HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of Decision	06.08.2026

S.No.	Complaint nos.	Complainants
1.	2396 of 2023	Manoj Kumar S/o Sh. Ram Sharvan R/o AT G-1108, Sangam Vihar New Delhi-110062
2.	2398 of 2023	Dhananjay Kumar S/o Sh. Harendra Kumar, R/o AT A-131, 1st floor, Arjun Park, Main Najafgarh Road, New Delhi-110043

VERSUS

1. **Asian Developers Limited**,
   Regd Office : W-6, 3RD Floor,
   Naveen Shadra Colony,
   New Delhi- 110032.

2. **Saera Auto India Private Limited,**
   Regd Office: Saera Tower, Plot No.1,
   Sector-11, Dwarka,
   New Delhi- 110075.

3. **Indian Bank Allahabad Bank**
   Office: Plot no. 525,Saini Plaza,
   Opposite, H- Block, Palam Vihar,
   Gurugram-122001, Haryana

4. **Haryana State Industrial and Infrastructure Development Corporation**
   Office: C-13-14, Sector-6, Panchkula, Haryana-160012

v

5. **Dinesh Kumar Sharma S/o Sh. Om Prakash Sharma,**
Director of Asian Developers Ltd.
R/o B-304, NRI Residency,
Pari Chowk, Omega-2,
Greater Noida(UP)- 201310

6. **Deepak Gusain S/o Sh. Dinesh Singh Gusain,**
Director of Asian Developers Ltd.
R/o 422, 4th floor, Sector-19,
Vasundra, Sahibabad, Ghaziabad, Uttar Pradesh- 201012

7. **Nitin Kumar S/o Sh. Ved Praksh,**
Director of Asian Developers Ltd.
R/o 501, Jivan Apartments GH-7, Sector-7,
Vasundra, Sahibabad, Ghaziabad, Uttar Pradesh- 201012

.... RESPONDENT(S)

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

Present: - Adv. Jyoti Verma and Adv. Radhe Sham Rohilla, Counsels for the complainants through VC (in both the captioned complainants).

Adv. Tarun Gupta, Counsel for the respondent (in both the captioned complainants).

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. This order shall dispose of above captioned both the complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016)

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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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

2. Captioned complaints are taken up together as facts and grievances of both the complaints are more or less identical and relate to the same project of the respondents, i.e., "Bawal Residency", situated at Plot no.16, sector 2, Bawal, Haryana. The fulcrum of the issue involved in these cases pertains to failure on the part of respondent/promoters to deliver timely possession of unit in question. Therefore, **Complaint No. 2396 of 2023 titled as "Manoj Kumar Versus Asian Developers Limited & Anrs."**has been taken as lead case for disposal of both the captioned matters.

A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the project have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	"Bawal Residency" Plot No. GH-16, Sector-2, Bawal.
2.	Name of the promoter	Asian Developers Ltd. And Saera Auto India Pvt. Ltd.

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4. Further the details of sale consideration, the amounts paid by the complainants and proposed date of handing over of the possession have been given in following table:

Sr. no	Complaint no.	Unit no./ area	Builder buyer agreement date	Deemed date of possession	Total sale consideration	Paid amount
1.	2396/2023	Flat no. 102, 1st floor, Tower-A, 1290 sq.ft.	03.11.2015	03.02.2017	42,14,300/-	40,46,800/- (as per receipts annexed at page no. 24, 61 and 62) of complaint book
2.	2398/2023	Flat no. 302, 3rd floor, tower-A-4, 1290 sq.ft.	21.09.2015	21.12.2016	40,65,300/-	38,81,035/-(as per account ledger annexed at page no. 33 of complaint book)

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

5. That the Complainant booked Flat No. A-1/102, Tower A, measuring 1290 sq. ft., in the project of Respondents No. 1 and 2 namely "Bawal Residency", situated at Bawal, by paying an advance amount of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) in cash on

19.10.2015. The complainant further paid an advance amount of Rs. 4,00,000/- vide Cheque No. 434574 dated 09.11.2015 towards the total sale consideration of Rs. 42,14,300/-.

6. That the complainant had opted for the Construction Linked Payment Plan and made the following payments:

Sr. No.	Date of Payment	Amount Paid (Rs.)
1	19.10.2015	1,50,000/-
2	09.11.2015	4,00,000/-
3	01.12.2015	34,96,800/-
Total		**40,46,800/-**

7. That the Allotment Letter-cum-Buyer Agreement was executed between the parties on 03.11.2015 and, as per the agreement, possession of the flat was to be handed over to the complainant within a period of fifteen months (as per Clause 10 of the Agreement) from the date of booking i.e. 19.10.2015, and the said period expired on 19.01.2017.

8. That Respondent No. 1 failed to adhere to its contractual obligations mentioned in the Allotment Letter-cum-Buyer Agreement, particularly Clauses 8 and 10, by:

(i) Not handing over the respective flat of the complainant, i.e., Flat No. 102, 1st Floor, Tower A, measuring 1290 sq. ft., in the scheme under the

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name and style "Bawal Residency" located at Plot No. 16, Sector-2, Bawal, Haryana-123401, within the stipulated period;

(ii) Not providing/offering an alternative unit of the same type to the complainant; and

(iii) Not refunding the amounts paid by the complainant.

9. That the complainant has paid an amount of Rs. 5,50,000/- from his own funds and an amount of Rs. 34,96,800/- through Allahabad Bank, i.e., Respondent No. 3, by way of loan, to Respondent No. 1 till the filing of the present complaint.

10. That on various occasions, the complainant requested Respondents No. 1 and 2 to refund the amount deposited by him, however, Respondents No. 1 and 2, on one pretext or another, continued to stall the refund despite being fully aware that the complainant had availed a home loan from Allahabad Bank and was paying hefty EMIs.

11. That Respondent No. 3 approved and disbursed the loan without exercising due diligence in respect of the project of Respondents No. 1 and 2. Moreover, Respondent No. 3 neither verified nor obtained the necessary project-related documents. The officers of Respondent No. 3, in collusion with Respondents No. 1 and 2, disbursed the entire loan amount at one time without informing the complainant or obtaining his approval.

12. That Respondent No. 3 filed a case against the complainant for recovery of the loan amount along with interest amounting to Rs. 41,29,386/- vide O.A. No. 1788/2019 before the Debt Recovery Tribunal-II, Chandigarh, wherein an order was passed by the Presiding Officer on 09.09.2019. Respondent No. 3 has also filed cases against the complainant under Section 138 of the Negotiable Instruments Act before the District Courts, Gurugram, vide Case Nos. NACT/29447/2018 and NACT/4764/2019. A copy of the order dated 09.09.2019 is annexed herewith as Annexure C-7.

13. That Respondent No. 4, namely HSIIDC, had allotted land to Respondent No. 2, namely M/s Saera Auto India Pvt. Ltd., solely for the purpose of providing residential accommodation to its workers and not for selling flats to the public at large after construction. Till date, Respondent No. 4 has neither cancelled the allotment nor taken any action against Respondents No. 1 and 2 in the larger public interest.

14. That this Hon'ble Authority, vide Order dated 29.10.2019 passed in Complaint No. 513 of 2018 titled "Sunil Yadav and Laxman Yadav vs. Saera Auto India Private Limited", found Respondents No. 1 and 2 guilty of cheating homebuyers and fastened the liability of refund upon them jointly and severally.

15. The operative portion of the Order dated 29.10.2019 passed by this Hon'ble Authority in Complaint No. 513 of 2018 is reproduced below:

"8. This authority is of the confirmed view that the owner in possession of the plot M/s Saera Auto India Pvt. Ltd. shall be liable jointly and severally with the promoters of the project who were authorised by them to sell and develop the apartments. For active participation or for passive ignorance of the facts happening on the ground, both Respondent No. 1 and Respondent No. 2 are answerable and liable towards the complainants jointly and severally."

9. Now this project is stuck. Sale of apartments has been done in violation of the conditions of the land, as such valid allotment of apartments cannot be done in favour of the complainants. Legally and practically speaking there is no likelihood that the respondents will be able to complete the project. Accordingly, as provided under Section 18 of the RERA Act, all the complainants are entitled to get refund of the money paid by them along with interest calculated in accordance with Rule 15 of the RERA Rules."

A copy of the said order is annexed herewith as Annexure C-8.

16. That Clauses (3) and (10) of the Agreement clearly provide as under, and the same was also taken on record by the Hon'ble High Court of Punjab and Haryana at Chandigarh in RERA Appeal No. 52 of 2022 (O&M) decided on 24.11.2022:

"That the second party has a right to sell, allot the flats to the respective buyers on the terms and conditions as agreed between the second party and the allottee and the first party has no role therein and is not permitted to obstruct or object the second party to do the same."

Further, Clause 10 of the Agreement reads as under:

"That in consideration of the First Party providing the land and the Second Party developing under this construction agreement, the First Party shall make payment to the Second Party as per schedule attached as payment plan (Annexure-I). In case the First Party fails to make payment to the Second Party as per payment plan, the same

shall be adjusted against the sale proceeds of the flats and receipts in the shape of advances/full payments received from prospective buyers and the proceeds shall be deposited in the account of the Second Party."

