HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**555 of 2024**
Date of filing:	**09.05.2024**
First date of hearing:	**29.07.2024**
Date of decision:	**02.04.2026**

1. **Mrs. Omwati Sharma W/o Sh. Surya Kant Sharma,**
R/o, House no. 663, Wno.12,
Krishna Colony, Samalkha,
Panipat, Haryana- 132101,

2. **Surya Kant Sharma S/o Sh. Ram Avtar Sharma,**
R/o, House no. 663,
Wno.12, Krishna Colony, Samalkha,
Panipat, Haryana- 132101,

.....COMPLAINANTS

Versus

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

.....RESPONDENT

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

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

Mr. Neeraj Goel, 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 complainant, date of handing over of the possession, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Smart Homes Karnal
2.	Name of the promoter	M/s Aegis Value Homes Ltd
3.	RERA registered/not registered	Registered
4.	Unit no.	A5-106

5.	Unit area	538.70 sq.ft and balcony area 100.10 sq.ft.
6.	Date of Apartment Buyer Agreement	22.03.2018
7.	Due date of offer of possession	22.03.2021 (3 years from date of execution of bba)
8.	Possession clause in BBA	8
9.	Total sale consideration	19,89,320/-
10.	Amount paid by complainant	₹18,90,454/-
11.	Offer of possession (fit-out)	04.02.2024, 06.10.2024 and 11.11.2024

B. FACTS AS PER THE COMPLAINT

3. That the complainant is an old man who utilized his entire life saving for purchasing flat in question. The respondent-builder is a habitual defaulter who even after taking an amount of approximately Rs.19 lacs. The respondents have not been able to deliver the possession of the flat as per the agreed amount till today. It is submitted here that as per the agreement dated 22.03.2018, the total price of the flat was Rs.19,89,320/- as per clause-1 of the Agreement. The copy of the Agreement dated 22.03.2018 is annexed herewith as Annexure C-1.

4. That the complainant has duly paid an amount of approximately Rs.19 lacs but now the respondent with the only intention to extract more money from the complainant is asking for another amount of Rs.12,36,921/- without any basis whatsoever. The copy of the final statement of account dated 04.02.2024 depicting the same is annexed herewith as Annexure C-2.

5. That the respondent-builder has committed a fraud upon the present complainant as well as various other home buyers who have given their entire life saving to the respondents for fulfilling their dream of home ownership. It is pertinent to mention here that the present project falls within the affordable housing policy erected by the State of Haryana with a view to provide affordable housing to the economically weaker section of the society.

6. That the respondents while acting in a completely illegal and unlawful manner and in complete contravention of the affordable housing policy usurped the money given by the complainant. It is submitted that initially after taking lacks of rupees from the home buyers, the respondents did not raise any construction over the site in question. It is pertinent to mention here that various complaints were filed before this Hon'ble Authority against the Aegis Value Homes Ltd. and this

Hon'ble Authority was pleased to pass various orders against the respondents wherein fraud committed by the respondents is apparent.

7. That the respondents after taking the aforesaid amount from the complainant till today has not been able to deliver the possession of the flat as per the total sale consideration mentioned in the agreement to sell. The respondents are making one excuse or the other just with an intention to deprive the present complainant from taking the possession of the flat.

8. That the respondents are certainly acting in contravention various provisions of law as mentioned in the RERA Act as well as Affordable Housing Police enacted by the State of Haryana. It is pertinent to mention here that the respondents cannot sit over the hard earned money of the present complainant without giving the possession of the flat in a reasonable time.

9. That the respondents are demanding further an amount of approximately Rs.12 lacs more from the complainant without any basis whatsoever. It is pertinent to mention here that the respondents miserably failed to honour the terms of the agreement with the complainant and instead of paying compensation to the complainant, they are demanding more money from him, which is completely in violation of the policy.

