complainant is entitled to refund of paid amount along with interest on account of default in delivery of possession of booked unit.

54. 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 judgement is reproduced below:

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

55. 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”..”*

56. 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. 21.05.2026 is **.8.80%**. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80 %.
57. Hence, Authority directs respondent to pay refund to the complainant 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.
58. 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., 07.05.2026 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 21.05.2026 (in ₹)
1	95,227/-	01.08.2017	90,616/-
2.	2,00,000/-	02.08.2017	1,90,258/-
3.	2,00,000/-	11.08.2017	1,89,725/-
4.	2,50,768/-	15.02.2018	2,23,935/-

5.	2,95,200/-	05.09.2018	2,45,969/-
6.	2,71,756/-	13.05.2019	2,06,332/-
7.	2,68,558/-	20.11.2019	1,88,726/-
8.	2,48,664.8/-	12.10.2021(Page no.77 of reply )	1,23,831/-
9.	2,68,558/-	17.06.2023	85,026/-
<b>Total:</b>	<b>₹20,98,731.8 /-</b>		<b>₹ 15,44,418/-</b>
<b>Total amount</b>	<b>₹ 20,98,731.8 /- + ₹15,44,418/- = ₹ 36,43,149.8/-</b>		

59. Furthermore, regarding the specific reliefs sought by the complainant in **Para 23, Clauses 2 and 3**, the Authority notes that the complainant has already formally elected the **relief of refund**, as detailed in **Para 45** of this order. Given that the complainant has opted to withdraw from the project, the Authority finds it appropriate not to adjudicate upon these specific claims, as they pertain exclusively to the **relief of possession** and associated handover charges. Consequently, these prayers are rendered infructuous in light of the decision to grant a refund.

#### **I. DIRECTIONS OF THE AUTHORITY**

60. 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.56 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.

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]

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

  
.....  
**PARNEET S SACHDEV**  
[CHAIRMAN]