That Paragraph 11 of the judgment passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh on page no. 8,9, 10 clearly records that the appellant had authorised the contractor to avail credit facilities from the bank, had knowledge of the marketing and sale of apartments, and that the contractor was permitted to market and sell apartments. The Court further recorded that the appellant had admitted conferring authority upon the contractor to sell and market the apartments."

A copy of the High Court judgment is annexed herewith as Annexure C-9.

17. That Paragraph 14 of the aforesaid judgment of the Hon'ble High Court clearly records that the appellant itself got the project approved, facilitated the contractor in obtaining bank finance, and under Clauses (3) and (10) of the Memorandum of Understanding authorised the contractor to sell, market and allot the flats to prospective buyers.

18. That Respondent No. 2 had filed SLP (C) Nos. 14625/2020, 14626/2020, 14677/2020 and 14678/2020 before the Hon'ble Supreme Court of India, which were disposed of on 13.05.2022 in terms of the judgment rendered in M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. & Others. A copy of the said order is annexed herewith as Annexure C-10.

19. That since Respondent No. 1 allotted the flat to the complainant in violation of the conditions of allotment imposed by HSIIDC and Respondent No. 2 remained complacent in the said acts, the complainant

has no other efficacious remedy except to approach this Hon'ble Authority.

20. That Paragraph 11 of the Allotment Letter for Group Housing issued by HSIIDC vide Memo No. HSIIDC/CGHS/BAWAL/2006/516 dated 04.09.2006 in favour of Respondent No. 2 specifically provides as under:

> *"The Plot/Building shall not be used for any purpose other than that for which it has been allotted in accordance with the plan approved by the competent authority."*

A copy of the Allotment Letter is annexed herewith as Annexure C-11.

21. That in the Agreement dated 14.10.2006 executed between HSIIDC and Respondent No. 2 regarding setting up of the Group Housing Colony, Clause (C) clearly provides that Respondent No. 2 shall only have the right to accept deposits towards membership fee and construction cost from its members and shall have no right to transfer the land/building by way of sale, gift, mortgage or otherwise without prior permission of HSIIDC.

22. That Clause (D) of the said Agreement further provides that the allottee shall ensure that the number and size of dwelling units constructed are in accordance with the approval granted by HSIIDC. Further, Clauses 10 and 11 provide that flats are to be transferred only to members in accordance with the provisions of the Haryana Apartment Ownership Act

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and all requisite formalities under the said Act are to be completed before possession is handed over.

23. That Clauses 14 and 20 of the said Agreement provide that the society/organisation/firm shall maintain a separate bank account of all monies received and expenditure incurred, which may be inspected by HSIIDC at any time. It is further provided that in the event of any breach of the terms and conditions of the Agreement or violation of any statutory provisions, the Managing Director, HSIIDC, may cancel the allotment of land granted to the allottee. A copy of the said Agreement is annexed herewith as Annexure C-12.

24. That the project in question, namely "Bawal Residency", is situated in District Rewari, Haryana, which falls within the territorial jurisdiction of the Haryana Real Estate Regulatory Authority, Panchkula. Therefore, the present complaint is fully maintainable and amenable to the jurisdiction of this Hon'ble Authority.

C. <u>RELIEFS SOUGHT:</u>

25. In light of the facts and circumstances of the present matter, the Complainant humbly prays that this Hon'ble Authority may:

    i. Grant the same relief to the Complainant, as was granted to the Homebuyers in the Complaint No. 513 of 2018 by this Hon'ble Authority

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ii. Hold Respondent No. 1 and Respondent No. 2 to be jointly and severally liable towards the Complainant for the refund of the amounts which has been paid by complainant at the time of booking an advance amount and loan amount disbursed from respondent no.3 to Respondent No.1 i.e., Rs.40,46,800/- along with interest at such rate as may be prescribed in this behalf under the provisions of the Real Estate Regulatory Authority Act, 2016 and the rules and regulations framed there under.

iii. The Complainant was sanctioned a loan in the amount of Rs.33,50,000/- from Allahabad Bank i.e., respondent no.3 for the purpose of payment to Respondent No. 1. A copy of the Sanction Letter by Allahabad Bank dated 06.11.2015 is annexed as Annexure C/ 3.

D. <u>SUBMISSIONS ON BEHALF OF RESPONDENT NO.2:</u>

26. Respondent No. 2, prior to filing its reply, moved multiple applications before the Registry dated 24.09.2024, 10.08.2021, and 16.08.2021, raising identical contentions and seeking either deletion of its name from the array of parties, or adjournment of proceedings sine die, pending adjudication of alleged disputed questions of fact by a competent civil court. In support of its applications, respondent no. 2 has also made the following assertions:

1. That it was unaware of the dealings of M/s Asian Developers Ltd., and in fact, was itself defrauded by the said entity through criminal acts involving forgery and fabrication of documents.
2. That it had no knowledge of the sale of apartments by M/s Asian Developers Ltd. and such transactions were allegedly in complete contravention of the contractual arrangements between respondents no. 1 and 2. That the title claimed by M/s Asian Developers Ltd. in the buyer agreements was defective and that the purchasers and their respective financial institutions failed to exercise due diligence.
3. That a Civil Suit bearing CC No. 241 of 2018 titled Saera Auto India Pvt. Ltd. v. Asian Developers Ltd. & Ors. was filed before the Ld. Civil Judge, Bawal, seeking, inter alia, a declaration that the Undertaking dated 29.07.2012 and the MoU dated 16.11.2012 were null and void, on the ground that they were allegedly not executed by it. Multiple injunctions were also sought therein against M/s Asian Developers Ltd. and others.
4. That a criminal complaint under Section 156(3) CrPC was also filed in October 2018 before the Ld. Sub-Divisional Judicial Magistrate, invoking Sections 406, 420, 465, 467, 468, 471, 472, 120B, and 34 IPC against the concerned parties. Copies of the MoU dated 16.11.2012, along with FIRs dated 08.01.2019 and

10.11.2020, were annexed with the applications. However, all such applications were dismissed by this Authority vide order dated 19.08.2021.

Similar assertions were reiterated in the written submissions dated 28.06.2022 filed by respondent no.2 in the registry which is not being repeated here for the sake of brevity. It was further submitted by respondent no. 2 that it had preferred an appeal before the Hon'ble Appellate Tribunal against the Authority's order wherein the Authority had held respondent no.1 and respondent no.2 jointly and severally liable.

Additionally, respondent no. 2 submitted that a bunch of similar complaints, with lead case being Complaint No. 513 of 2018 and the consequential order dated 29.10.2019, is sub judice before the Hon'ble Supreme Court, wherein the issue of whether M/s Sacra Auto India Ltd. qualifies as a "promoter" under the Act is under challenge. It was argued that respondent no. 2 is merely a landowner and should not be treated as a promoter.

27. Reply on merits by respondent no.2 filed on 04.12.2025. It is respectfully submitted that all the allegations, averments and submissions stated in the complaint under reply are denied in toto, severally and specifically, except those which are specifically admitted hereinafter. It is stated that nothing shall be deemed to be admitted for a mere reason of non-traverse.

The captioned complaint against the Answering Respondent is wholly misconceived, devoid of merit, an abuse of the legal process, warranting its outright rejection. The complaint is based on misrepresentation, selective disclosure, and distortion of facts.

PRELIMINARY OBJECTIONS:

1) **Lack of merit**: The Complaint is fundamentally flawed. The Complainant has failed to establish any legal or factual basis for its claims and the prayer sought. Notably, the Complaint is devoid of any merit and lacks bona-fide. There exists no actionable cause of action in favour of the Complainant and against the answering Respondent, and therefore, the complaint warrants outright dismissal by this Hon'ble Authority.

2) **Concealment and Suppression of material facts** and information by the Complainant: That the Complainant has deliberately withheld crucial facts rendering the captioned complaint ex-facie frivolous and vexatious and deserving of no consideration against Answering Respondent as it has been filed with the mala fide intention of the Complainant to unjustly enrich itself at the cost of the Answering Respondent. The complaint has been filed before this Hon'ble Forum to mislead it in granting such reliefs, which otherwise the Complainant is not entitled to as against Answering Respondent. The Complainant has concealed that the Answering Respondent is not a promoter and is in no way associated with

the illegal project which was launched by Respondent No. 1 on the Answering Respondent's land. The Complainant has further concealed the fact that the Answering Respondent did not derive any monetary gains and did not receive any consideration either directly or indirectly from the Complainant.

3) **No privity of contract**: The Answering Respondent is not a "promoter" under the Real Estate (Regulation and Development) Act, 2016 ("RERA Act"). The Answering Respondent is only the landowner and never launched or marketed any public real estate project; it is therefore not a "promoter" within Section 2 (zk) of the RERA Act and cannot be fastened with liability of refunding any amount to the Complainant.