10. That the complainant is entitled to seek the refund of the total amount paid with interest from the respondents on their failure to deliver the possession of the flat within time as per the terms and conditions of the agreement to sell. The complainant is further entitled for compensation from the respondents on the account of mental harassment and damages. It is submitted here that the complainant is running from pillar to post for the last more than 10 years but the respondent is playing delaying tactics to extract more money from the complainant.

11. That this Hon'ble Authority in a similar complaint titled as "Jyoti Chopra Vs. Aegis Homes Value Ltd. & Ors." i.e. complaint No.649 of 2019 clearly held that the respondents are liable to refund the amount to the complainant with interest. The copy of the judgment dated 31.08.2023 is annexed herewith as Annexure C-3.

12. That the respondents were directed u/s 37 of the Act to ensure compliance of the obligation caste upon the promoters as per function entrusted to the authorities under section 34(f) of the Act 2016.

13. Complainants have filed two applications dated 16.09.2025 and 11.12.2025 in support of their 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

14. Complainants sought following reliefs :

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

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

iii. 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 maybe levied on such defaulting promoters, so as to curb the practice of exploitation of innocent buyers.

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

mentioned above and for the purpose of escrow Account as provided in Section 4 of the Act, 2016.

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

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

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

15. 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.

16. That the complainant has willfully 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.

17. 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.

18. 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.

19. 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.

20. That the possession was to be offered within 4 years from the date of approval of building plans (03.03.2017) as per website or grant of environment clearance (24.10.2017), whichever is later which comes out to be 24.10.2021 and since the completion date falls within the covid notification, the due date after adding 9 months extension granted by this Ld. Authority comes out to be 24.07.2022, subject to timely payments by the allottee, and other

conditions mentioned in the agreement. True copies of building plans and environment clearance are annexed as Annexure R-1/3 & R-1/4 respectively.

21. That pursuant to draw of lots held on 07.07.2017, complaints were allotted Unit no. A5-106, 12th floor, tower A-5 having carpet area of 538.70 sq.ft. for basic sale consideration of Rs. 19,89,320/-. Builder buyer agreement was executed on 22.03.2018, containing detailed terms and conditions:

- Payment schedule spread over 36 months
- Possession clause within 4 years timeline from building plan approval/environment clearance (whichever later)
- **Force majeure provisions covering natural calamities government orders, court orders**
- Interest liability @ 15% p.a. on payment defaults
- cancellation rights for material breach by either party.

22. Present complaint suffers from fatal legal defect and is liable to be dismissed in limine for non-impleading of Mrs. Omwati Sharma W/o Sh. Surya Kant Sharma, who is first allottee as per builder buyer agreement dated 22.03.2018. Mrs. Omwati Sharma being the primary allottee has superior legal rights and interests in the subject apartment. Her non-impleadment renders the present complaint legally incompetent.

23. That the complaint is founded on false and fabricated allegations of delay in possession, when in fact:

a) Occupation Certificate dated 20.09.2024 has been duly granted by the Director, Town and Country Planning, Haryana for Towers A1, A2, A3, A4, A5, A6, A7 & B1 covering 877 dwelling units including the complainant's Unit A5-106 (True copy of the said Occupation Certificate is annexed herein as Annexure R-1/6).

b) Multiple Offers of Possession were issued on 04.02.2024, 06.10.2024 and 11.011.2024 which remain unaccepted due to complainant's payment defaults (True copies of the said Offer of Possessions are annexed herein as Annexure R-1/7);

c) The project completion has been achieved despite unprecedented force majeure events documented over **555** days between 2017-2024.

24. That the complainant had voluntarily cancelled his allotment vide letter dated 13.09.2018, subsequently sent legal notice dated 18.07.2019 demanding refund. Having voluntarily exited the project, complainant now cannot claim continuous breach or delay. True copies of the said legal notice dated 18.07.2019 is annexed herein as Annexure R-1/8.

25. That the complainant's conduct demonstrates lack of bona fides and commitment towards the project:

Phase I:

- Made initial payment of 5,90,000/- at time of agreement
- Subsequently defaulted on scheduled payments

Phase II: Voluntary Exit (2018-2019)

- Sent cancellation letter dated 13.09.2018
- issued legal notice dated 18.07.2019 seeking refund

Phase III: Re-entry(2022 onwards)

- Applied for rejoining vide letter dated 01.11.2022
- Again, defaulted on subsequent payments. (True copies of the demand letters are annexed herein as Annexure R-1/9)

26. That the complainant is in gross breach of his statutory and contractual obligations under Section 19(6) and (7) of the Real Estate (Regulation and Development) Act, 2016, which mandate:

Section 19(6): "Every allottee, who has entered into an agreement for sale to take an apartment, plot or building 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."

Section 19(7)- " The allottee shall be liable to pay interest, at such rate as may be prescribed for any delay in payment towards any amount or charges to be paid under sub-section(6)"

27. That the Financial position and Outstanding dues of the present complainant is about Rs. 16,51,195/-.

28. That the complainant has deliberately and fraudulently suppressed the following material facts, thereby violating the fundamental principle of uberrima fides (utmost good faith):

a) Voluntarily cancellation letter dated 13.09.2018 and legal notice dated 18.07.2019;

b) Rejoining the project vide letter dated 01.11.2022.

c) Wavier of accumulated interest granted by respondent at time of rejoining as a good will;

d) Multiple demand notices and payment reminders sent between 2017-2024 which remained unheeded;

e) SWAMIH funding of Rs.200 crores sanctioned by Government of India for project completion;

f) Grant of Occupation Certificate on 20.09.2024 demonstrating project completion.

29. That the Hon'ble Supreme Court in S.P. Chengalvaraya Naidu v. Jagannath & Ors. reported in (1994) 1 SCC 1 held at Para 17:

"Suppression of material facts amounts to playing fraud on the court as well as on the opposite party... A litigant who approaches the court must come with clean hands and must make a true and full disclosure of facts. He cannot be permitted to obtain an order by making a false or incomplete disclosure."

30. That the complainant having enjoyed the benefits of Haryana Affordable Housing Policy 2013 including subsidized rates and concessional pricing, cannot now reprobate his payment obligations while simultaneously seeking to approbate the benefits received. This violates the established doctrine that one cannot blow hot and cold in the same breath.

31. The Hon'ble Supreme Court in Mahabir Prasad Santuka v. Mahabir Prasad Mantri reported in (2004) 9 SCC 681 observed at Para 15:

> *"The doctrine of approbate and reprobate means that no party can accept and reject the same instrument and that no party can take benefit under the document and then turn around and claim that the document is not binding upon him."*

32. That the project faced unprecedented and well-documented force majeure events totalling **555** days as detailed in the comprehensive Force Majeure documentation.

33. That recognizing the genuine challenges faced by the project, the SWAMIH Investment Fund I (Government of India initiative) sanctioned Rs. 200 crores funding on 28.01.2021 for last-mile financing to ensure project completion. This demonstrates government recognition of the project's viability and completion timeline challenges.

34. That despite unprecedented challenges, the respondent has successfully completed the project, as evidenced by the Occupation Certificate dated 20.09.2024 granted by Director, Town and Country Planning, Haryana for Towers A1, A2, A3, A4, A5, A6, A7 & B1 covering all 877 dwelling units.

35. That the Occupation Certificate specifically covers Unit A5-106 allotted to the complainant, thereby conclusively establishing that:

a) Project has been completed in accordance with approved plans

b) All statutory clearances and compliance requirements have been fulfilled.

c) Physical possession is ready for delivery upon payment of outstanding dues

36. That even in Newtech Promoters and Developers Pot K. v. State of U.P. & Ors. (2021) 17 SCC 607 - The Apex Court categorically held at Para 56-57:

"We are of the view that the promoter cannot be made liable for the delay which is caused at the instance of the allottee. In such cases, the alloottee cannot claim any compensation or interest from the promoter.. The object and scheme of the Act is very clear that the Parliament intended to protect the interest of allottees/ consumers and for that purpose, it imposed certain obligations on the promoters. But at the same time, it cannot be ignored that the allotters also have certain obligations which are required to be performed by them. If the allottees fail to perform their part of obligations, then they cannot turn around and claim any relief against the promoter. "

37. That the Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Ltd. v. Union of India(2019) 8 SCC 416 observed at Para 122:

"Under the RER A Act, both the promoter and the allottee have to perform their respective obligations in a timely manner. The promoter has to develop and deliver the project in time and the allottee has to make payments in time. If either of them commits default, the other party gets a right to claim compensation including interest."

38. That in Imperia Structures v. Anil Patni & Anr. Punjab & Haryana High Court in CWP-24295-2017 held:

"The allottee cannot claim refund with interest under Section 18 of the RERA Act when be himself is in default of payment obligations. The relief under Section 18 is available only when the delay is attributable to the promoter and not when the allottee fails to make timely payments as agreed."

39. Similarly in M/s Vatika limied v. Sate of Haryans & Ors. Punjab &t Haryana High Court in CWP-8003-2020 observed:

"The RERA Act creates reciprocal obligations. Were an allottee seeks refund despite his own default in payments, such claim cannot be sustained as it would amount to seeking benefit from his own breach."

40. That even Hon'ble Appellate Tribunal in M/s Venetian LDF Projects LLP v. Rajni Singh & Ors. HREAT Appeal No. 755/2024 - The Tribunal at Para 24-26 held:

"The allottee who default in payment of instalments as per agreed schedule cannot claim that the promoter is in breach. The promoter is entitled to charge interest of the agreed rate and with hold possession until full payment is made. The allottee's own breach disentitles him from claiming any relief under Section 18 of the RERA Act."

41. That in M/s M3M India Pvt. Ltd. v. Meenakshi Bhatia HREAT Appeal No. 883/2024 - The Tribunal at Para 31-33 ruled:

> *"Once the offer of possession is made by the promoter after obtaining occupation certificate, the liability shifts to the allottee to make the balance payment and take possession. Thereafter, the allottee becomes liable for holding charges and maintenance charges as per the agreement."*

42. That in Section 51 of the Indian Contract Act, 1872 provides:

> *"When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promise is ready and willing to perform his reciprocal promise."*

43. That Hon'ble Supreme Court in Union of India v. M/s Kailash Nath Associates (2015) 4 SCC 136 elaborated at Para 43:

> *'The principle of reciprocal promises is fundamental to contract law. A party who is himself in breach cannot demand performance from the other party. The defaulting party cannot seek legal remedy while remaining in continuing breach of his own obligations."*

44. That in Paragraph 7(v) of the Haryana Affordable Housing Policy 2013 specifically provides:

"In case of voluntary withdrawal by the applicant or payment default beyond the grace period, the developer shall be entitled to forfeit the booking amount and interest component on delayed payments. The balance amount shall be refunded within 90 days after adjusting the forfeiture amount."

45. That the complainant having availed benefits under this policy at subsidized rates cannot escape the corresponding obligations and penalty provisions contained therein.

46. That the Ministry of Housing & Urban Affairs, Government of India vide Advisory dated 13.04.2020 specifically recognized COVID-19 as force majeure event affecting real estate projects and recommended extension of project timelines.

47. That the Haryana Government and HRERA issued multiple notifications extending project completion timelines on account of COVID-19 and other force majeure events, thereby providing legal sanctity to the delays.

48. That various High Courts have recognized construction bans imposed by environmental authorities as valid force majeure events.The Delhi High Court in M/s Halliburton Offshore Services Inc. v. Vedanta Ltd. (2020) 280 DLT 169 held:

"The COVID-19 pandemic and consequent lockdown imposed by the Government constitutes a force majeure event which was beyond the contemplation of the parties at the time of entering into the contract."