4) **Entire alleged consideration amount moved only between the Complainant, Respondent No. 1, and Respondent No. 3.** The Answering Respondent was neither a party to any of discussions or execution of any documents nor a recipient of any consideration or funds. The tripartite agreement to allegedly finance the Complainant's purchase of flat in the illegal project launched by Respondent No. 1 was exclusively executed between the Complainant, Respondent No. 1, and Respondent No. 3. The Answering Respondent was not involved in any capacity what so ever, as is established from the documents annexed by the Complainant himself.

5) **Lack of jurisdiction of this Hon'ble Authority**: It is humbly submitted that certain documents placed on record to establish the fact that the Answering Respondent had authorized Respondent No. 1 to launch its illegal project – "Bawal Residency" are fraudulent and forged documents. The Answering Respondent has already initiated all appropriate civil and criminal remedies. Moreover, to establish the forgery committed against the Answering Respondent in a concrete manner a forensic examination report dated 07.12.2019 which concludes that the documents which purportedly gave authorization to the Complainant to launch the illegal project bear signatures of the director of the Answering Respondent which are clearly forged and the witness, Mr. Vikas Sihag, who purportedly signed the forged document which authorized Respondent No. 1 to launch the illegal residential project has also denied ever attesting any such document as a witness. Therefore, liability cannot be fixed upon the Answering Respondent based on forged documents and this Hon'ble Authority lacks the jurisdiction to decide upon the veracity of any document. The RERA Act anchors liability upon promoters and builders, as explained above, the Answering Respondent is merely a landowner and fixing any liability upon the Answering Respondent would be an action contrary to the statute.

6) **Misjoinder of Parties:** The Complainant has impleaded the Answering Respondent as a party even when the receipts and loan

documents in the transaction stream clearly show that Respondent No. 1 is the only payee and promoter. If this Hon'ble Authority deems it fit to grant any relief to the Complainant the same can be granted only against Respondent No. 1. The Answering Respondent is not the selling entity and it did not market any flats or project; there exists no privity between the Complainant and the Answering Respondent and no builder buyer agreement exists between them. Moreover, no material in the complaint demonstrates any payment to the Answering Respondent. Therefore, there is absolutely no cogent proof for fastening any liability upon the Answering Respondent.

PRELIMINARY SUBMISSIONS:

28. It is submitted that the Haryana State Industrial and Infrastructure Development Corporation Limited ("HSIIDC") vide two allotment letters dated 06.06.2005 and 04.09.2006 allotted two plots to the Answering Respondent. The first was an Industrial Plot No. 08-10 and 19-21 located in Sector 7, Bawal, Rewari, Haryana admeasuring 20250 sq. mtrs., allotted for setting up a manufacturing facility for automobile components. The second was Plot No. GH-16, Sector 2, Growth Centre, Bawal, Rewari, Haryana admeasuring 8300.70 sq. mtrs. (the "Plot") allotted for the development of a group housing residential complex exclusively for the Answering Respondent's employees. The present dispute pertains to the latter allotment for the Plot in favour of the

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Answering Respondent. A copy of allotment letter dated 04.09.2006 issued by HSIIDC in favour of the Answering Respondent for the Plot is annexed herewith and marked as Annexure R-1.

29. In furtherance of its intention to develop a multi-storeyed group housing residential complex over the Plot for the welfare of its employees, the Answering Respondent entered into an agreement dated 14.10.2006 with HSIIDC ("HSIIDC Agreement"). Clause 2 of the HSIIDC Agreement required, the Allottee, i.e., the Answering Respondent, to complete the construction over the Plot within five years from the date of offer of possession. In the event of delay, the Answering Respondent was required to seek an extension and pay applicable extension fee to HSIIDC. A copy of the HSIIDC Agreement dated 14.10.2006 is annexed herewith and marked as Annexure R-2.

30. The Answering Respondent took physical possession of the Plot on 06.09.2010. Thereafter, upon receipt of the full consideration amount, HSIIDC executed a Conveyance Deed in favour of the Answering Respondent on 08.11.2010, transferring title in respect of the Plot. The said Conveyance Deed was duly registered with the office of sub-registrar, Bawal, on the same date. A Copy of Conveyance Deed dated 08.11.2010 is annexed herewith and marked as Annexure R-3.

31. Owing to financial constraints, prevailing circumstances, and the non-viability of commencing construction activity at that time, the Answering

Respondent deferred the construction work over the Plot for some time. However, under the applicable allotment rules governing such plots, and in accordance with the HSIIDC Agreement, the Answering Respondent was required to initiate construction within two years from the date of allotment. In order to avoid incurring a substantial extension fee, the Answering Respondent began exploring the possibility of engaging third-party developers or construction companies to execute the residential project. It is relevant to note that the Answering Respondent, being primarily involved in the automotive industry, lacked the technical know-how and experience necessary to undertake a multi-storeyed residential construction project. Accordingly, it was decided to engage a qualified contractor/construction company with the requisite experience and expertise to undertake the construction of residential housing units for its employees.

32. In view of the above, the Answering Respondent entered into a construction agreement dated 16.11.2012 ("Construction Agreement") with Respondent No. 1, engaging it as the contractor for execution of the housing project over the Plot. As per the terms of the Construction Agreement, the Answering Respondent agreed to make payments to Respondent No. 1 in accordance with the schedule set out in Annexure III of the Construction Agreement. The Construction Agreement recorded the following salient conditions and observations:

(a) That the Land/Plot, on which Respondent No. 1 was to construct the residential project was owned by the Answering Respondent and had been allotted from HSIIDC, as a "Residential Sector-2 Group Housing Plot No. 16";

(b)Clause 10 of the Agreement stated that for the purposes of constructing the residential project, the Answering Respondent (First Party under the Agreement) would pay to the Respondent No. 1 (Second Party under the Agreement), payments as specified in the schedule provided in Annexure III of the Agreement;

(c) Clause 10 further provided that in the event that the Answering Respondent failed to make payment to Respondent No. 1, as per Annexure III of the Agreement, the outstanding payment due would be adjusted against the sale proceeds of the flats to prospective buyers, which would preferably be employees of the Answering Respondent.

Clause 10 of the Construction Agreement has been reproduced herein below:

"10. That in consideration of the FIRST PARTY providing the land and the SECOND PARTY developing it under this construction agreement, the FIRST PARTY shall make Payment to the SECOND PARTY as per schedule attached as PAYMENT PLAN (Annexure III) attached to this agreement. In case FIRST PARTY fails to make payment to the SECOND PARTY as per Payment plan, then the same shall adjusted against the sale proceeds of the flat and receipts in the shape of advances/full Payment Or whatsoever nature from the prospective buyers (preferably the employees of the first party) the proceeds shall be deposited in the account of SECOND PARTY"

The understanding between the Answering Respondent and Respondent No. 1 was further corroborated by and reflected in the language of Annexure III of the Construction Agreement, which set out the detailed payment terms between the Answering Respondent and Respondent No. 1.

Annexure III of the Construction Agreement records as follows:

"In case FIRST PARTY fails to make payment to the SECOND PARTY as per payment plan. The proceeds of the receipts of the shape of advances/full payment or whatever nature from the prospective buyer the proceeds shall be deposited in Asian Developer Limited and the same will be distributed in the ratio of 30% to FIRST PARTY and 70% to SECOND PARTY."

It is pertinent to note that Respondent No. 1 was entitled to sell flats constructed on the Plot only upon the occurrence of a specific contingent event – namely, a default by the Answering Respondent in making payment to Respondent No. 1 under the Construction Agreement, as fees for developing and constructing the residential project. No inherent or independent right of sale was conferred upon Respondent No. 1 under the Construction Agreement. At all times, legal title to the Plot remained solely with the Answering Respondent. The Answering Respondent never defaulted on the payment to Respondent No. 1 and therefore, the Respondent No. 1 ought to have focussed on completion of the project and handing the same over to the Answering Respondent or its use by its own employees. A copy of the Construction Agreement dated 16.11.2012 is annexed herewith and marked as Annexure R-4.

33. Despite the limited and conditional scope of its authority under the Construction Agreement, Respondent No. 1, unbeknownst to the Answering Respondent, fraudulently began selling flats in the yet to be completed project to third party homebuyers. As stated above, the intent behind developing the project was solely to provide residential accommodation to Answering Respondent's employees, and at no stage was the project ever conceived as a commercial housing venture open forsale of flats to general public/third party homebuyers. Nevertheless, Respondent No. 1 promoted and marketed the project under the name "Bawal Residency" and proceeded to sell units to third-party homebuyers without the knowledge, consent, or authorization of the Answering Respondent. In furtherance of this fraudulent scheme, Respondent No. 1 forged and fabricated documents to falsely represent that it held valid title and authority to alienate interests in the Plot. The Answering Respondent became aware of these illegal acts in 2018 when it was unexpectedly impleaded as a party in various litigations initiated by defrauded homebuyers across multiple forums. Around the same time, the Answering Respondent also received a telephonic tip-off from an unknown caller alerting it to the unauthorized sale of flats being carried out by Respondent No. 1.

34. On 05.12.2013, one Mr. Nawal Singh Janghu, an advocate submitted a complaint to HSIIDC alleging that Respondent No. 1 was unlawfully

booking flats in the group housing project on the Plot allotted to the Answering Respondent for the exclusive purpose of constructing residential units for its employees. The complainant, Mr. Janghu, further alleged that Answering Respondent had obtained the allotment of the Plot by colluding with the officials of HSIIDC.

35. Pursuant to the complaint filed by Mr. Janghu, HSIIDC, Respondent No. 4 issued a notice to the Answering Respondent on 13.12.2013 seeking clarification regarding the alleged booking and sale of flats on the Plot. The said notice stated, inter alia, as follows:

> *"...As per the terms and conditions of the allotment you have no right to transfer the plot allotted to you by way of sale, gift, mortgage or otherwise the plot/building or any right title or interest except with prior permission of the MD/HSIIDC. Such booking of flats or sale of land in parts is a clear-cut violation of the terms and conditions of allotment and thus the plot is liable for resumption."*

It is pertinent to note that this notice was never delivered to the Answering Respondent in the ordinary course and a copy had to be obtained by the Answering Respondent. A copy of notice dated 13.12.2013 issued by HSIIDC to the Answering Respondent is annexed herewith and marked as Annexure R-5. .

36. Since the notice dated 13.12.2013 was not delivered to the Answering Respondent, HSIIDC issued a follow-up notice dated 28.02.2014 reiterating similar contents. The Answering Respondent responded to the notice dated 28.02.2014 and stated:

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"...As submitted earlier, the Asian Developers Ltd. are simply a construction company, who has been assigned with the job of raising construction at the site.
They are not having any right, title or interest over the property and as such the question of booking or sale having being done by them does not arise. They are not in a capacity to transfer the title over the plot/ any part of it because they do not have the same and it is a settled preposition that a person cannot transfer a better title than he himself has. They are having permissive uses of the plot and that too only for the limited purpose of raising construction over the same. The averments made by Sh. Nawal Singh Jhangu are beyond the knowledge of our company...
We have not delegated or consent to any such activity by them [Asian Developers] at our premises... We as a company have not created any third party right, title or interest over the said plot. The original documents are with us as on date of filing the present reply and we have not raised any loan of financial assistance whatsoever from any bank. [T]he company has clearly put up a signage at site showing the name of the owner, the name of the developer, and the estimated cost of land and construction and the name of the company duly figures in the capacity of the owner...The last legal search report issued on the basis of revenue documents also shows that the company is the owner of the site in question. We are also enclosing a copy of the notice given to M/s Asian Developers Ltd., vide which we have apprised them of the facts conveyed to us by your good self. For the purposes of imparting knowledge to general public so that the general public is not deceived by any third party is not buying of the flat, we have put appropriate boards outside the main gate of the property clearly mentioning therein that the property does not meant for sale and anybody who does so shall be doing so at his own cost and consequences... We have not sold or booked any flat as averred in your notice and the entire idea is highly misconceived..."
A copy of the reply sent by the Answering Respondent to HSIIDC is annexed herewith and marked as Annexure R–6.

37. On 31.03.2014, the Answering Respondent issued a notice to Respondent No. 1 seeking clarification regarding the allegations that it had been selling flats to third-party homebuyers without any authority, knowledge, or consent from the Answering Respondent. In response, Respondent No. 1 provided verbal assurances that it had not violated the terms of the

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Construction Agreement and further undertook not to engage in any such acts in the future. However, these assurances were false and misleading. Unbeknownst to the Answering Respondent at the time, Respondent No. 1 was already actively engaged in the unauthorized and illegal sale of flats, having falsely represented to certain lender banks and homebuyers that it held valid title and authority over the Plot. These misrepresentations were supported through forged and fabricated documents, which were subsequently used to facilitate the fraudulent transactions.

38. Pursuant to its detailed response to Respondent No. 4's notice dated 28.02.2014, the Answering Respondent was directed to appear before the Estate Management Committee ("EMC") of Respondent No. 4 for a discussion on 05.05.2014. During this interaction, and while still unaware of the fraudulent actions of Respondent No. 1, the Answering Respondent clarified that Respondent No. 1 had been engaged solely for the purpose of constructing residential flats on the Plot for use by the Answering Respondent's employees. It was specifically emphasized that Answering Respondent had not been authorized to sell flats to third-party homebuyers.

39. On 05.05.2014, as per the directions of the EMC, a field officer of IMT, Bawal, carried out a site inspection of the Plot and submitted a report dated 05.05.2014 (the "Report"). The Report noted that the Answering

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Respondent had put up a sign board at the site indicating its ownership over the Plot. It further confirmed that no sale activity of flats was being carried by the Respondent No. 1. However, the Report suggested that an explanation be sought from the Answering Respondent, to justify the inclusion of the payment adjustment clause set out in Annexure III of the Construction Agreement.

40. On 06.05.2014, Mr. Manjeet Johar, Director and Authorized Signatory of the Answering Respondent, appeared before the members of the EMC and informed them of the Construction Agreement executed between the Answering Respondent and Respondent No. 1. During the meeting, a copy of the Construction Agreement executed between the Answering Respondent and Respondent No. 1 was also submitted to the HSIIDC.

41. Subsequently, on 29.05.2014, the HSIIDC issued a letter to the Answering Respondent seeking a formal explanation regarding the language and intent of the payment adjustment clause record in Annexure III of the Construction Agreement. In response, by way of a detailed reply dated 07.07.2014, the Answering Respondent clarified that the said clause had been inserted solely to provide assurance to Respondent No. 1 that, in the event of any non-payment of construction costs by the Answering Respondent, the contractor could recover its outstanding dues from the sale proceeds—subject to the condition that such sales would be made preferably to Answering Respondent's employees. It was further

emphasized that Respondent No. 1 had been unequivocally informed that the Plot allotted by HSIIDC could neither be sold nor transferred without prior permission from HSIIDC, and under no circumstances could flats be sold in the open market to third parties. The Answering Respondent also conveyed its willingness to amend the language of the clause to address HSIIDC's concerns. A copy of the reply dated 07.07.2014 submitted by the Answering Respondent to the HSIIDC is annexed herewith and marked as Annexure R-7.

42. It is pertinent to note that the Answering Respondent had duly made all payments to Respondent No. 1 towards construction, strictly in accordance with the payment schedule agreed under the Construction Agreement. However, recognizing the potential for misuse of Clause 10 and Annexure III by Respondent No. 1, the Answering Respondent proactively initiated steps to withdraw any language that could be construed as authorizing the sale of flats. Accordingly, on 09.10.2014, the Answering Respondent issued a formal communication to Respondent No. 1, expressly withdrawing any purported rights given to it to sell the flats under any circumstances. A Copy of the letter dated 09.10.2014 issued by the Answering Respondent to Respondent No. 1 is marked and annexed herewith as Annexure R-8.

43. Pursuant to its letter dated 09.10.2014, the Answering Respondent and Respondent No. 1 executed an Addendum to the Construction Agreement

on 11.10.2014, formally removing the clause that had previously conferred any right upon Respondent No. 1 to sell flats. The revised clause stipulated that, in the event of a default by the Answering Respondent in making payments under the agreed schedule, Respondent No. 1 would merely be Entitled to retain possession of the constructed flats until full payment was made by the Answering Respondent. It is submitted that the Answering Respondent never defaulted in making payment to Respondent No. 1, and therefore, the revised clause also never came into operation. The revised payment clause reads as follows:

"In case the first party fails to make payment to the second party as per payment plan, the second party shall have a right in the shape of possession of the flats constructed by the second party till the full payment is made by the second party. The second party shall vacate and handover the possession peacefully to the first party on receiving full payment from the first party."

Accordingly, following execution of the Addendum Agreement, it became unequivocally clear that ownership of the Plot and the flats constructed thereon vested solely with the Answering Respondent. The only limited right conferred upon Respondent No. 1 was to retain possession of the constructed flats—strictly in the event of default in payment by the Answering Respondent under the agreed terms. It is an undisputed fact that the Answering Respondent never defaulted on its payment obligations. Consequently, even this limited right never came into effect, and Respondent No. 1 had no legal authority, post the Addendum, to sell or transfer any flats to third parties. A copy of the

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Addendum to the Construction Agreement dated 11.10.2014 is annexed herewith and marked as Annexure R-9.

44. It is pertinent to note that Mr. Nawal Singh Janghu filed a second complaint to HSIIDC dated 05.01.2015, raising similar allegations as in his earlier communication. This complaint was duly investigated by HSIIDC and, upon examination, was closed on the ground that it lacked merit. Subsequently, by communication dated 27.08.2015, the HSIIDC also formally closed the earlier complaint dated 05.12.2013 filed by Mr. Nawal Singh Janghu, noting that the complainant had failed to produce any documentary evidence in support of his allegations.