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

49. Ld. counsels for both the parties reiterated their submissions as mentioned in the complaint and reply. Further, ld. Counsel for complainant submitted that application stating amended memo of parties stands filed on 11.12.2025 in registry. In addition to the above application, complainant had also placed on record an application dated 16.09.2025, wherein it is specified that an amount of ₹18,90,454/- 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

50. Whether the complainant are entitled to the reliefs sought or not?

G. OBSERVATIONS AND DECISION OF AUTHORITY

51. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainant booked a flat in the real estate project: "Smart Homes Karnal, being developed by the promoter namely: "Aegis Value Homes Ltd.". Thereafter, flat buyer agreement was executed between

the parties on 22.03.2018 for unit bearing no. A5-106 admeasuring 538.70 sq.ft and balcony area 100.10 sq.ft.

52. Complainants have paid a total amount of ₹18,90,454/- out of total sale consideration of ₹19,89,320/-. To substantiate the paid amount, complainants have filed an application dated 16.09.2025 where in bank statements has been annexed which shows that amount of 18,90,454/- stands paid by the complainants. In the final statement of account annexed with the Offers of Possession dated 11.11.2024 (placed at page no. 98-102 of the reply) the respondent also reflects the receipt of ₹ 18,90,452/-. The respondent has not controverted this payment received.

53. Further, vide last order dated 19.02.2026, complainants have already filed an application on 11.12.2025 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:

H.i. Objections raised by respondent that under section 19 (6) and 19 (7) of the Real Estate (Regulation and Development) Act, 2016, obligation to make payment against the unit was on

complainant. Therefore, the Complainant cannot seek any relief under the provision of the Real Estate (Regulation and Development) Act, 2016 or rules framed thereunder.

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

> 19(6)*"Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."*

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

> *"The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)."*

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 2023, payments were made as per demand of respondent, thereafter, 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) as annexed at page no. 75 of reply. Further, as per table mentioned at page no. 3 of application dated 16.09.2025 filed by complainant, it is clear that complainants had made payments from year 2017- 2023 and last payment of ₹2,00,000/- was paid on 28.08.2023 to respondent which was after expiry of deemed date of possession, i.e., 22.03.2021. 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 ₹19,89,320/- out which ₹ 18,90,454/- stands paid by the complainants. Meaning thereby, 95% 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 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 and not 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 complainants cannot be expected to perform or continue performance of their 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 complainants were 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 their 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 complainants are 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.

H.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 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 delay 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 delay 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 22.03.2018. 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 from date of execution of builder buyer agreement 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 **22.03.2021.**

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 ***30.05.2021*** (22.03.2021 + 2 months 8 days).

54. Arguments of both the parties were heard at length. As has been admitted between both the parties, upon executing agreement dated

22.03.2018, a unit bearing no. A5-106, admeasuring 538.70 sq. ft and balcony area 100.10 sq.ft (stated at page no. 14 of complaint book) 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 30.05.2021. Respondent has failed to deliver possession of the flat before or till 30.05.2021 to the complainants. 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 09.05.2024 in the registry.

55. 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.

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.

Further, complainants have stated that they had paid almost the entire sale consideration as per agreement on time and account ledger/ bank statement depicting paid amount has been placed on record. The respondent only received the Occupation Certificate on

20.09.2024, which was three years and four months after the deemed date of possession. Subsequently, the respondent made three offers of possession to the complainants i.e., on 04.02.2024, 06.10.2024 and 11.11.2024. The initial offers of possession dated 04.02.2024 and 06.10.2024 were made without obtaining occupation certificate, an offer bad in law, hence not valid. The other subsequent offer of possession dated 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 09.05.2025 i.e. before the issuance of offers of possession Hence, both the subsequent offers of possession hold no sanctity.

Lastly, Further, respondent vide application dated 14.01.2026, has placed on record cancellation letter dated 12.09.2025 issued by respondent. Wherein, it is stated that an amount of Rs. 5,97,008/- stands deposited in complainants account as refund after cancelling the unit in question.