45. In January 2018, the Answering Respondent, received a telephonic communication from unidentified individuals, informing it that Respondent No. 1 had sold flats constructed on the Answering Respondent's Plot to third-party homebuyers by falsely representing that it held valid title to do so. It was further conveyed that Respondent No. 1 had been unlawfully promoting the residential flats—intended exclusively for the Answering Respondent's employees—as a commercial housing project under the name "Bawal Residency". The Answering Respondent was shocked to learn that, despite the specific assurances given by Respondent No. 1 in 2014 and the subsequent execution of the Addendum Agreement, it had nevertheless acted in blatant violation of the Construction Agreement and its Addendum by

accepting consideration from third-party homebuyers for unauthorized sale of flats.

46. Upon conducting further inquiry in light of the information received in January, 2018 and a perusal of the cases filed against the Answering Respondent by homebuyers, the Answering Respondent discovered that Respondent No. 1 had forged signatures of one of its Directors, and fabricated two documents in order to misrepresent and mislead the homebuyers into believing that it had valid title and authorization to sell flats on the Answering Respondent's Plot. The documents forged and fabricated by the Respondent No. 1 are:

i. A forged and fabricated undertaking dated 09.07.2012, purportedly authorizing Mr. Dinesh Sharma, a Director of Respondent No. 2, to undertake certain actions on behalf of the Answering Respondent in relation to the Plot ("Forged Undertaking"); and

ii. A fabricated Memorandum of Understanding dated 16.11.2012 ("Forged MoU"), allegedly granting Respondent No. 2 the authority to construct, market, and sell flats on the Plot to prospective buyers, without any obstruction from the Answering Respondent. Copies of above-mentioned two documents as forged by Respondent No. 1 are annexed herewith and marked as Annexure R-10 (Coll'y).

47. Upon receiving information regarding the fraudulent conduct of Respondent No. 1, the Answering Respondent immediately took action

and lodged a complaint dated 29.01.2018 with the Senior Superintendent of Police, Dehradun seeking appropriate actions against Respondent No. 1 and its directors on account of the aforementioned fraud, forgery, and unauthorized sale of flats in breach of the Construction Agreement. A copy of the complaint dated 29.01.2018 annexed herewith and marked as Annexure R-11.

48. The foregoing forged documents were never executed by the Answering Respondent. It may be noted that the foregoing documents could not have been executed by the Answering Respondent as the understanding contained therein would have been in direct violation of the terms of the allotment contained in the allotment letter issued by Respondent No. 4 for the Plot. The Answering Respondent arranged for an expert inspection and opinion and as such the genuine and forged and fabricated signatures were sent for forensic examination to be done by Mr. Syed Faisal Huda, Forensic Expert. He gave a detailed report dated 07.12.2019 in which he concluded that the signs of Mr. Manjeet Johar, the Authorized Signatory of the Answering Respondent had been forged upon the abovementioned two documents. A copy of the Forensic Signature Examination Report by Forensic Expert Mr. Syed Faisal Huda is annexed herewith and marked as Annexure R–12.

49. It became immediately apparent that the documents relied upon by Respondent No. 1 were forged and fabricated, as the signatures of

Answering Respondent's director, Mr. Manjeet Johar, appearing on those documents are visibly inconsistent with his genuine signatures, including those placed on the present appeal, and can be easily distinguished even upon plain visual comparison. Furthermore, the name of witness Mr. Vikas Sihag, who had signed the Construction Agreement as a witness, was also falsely shown as a witness to the forged Memorandum of Understanding dated 16.11.2012. This appears to have been done intentionally to lend an air of authenticity to the fabricated document. However, it is categorically submitted that Mr. Vikas Sihag never attested the said forged Memorandum of Understanding, and his purported signature thereon is also forged. To corroborate this, the statement by Mr. Vikas Sihag given to law enforcement and investigating authority is annexed herewith and marked as Annexure R-13.

50. On 21.03.2018, some of the homebuyers who had been defrauded by Respondent No. 1 issued two legal notices addressed jointly to the Answering Respondent and Respondent No. 1 through a common counsel. In these notices, the homebuyers sought recovery of the amounts allegedly paid by them to Respondent No. 1 towards booking of flats in the unauthorized and illegal project – "Bawal Residency".

51. Unbeknownst to the Answering Respondent at the time, a F.I.R. bearing number 53 of 2018 was lodged at P.S. Kasola by one Mr. Devender Kumar, homebuyer who alleged that Respondent No. 1 had dishonestly

induced him into purchasing a flat in the illegal project – "Bawal Residency". Regrettably, Mr. Manjeet Johar, Director and Authorized Signatory of the Answering Respondent, was also arrayed as an accused in the said F.I.R., despite having no knowledge of or involvement in the fraudulent activities of Respondent No. 1. It is pertinent to mention that, upon being informed of the Answering Respondent's status as a victim and its intent to resolve all litigations initiated by defrauded homebuyers due to its inability to enjoy peaceful possession and use of its own property, the complainant in F.I.R. No. 53 of 2018 executed a written undertaking confirming that he had no grievance against the Answering Respondent or its director. Based on this signed undertaking, the Answering Respondent's director, Mr. Manjeet Johar, filed a petition before the Hon'ble Punjab and Haryana High Court registered as CRM-M 44072 of 2024 seeking quashing of F.I.R. NO. 53 of 2018 and the criminal proceedings emanating therefrom. The settlement agreement/undertaking signed by the complainant of F.I.R. No. 53 of 2018 stating that he was not caused any grievance by the Answering Respondent is annexed herewith and marked as Annexure R-14.

52. In response to the legal notices dated 21.03.2018 (issued by homebuyers), the Answering Respondent issued a detailed reply dated 04.04.2018, categorically denying any involvement in, or knowledge of, the execution of any builder-buyer agreements between the homebuyers and

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Respondent No. 1. The Answering Respondent further clarified that it had neither received any consideration from any homebuyer nor had it ever authorized Respondent No. 1 to sell flats in the project.

53. On 04.04.2018, one of the defrauded homebuyers, Mr. R.S. Rohilla, filed a complaint with the Economic Offences Wing (EOW), Delhi Police, Delhi alleging fraud in relation to the unauthorized project – "Bawal Residency". pursuant to this complaint, the Answering Respondent received a notice from EOW seeking information from the Answering Respondent regarding the project – "Bawal Residency". The Answering Respondent submitted a detailed reply to the EOW notice on 11.05.2018, clearly setting out its non- involvement in the alleged fraudulent activities. It is relevant to mention that the above-mentioned complaint culminated into F.I.R. No. 0152 of 2018 dated 24.07.2018. It is further relevant to mention that a chargesheet has also been filed in the aforementioned F.I.R. Through the course of their investigation, the Investigating Authority asked Mr. Dinesh Sharma (Director of Respondent no.1) to produce original alleged MoU, the document through which the Respondent no.1 claims to have received the authorization to undertake sale of lands, which he could not. Owing to this, the Investigating Authority then issued notice under applicable law, to Mr. Vikas Sihaag, the alleged witness to the alleged MoU, to join the investigation and clarify whether he had signed the alleged MoU as

awitness. It is pertinent to highlight that Mr. Vikas refused having signed the alleged MoU as a witness. This clearly establishes the forged and fabricated nature of the MoU. The relevant portion of the chargesheet filed by the Investigating Authority is reproduced herein below:

"Alleged Dinesh Sharma (Director of ADL) was asked to provide original alleged MOU claimed by him, however, he could not produce the same. During investigation, witness of alleged forged MOU, namely Vikash Sihag has sent notice to join investigation to examine him regarding this MOU regarding allowing M/s Asian Developers Ltd. to sale the flats, having his signature aswitness and he replied that he never signed this document....."

A copy of F.I.R. No. 0152 of 2018, along with the Economic Offences Wing supplementary chargesheet, is annexed herewith and marked as Annexure R-15 (Coll'y).

54. Aggrieved by the rising number of complaints and allegations being made by defrauded homebuyers, the Answering Respondent issued a legal notice dated 23.04.2018 to eighteen (18) such homebuyers, setting out the true facts concerning the Project. In the said notice, the Answering Respondent categorically stated that it had never authorized Respondent No. 1 to sell or book flats in any manner whatsoever. It was further asserted that the Answering Respondent had been completely unaware that the project was being promoted under the name "Bawal Residency," which was a fabrication by Respondent No. 1 without any knowledge, approval, or authorization from the Answering Respondent. The notice also clarified that the Answering Respondent had not executed any

allotment-cum-buyer agreements with any of the homebuyers and that it had itself been defrauded by Respondent No. 1. It was also communicated that the Answering Respondent had already initiated appropriate criminal proceedings against Respondent No. 1 in this regard. A copy of the legal notice dated 23.04.2018 is annexed herewith and marked as Annexure R– 16.

55. In continuation of its efforts to safeguard its interests and to address the fallout of the fraudulent actions of Respondent No. 1, the Answering Respondent issued a legal notice dated 27.04.2018 to Respondent No. 1, calling upon them to cancel all purported allotment-cum-buyer agreements executed in favour of the flat buyers and to refund the monies received from them against such illegal transactions. In addition, the Answering Respondent filed a complaint with the Chief Minister's Grievance Cell, seeking appropriate action against Answering Respondent and its directors for the fraud committed in relation to the unauthorized project. A copy of the legal notice dated 27.04.2018 is annexed herewith and marked as Annexure R-17, and a copy of the complaint filed with the CM Grievance Cell along with the true translated typed copy are annexed herewith and marked as Annexure R–18 (Coll'y).

56. On 07.05.2018, the Answering Respondent filed another complaint with the SHO, Bawal, District Rewari, seeking appropriate legal action against Respondent No. 1 and its Directors on account of the fraud committed by

them. Since no action was taken on the Answering Respondent's complaint by the Police the Answering Respondent was constrained to file a complaint under Section 156 (3) of the Code of Criminal Procedure, 1973 before the Learned Trial Court at Bawal, Rewari, Haryana. The Answering Respondent's application was allowed vide order dated 05.12.2018 and consequently a F.I.R. was registered against Respondent No. 1 bearing number 0007 of 2019 The F.I.R. is primarily for offence of forgery of undertaking dated 29.07.2012 and MOU dated 16.11.2012. A copy of F.I.R.No. 0007 of 2019 is annexed herewith and marked as Annexure R-19.

57. The Answering Respondent became fully aware of the extent of the fraud committed by Respondent No. 1 in May 2018, when it received summons from the National Consumer Disputes Redressal Commission (NCDRC) in Consumer Complaint No. 1137 of 2018 titled "Saurabh Sharma & Ors. v. M/s Asian Developers Ltd. & Ors.". The Answering Respondent was arrayed as an opposite party along with Respondent No. 1 and was shocked to discover, upon perusal of the complaint, that Respondent No. 1 had been collecting monies from homebuyers from as early as January 2012, almost ten months prior to the execution of the Construction Agreement. It is pertinent to note that although discussions between the parties regarding development of the project had taken place in late 2011, the Construction Agreement was formally executed only on 16.11.2012.

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The Answering Respondent thus discovered that Respondent No. 1 had fraudulently commenced selling flats well before the agreement was finalized, acting with the ulterior motive of unjustly enriching itself through unauthorized sale of units on the Plot allotted by HSIIDC.

58. On 21.09.2018, the Answering Respondent received a notice from the Real Estate Regulatory Authority, Panchkula ("RERA Panchkula") in Complaint No. 536 of 2018, filed by one Mr. Prem Rustagi, a defrauded homebuyer. Upon perusal of the complaint, the Answering Respondent learned that Respondent No. 1 had managed to sell flats to third-party homebuyers by relying on the forged Undertaking and fabricated Memorandum of Understanding without any intimation to or authority from the Answering Respondent. The conduct of Respondent No. 1 was not only fraudulent and illegal, but also resulted in serious prejudice to the Answering Respondent, which faced legal action from unsuspecting homebuyers despite having played no role in the unauthorized sale of flats in the illegal project - "Bawal Residency."

59. It is further submitted that the Answering Respondent is, in fact, also a victim of the acts of Respondent No. 1

60. That the documents on the basis of which the Answering Respondent has been shown to be complicit with Respondent No. 1 and has been necessarily arrayed as a party in the captioned complaint before this Hon'ble Authority by the Complainant are forged documents, the veracity

and authenticity of which is yet to be adjudicated and determined by the court of appropriate jurisdiction and therefore, this Hon'ble Authority ought not to rely upon such documents to fasten liability upon the Answering Respondent. Moreover, this Hon'ble Authority lacks the jurisdiction to decide upon a disputed question of fact.

61. That the Answering Respondent has never held any responsibility towards the Complainant regarding the project and can under no condition be construed as a promoter, developer, or financer of the project. It is specifically reiterated that Answering Respondent is merely the owner of the land on which the alleged Project has been constructed by Respondent No. 1, M/s Asian Developers Ltd.

62. That Answering Respondent never accepted nor was ever a beneficiary of any amount deposited by the Complainant with the Respondent No. 1. That the Answering Respondent has also never received any consideration for the flats and it is further pertinent to note that the Answering Respondent was not even mentioned in any of the brochures or advertisements and was in no way involved with promotion or advertising of the illegal residential project launched by the Respondent No. 1. It is further submitted that there is no privity of contract between the Complainant and the Answering Respondent. The Answering Respondent has not received a single penny from the Complainant.

63. That in the case of Shankari Sundaram vs. Sree Vardhana Builder Pvt. Ltd & Anr. (S.R. No. 265 of 2020), the Ld. Tamil Nadu Real Estate Regulatory Authority dealt with the whether the landowners are necessary party in the real estate cases while deciding a case of refund. The Authority, after considering arguments from both sides, held that since it was Respondent No. 1, i.e., the developer who executed sale deed for the undivided share in the favour of the complainant and since it was the developer who launched the project and entered into construction agreement with the complainant, only the developer comes under the definition of "promoter" under section 2 (zk) of the Real Estate (Regulation and Development) Act, 2016 ("the Act") and, consequently, can be proceeded and made liable by the homebuyer for any violation or contravention of the provisions of the Act. The Authority direction the complainant to amend the complaint accordingly.

64. Similarly, in the case of Shakuntla Narendrasingh Chauhan vs. Modest Infra Limited (Complaint No. 2403 of 2018), the Ld. Rajasthan Real Estate Regulatory Authority considered the argument that since the agreement is between complainant, developer and landowner, landowner is equally entitled to pay the refund as he shares the revenue and so the Complainant shall also make the co-promoter/landowner a party in the complaint. The Authority, while commenting on this argument, stated that "even though the agreement contains the signature of the landowner,

the substantial part of the agreement is between the developer and the homebuyers and whatever part of the sale consideration is transferred to the landowner is internal arrangement between the developer and the landowner governed by the development agreement between them". Here, the Authority also observed that the Act only recognises the promoter and all obligations to the allottee are of the promoter, not of the landowner or so-called promoter and went on to conclude that simply by virtue of being a landowner, one does not become a promoter.

65. Furthermore, the Ld. Rajasthan Real Estate Regulatory Authority discussed "Categories of Promoters and Role and Status of Landowner under RERA" in detail in their Circular dated 30.06.2020 ("the Circular"). In the Circular, while analysing a catena of judgements on liabilities of a landowner, the Ld. Authority came to a conclusion that landowner is not ipso facto a 'promoter' under the Act. It was further elaborated by the Ld. Authority that if a landowner has no role in the project either as a developer-promoter or a seller-promoter, then it is not necessary to name or treat him as a promoter.

66. The Ld. Authority went to the extent of declaring that a landowner is not even liable in situations when certain part of the sale proceeds of the project is received by the landowner. They compared this situation to the one where the developer pays parts of sale proceeds to other stakeholders such as banks and other financiers, similarly a landowner does not

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become a landowner merely because he receives certain part of sale proceeds.

67. The Ld. Authority while issuing directions clearly states that a landowner shall not be named or treated as a promoter of the project if, as per the development agreement, the landowner: (a) has no role as a developer-promoter; (b) does not have a share in the area developed for sale in the project or has a share but not with an intent to market or sell it; (c) landowner has given all power to developer-promoter for sale and conveyance of all units to be sold; and (d) if the landowner does not have a share in the profit or loss of the project. In addition to this, the Ld. Authority also directed that the landowners will not be impleaded as a non- complainant in complaints of allottees against the promoter if there are no such clauses in the development agreement which establish privity of contract as between the landowner and the allotees.

68. That Answering Respondent is merely a landowner and from the analysis of the above authorities, it is very clear that in a situation when a landowner has no role in the construction, development, marketing, or sales of the project, a landowner shall not be treated as a promoter and liabilities of promoter shall not be fastened on him. Consequently, he shall not be impleaded in the proceedings against Respondent No. 1 as it goes against the principles of natural justice.

E. SUBMISSIONS ON BEHALF OF RESPONDENT NO.4 filed on 19.01.2026:

69. That the complainant has not sought any relief against the answering respondent No.4. As such the answering respondent No.4 is filing a short reply, reserving its right to file a detailed reply, if required.That the Board of directors of HSIIDC in its meeting held on 17.07.2005 floated a scheme for the Group Housing Societies formed by the industrial workers / Executives / allottees working in the industries located in IMT Manesar and Bawal and also to the industrialists located in these two industrial parks for their staff housing.

70. That the Board approved the following criteria for allotment:

i. Regd. Co-op. Group Housing Societies of Industrial workers/Executives/ Allottees of Industrial plots working in the industries located in IMT Manesar and Bawal, Haryana.

ii. Individual industrial units, Industrial firms, Companies in IMT, Manesar and Bawal for staff housing. (Annexure R-1).