With regard to the above stated cancellation letter dated 12.09.2025, Authority observes that present complaint was filed on 09.05.2024 in registry. Since, cancellation is done during pendency of

the present complaint. Hence same is barred by principle of "lis pendens". Accordingly, ***Authority deems appropriate to set aside the cancellation letter dated 12.09.2025 issued by the respondent. Further,*** the illegal amount deducted by respondent out of total paid amount by the complainants also stands quashed.

56. The facts set out in the preceding paragraph demonstrate that respondent had failed to fulfill its obligation to handover possession by 30.05.2021 i.e. deemed date of possession. Keeping the hard earned money of allottees without justification and the subsequent illegal cancellation 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.

57. 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."*

58. 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 (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"..."

59. 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. 02.04.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.

60. Since, relief of refund along with delay interest has already been allowed in this order to the complainants. Taking into

consideration, the fact that respondent had already refunded an amount of ₹5,97,008/- on 12.09.2025 out of total paid amount of ₹ 18,90,454/- along with cancellation letter. For maintaining the parity between parties, it is appropriate to adjust the already paid amount of ₹5,97,008/- from the total paid amount of ₹18,90,454/-. For the purpose of calculating the interest accrued on account of delay in handing over of possession, Authority deems appropriate to calculate interest on total paid amount of ₹18,90,454/- till the date on which refund of ₹5,97,008/- was received by the complainants i.e. on 12.09.2025 @ 10.80%. Said interest is **₹7,96,526/-**. As already stated above that partial amount of ₹5,97,008/- had already been refunded to the complainants, now the delay interest is calculated on the remaining balance amount of ₹12,93,446/- (₹ 18,90,454 - ₹ 5,97,008/-). The delay interest on the remaining balance amount is calculated from the period 12.09.2025 (date of refund of balance amount) till the date of order i.e. 02.04.2026 which comes out to **₹77,309/-**. Accordingly, complainants are now, entitled to refund of **₹21,67,281/-** (₹12,93,446/- + ₹7,96,526/- + ₹ 77,309/-).

61. Above stated calculation is given below in tabular manner:

Sr. No.	Principal	Date of payments	Amount refunded

	Amount		on /Interest Accrued till 12.09.2025
1.	95,227/-	29.08.2017	82,755/-
2.	95,227/-	09.10.2017	81,600/-
3.	2,00,000/-	30.04.2018	1,59,367/-
4.	2,00,000/-	11.05.2018	1,58,716/-
5.	1,00,000/-	10.04.2023	26,245/-
6.	4,00,000/-	17.05.2023	1,00,603/-
7.	4,00,000/-	20.06.2023	96,579/-
8.	2,00,000/-	21.07.2023	46,455/-
9.	2,00,000/-	28.08.2023	44,206/-
Total interest till 12.09.2025			₹ 7,96,526/-
	12,93,446/- (18,90,454 - ₹ 5,97,008) ***Remaining balance***	From 13.09.2025	₹77,309/- Till date of order i.e. 02.04.2026
	(₹ 12,93,446/- + ₹7,96,526/- + ₹77,309/-)		
Total amount to be refunded	**₹21,67,281/-**		

62. Further, with regard to the reliefs sought by the complainants mentioned in Para 13 iii, iv of this order, the complainants have not clarified how the above stated reliefs could be granted under Section 31 of the RERD Act, 2016. Moreover, complainants did not pressed upon these reliefs during the hearing. Therefore, the Authority deems it appropriate not to adjudicate on this relief.

63. 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 2021 titled as *"M/s Newtech*

Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors." (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is free to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

64. 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 of ₹ **21,67,281/-** to the complainants as specified in the tables provided above in Paras no. 61 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 complainants. Further, for any compensation, the complainants 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. Files be consigned to the record room after uploading of the order on the website of the Authority.

CHANDER SHEKHAR
[MEMBER]

DR. GEETA RATHEE SINGH
[MEMBER]

NADIM AKHTAR
[MEMBER]

PARNEET S SACHDEV
[CHAIRMAN]