71. That the Group Housing Plot No. GH-16 measuring 8300.70 sq. mtrs was allotted to M/s Saera Corporation Ltd vide Letter of intent (LoI) dated 23.06.2006 alongwith offer of possession under category '2(ii)' above for its staff housing requirement, since, this company had been allotted industrial plot no. 8-10 & 19-21, Sector-7, Bawal measuring 20250 sq. mtrs under prestigious project category for setting up project for

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manufacturing for Auto parts. The project of the company on industrial plot had been completed in the year - 2009 and change of share holding in the allottee company was also allowed by the Corporation.

72. That after compliance of conditions of Letter of Intent by M/s Saera Corporation Ltd, the Regular Letter of Allotment in respect of Group Housing site under reference was issued in favour of M/s Saera Corporation Ltd on 04.09.2006. Agreement for the said Group Housing site was executed. on 14.10.2006. As per clause 1(c) of the Agreement, one of the condition stipulated that- "The allottee will only have the right to accept the deposit in respect of membership fee and towards the construction of flats under self-financing or any other scheme from its members but shall have no right to transfer by way of sale, gift, mortgage or otherwise the land /building or any part thereof or any right, title or interest therein till full price has been paid to the HSIIDC except with prior permission of MD/HSIIDC"(Annexure R-2).

73. That on request of allottee of Group Housing Site 16, change in the allottee name of captioned plot from M/s Saera Corporation Ltd to M/s Saera Auto India Pvt. Ltd. (respondent No. 2) was allowed vide letter dated 10.01.2007.

74. That the respondent No. 2 took the possession of the Group Housing plot on 06.09.2010.

75. That consequent upon payment of entire plot cost, conveyance deed of the Group Housing site(GH) was executed on 10.11.2010 in favour of respondent No. 2.

76. That the Occupation Certificate of the Group Housing site was issued on 30.01.2017.

77. That as regards the contention of complainant that in one of the condition of the allotment of this Group Housing site, it was stipulated that that allottee of this Group Housing Site will have the right to accept the deposits w.r.t membership fee and towards construction of flats but shall have no right to transfer by way of sale, gift, mortgage or otherwise the land/building or part thereof or any right, title or interest till full price has been paid to the HSIIDC, a complaint from one person- Sh. Nawal Singh Janghu was received on 05.12.2013 wherein it was alleged that the allottee of captioned Group Housing site had sold the site to M/s Asian Developers Limited (respondent No. 1) who were further selling individual flats in the open market which was not as per norms.

77. That a notice dated 13.12.2013 with subsequent reminder dated 28.02.2014 were issued to the respondent No. 2 to explain his position regarding booking/selling of flats in contravention with the terms of allotment wherein the answering respondent No. 4 asked the respondent No. 2 to clarify regarding as per terms & conditions of allotment, he had no right to transfer the plot by way of sale, gift, mortgage or otherwise the

plot/building or any right, title /interest except with prior permission of MD/HSIIDC, such booking of flats or sale of land in parts is clear cut violation of the terms & conditions of allotment. (Annexure R-3).

78. That in response to the notice, the respondent No. 2 vide letter dated 03.04.2014 submitted that the company was basically an auto company with no knowledge whatsoever regarding construction and allied activity so the company entered into a contract for the purpose of raising necessary construction work at site as per approved site plan approved by statutory authorities. Further, they clarified that the construction company(respondent No. 1) are not having right, title or interest over the property as such, so the question of booking or sale having being done by them does not arise. Further, they submitted that the aforesaid construction company is not in a capacity to transfer the title over the plot/any part of it. The construction company had permissive uses of plot and that too only for a limited purpose of raising construction.

79. The respondent No. 2 clarified that they have issued a letter to M/s Asian Developers Ltd with regard to averments made and they will terminate the contract if during internal verification, it transpires that they have done anything in contravention with the laws. Further, they have not delegated or consented to any such activity by them at their premises. They had further informed in the said letter that verbal communication from the authorities of M/s Asian Developers Ltd have revealed that they

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have not done any such act and the allottee have not created third party rights. (Annexure R-4)

80. That later on, preliminary enquiry was conducted by the answering respondent No. 4 on the complaint of Sh. Nawal Singh Janghu wherein it was observed that as per site report dated 05.05.2014, the respondent No. 2 had put up sign boards highlighting their ownership on the site stating that no sale purchase of flats is permissible. Further as regards issue raised by complainant -Sh. Nawal Singh Janghu that in Annexure -III of MOU dated 16.11.2012 between allottee- M/s Saera Auto India Pvt.Ltd and M/s Asian Developers, there was a provision for sharing of sale proceeds in case allottee i.e. first party failed to make payment towards construction, the said clause in Annexure-III is reproduced as under:_

"*in case first party fails to make payment to second party as per payment plan, the proceeds of the receipts in the shape of advances/full payment or whatsoever nature from the prospective buyers, the proceeds shall be deposited in Asian Developer Ltd. and the same will be distributed in the ratio of 30% of first party and 70% of second party*"."(Annexure R-5).

81. That the respondent No. 2 was asked to clarify the same and the respondent No. 2 vide his letters dated 17.06.2014 & 07.07.2014 submitted an amended agreement executed with the respondent No. 1 wherein the said clause which had provided for such sharing of sale proceeds in above condition had been removed wherein revised Annexure-III was annexed to supplementary agreement executed between M/s Saera Auto Pvt. Ltd. & M/s Asian developer Ltd. The said clause

was submitted by respondent No. 2 to the answering respondent No. 4, the revised clause in Annexure-III is reproduced as under:-

"*in case first party fails to make payment to second party as per payment plan, the second party shall have the right in the shape of possession of the flats constructed by the second party till the full payment is made by the first party. The second party shall vacate and hand over the possession peacefully to the party on receiving full payment from the first party.*"(Annexure R-6).

82. That further, the above complainant and the respondent No. 2 were also called for hearing and after examining the documents, it was found that there was no documentary proof to substantiate that GH site has been transferred as alleged by the complainant, and thus, the complaint of Sh. Nawal Singh Janghu was filed.

83. That the complainant has himself brought out the fact in the complaint that in the year 2019, some homebuyers got relief of refund of their payment from respondent No. 2 and builder from this Ld. Authority. In this regard, as per orders of Ld. Authority downloaded from official web site, Ld. Authority vide its order dated 29.10.2019 in complaint no. 513 of 2018 along with 19 other complaints which were filed on similar grievance impleading M/s Saera and M/s Asian Developers Ltd. as respondent No. 1 & 2 respectively passed following order:-

"*In the light of the foregoing discussions and findings, this authority is of the confirmed view that the owner in possession of the plot M/s Saera Auto India Pvt Ltd. shall be liable jointly and severally with the promoters of the project who was authorised by them to sell and develop the apartments. For achieving their objective, both parties executed several documents including an MoU and an agreement. For active*

participation or for the passive ignorance of the facts happening on the ground, both respondent No.1 & respondent no.2 are answerable and liable towards the complainants jointly and severally.Sale of the apartments has been done in violation of the conditions of allotment of the land, as such, valid allotment of the apartments cannot be made in favour of the complainants. Legally and practically speaking there is no likelihood that the respondents will be able to complete the project. Accordingly, as provided under Section 18 of the RERA Act, all the complainants are entitled to get refund of the money paid by them along with interest calculated in accordance with Rule 15 of the RERA Rules which is SBI MCLR-2% This order shall be executable against both the respondents No.1 and No.2 jointly and severally. All the complainants shall calculate the interest payable as per Rule on each instalment paid from the date of payment upto the date of passing this order. A table of those calculation shall be sent to the respondent within 30 days with a copy to this Authority. If the respondent agrees with the calculations, the amount shall be refunded to the complainant. If they do not agree, then respondent may file an application with this Authority for settling the dispute regarding calculations. A copy of the said application shall be sent to the complainant also.
The respondents are directed to refund the amounts as per this order to the complainants within a period of 90 days failing which the complainant shall be free to file petitions for execution of these orders. The complainants are free to get these orders executed both against respondent No. 1 & respondent No.2 or against any of their bank accounts or properties."

On perusal of above orders, it is observed that respondents no. 1 & 2 have been directed to refund the amounts as per this order to the complainants within a period of 90 days admitting thereby that this was a dispute between above complainants and M/s Saera & M/s Asian developers per se. The sanctioning of loan by banks to these petitioners is a matter between petitioners and the said banks as Corporation never issued NoC to Mortgage in favour of said banks thus, the answering respondent No. 4 was not a party to such loan agreements or sanctioning or disbursement of loans. Thus, recovery cases filed by banks against complainant or other persons before DRT-II is matter between the said parties per-se.

84. That as far as the contention of complainant that he entered into contract with M/s Asian Developers into buyer & seller agreement, it is pertinent to mention that the site was allotted by answering respondent No. 4 to respondent No. 2 and not respondent No. 1. Further answering respondent No. 4 entered into agreement with the respondent No. 2 only. Thus, the answering respondent No. 4 was not a party to agreement between complainant and respondent No. 1 and thus cannot comment on the contents of agreement without ever being a party to such agreement. Since, the site was allotted for Staff Housing requirement of the respondent No. 2 and the flats constructed thereon were not meant for general public as was clear from the scheme of allotment itself, the complainant ought to have carried out due diligence before entering into so called agreement with outside third party- respondent No. 1. The answering respondent No. 4 is not liable to be held accountable for ignorance and lack of due diligence of complainant.

85. That the averment of complainant that loan from the respondent No. 3 was disbursed without NOC from complainant are denied for want of knowledge. The answering respondent No. 4 is not a party to any loan agreement executed by complainant in this regard.

86. That as regards contention of the complainant that site should be resumed, it is pertinent to mention that the respondent No. 2 has paid entire cost of plot including dues and has executed conveyance deed of plot. Further, Occupation certificate was obtained on 30.01.2017. The contention of the complainant that they should be given refund after resuming above site is not tenable since, such cause of action had arisen and as per policy, if any site is resumed by the answering respondent No. 4, the refund after deductions as per policy is made to the allottee only.

87. That the contentions of complainant with regard to booking of any flat/ entering any agreement with respondent No.1 to 3, payments made to respondent No.1 to 3, are all denied for want of knowledge. The answering respondent No. 4 was not privy to contract of the dealings between the complainant and respondents No.1 to 3. The complainant ought to have carried out due diligence before entering into so called agreement with outside third party-respondent No. 1. It is evident that the dispute pertains to the terms of agreement which was executed by complainant with respondent No. 1 to which the answering respondent No. 4 had never been a party.

On the facts stated and submissions made above, it is therefore respectfully prayed that this Ld. Authority may be pleased to dismiss being devoid of merits. the present complaint qua the respondent No.4 with heavy cost.

F. **SUBMISSIONS ON BEHALF OF RESPONDENT NO.5 filed on 05.02.2026:**

88. The Respondent No. 5 was one of the Directors of Mis Asian Developers Ltd., arrayed herein as Respondent No. 1. It is respectfully submitted that Mis Asian Developers Ltd. was a private limited company duly incorporated under the provisions of the Companies Act, 2013 and was engaged in the business of construction. The name of the said company has been since struck off from the Register of Companies by the Registrar of Companies in exercise of powers under Section 248(1) of the Companies Act, 2013.

89. At the very outset, the Respondent No. 5 categorically denies each and every allegation, averment, and contention made in the Complaint, save and except those which are expressly and specifically admitted hereinbelow. It is further submitted that no statement or averment contained in the Complaint shall be deemed to be admitted merely for want of specific denial or non-traverse.

PRELIMINARY OBJECTIONS:

90. The present Complaint is ex facie not maintainable in law and is liable to be dismissed as being vexatious, frivolous and an abuse of the process of law. The Complainant has approached this Hon'ble Authority with unclean hands and has deliberately attempted to mislead this Hon'ble Authority by making false, incorrect, misleading and incomplete

averments and by suppressing material facts. The Complainant is therefore guilty of *suppressio veri* and *suggestio falsi*.

91. The Complainant has consciously concealed and/or misrepresented material facts and consequently the present Complaint, apart from being wholly misconceived and devoid of merit, amounts to a gross abuse of the process of law. On this ground alone, the Complaint deserves to be dismissed with costs.

92. It is respectfully submitted that the Complaint filed by the Complainant is wholly baseless, frivolous and vexatious and is not tenable in the eyes of law. The same is therefore liable to be dismissed at the very threshold.

PRELIMINARY SUBMISSIONS:

93. It is respectfully submitted that the property in question bearing Plot No. 16, Sector-2, Bawal, Haryana (hereinafter referred to as the "Said Property") was duly allotted to Respondent No. 2 by the Haryana State Industrial and Infrastructure Development Corporation (HSIIDC), Haryana, vide allotment letter dated 17.12.2015. Thereafter, Respondent No. 2 approached Respondent No. 1, a company engaged in the business of construction, for the purpose of undertaking the construction of dwelling units for its workforce.

94. It is respectfully submitted that M/s Asian Developers Ltd., arrayed herein as Respondent No. 1, was appointed as the promoter and developer of the said land and was engaged by Respondent No. 2, being the allottee

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thereof, for the purpose of undertaking the construction of dwelling units in relation to the project proposed to be developed on the said land.

95. It is respectfully submitted that the loan amount was directly disbursed and credited into the bank account of the Complainant herein. The said loan amount has no nexus whatsoever with Respondent No. 5 and was neither received nor routed through Respondent No. 5 at any point of time. It is further submitted that the loans applied for and sanctioned in favour of the Complainant by the bank, namely Allahabad Bank, were granted only after undertaking due and proper diligence, including verification of the requisite approvals, sanctions and permissions obtained for the project from the competent Government authorities.

96. It is germane to mention that M/s Asian Developers Ltd., arrayed herein as Respondent No. 1, had completed substantial construction and development work at the said property, including the completion of multiple towers, boundary walls, core structural framework and other allied infrastructure, and had made all sincere and bona fide efforts to complete the project within the stipulated timeframe. It is further submitted that Respondent No. 5, being one of the Directors of Respondent No. 1, had at all times acted diligently, transparently and in good faith, deploying his best efforts to ensure completion and successful development of the project.

97. It is further submitted that the loan sanctioned in favour of the Complainant was subject to a construction-linked payment plan, in accordance with which the disbursement and corresponding payments were required to be made strictly as per the stages of construction. It is the Complainant who has failed to adhere to the terms and conditions of the Agreement and has defaulted in making the agreed payments and discharging his contractual obligations. In view thereof, the Complainant is disentitled from seeking any relief before this Hon'ble Authority.

98. It is respectfully submitted that Respondent No. 5, being one of the Directors of M/s Asian Developers Ltd., arrayed herein as Respondent No. 1, has at all times acted bona fide and has made sincere and diligent efforts towards completion of the said project, including the construction of multiple towers and allied structures. In the absence of any act, omission or negligence attributable to Respondent No. 5, no cause of action whatsoever has arisen in favour of the Complainant to institute the present Complaint against Respondent No. 5.

99. It is respectfully submitted that the Directors of a company act only in their fiduciary and representative capacity as agents of the company and do not incur personal liability for the acts, contracts or obligations of the company, save and except in circumstances specifically provided for under law.

100. The corresponding paragraph is admitted to the limited extent that the Complainant had booked Flat No. A-1/102, Tower A-1, admeasuring 1290 sq. ft., in the project of Respondent Nos. 1 and 2, namely "Bawal Residency", situated at Bawal, and had paid an amount of ₹4,00,000/- (Rupees Four Lakhs only) vide Cheque No. 434574 dated 09.11.2015 towards part consideration of the total sale consideration of ₹42,14,300/-. However, it is categorically and specifically denied that the Complainant paid any sum of ₹1,50,000/- (Rupees One Lakh Fifty Thousand only) in cash on 19.10.2015 or at any other point of time. It is further submitted that the Complainant made only a single payment of ₹4,00,000/- on 09.11.2015 under the construction-linked payment plan and no other amount was paid as alleged.

101. It is categorically and specifically denied that any Allotment Letter-cum-Buyer Agreement was executed between the parties on 03.11.2015 or that, in terms thereof, possession of the subject flat was required to be handed over to the Complainant within a period of fifteen months from 19.10.2015, as alleged under Clause 10 of the purported Agreement, or that such period stood expired on 19.01.2017.

102. It is categorically and specifically denied that M/s Asian Developers Ltd., arrayed herein as Respondent No. 1, failed to adhere to or breached any contractual obligations as alleged, including those purportedly arising under Clauses 8 and 10 of the alleged Allotment Letter-cum-Buyer

Agreement. It is reiterated that no such Allotment Letter-cum-Buyer Agreement was ever executed between the Complainant and Respondent No. 1. The submissions and averments made in the Preliminary Submissions are respectfully reiterated and may be read as forming an integral part of the present reply to this paragraph and are not being repeated herein for the sake of brevity.

G. ISSUES FOR ADJUDICATION

Whether complainant is entitled to the reliefs sought or not? If yes, the quantum thereof?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

103. 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 present complaint pertains to the project "Bawal Residency" located at Plot No. GH-16, Sector 2, Bawal, Haryana. Facts reveal that the land on which the project in question has been developed was originally allotted to Respondent No. 2 by HSIIDC and later developed and marketed by Respondent No. 1.

104. Further, Complainant in its complaint has originally impleaded total 4 respondents. Later, vide application dated 16.01.2025 has also impleaded 3 others respondents who are directors of company namely Asian Developers i.e. respondent no.1in the present case. 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 on the last date of hearing i.e. 14.05.2026. To this, ld. Counsel for complainant replied that relief of refund be awarded against respondent no. 1 and 2 only and no other relief pertains to any other respondent. Accordingly, no direction is passed against any other respondents except respondent no. 1 and 2 in this order.

105. Admittedly, complainant had booked a flat in the project of the respondent in October 2015 against which a total amount of ₹40,46,800 /- has been paid to the respondent which is duly substantiated by receipts attached. Out of said paid amount, last payment of ₹34,96,800/- was made to respondent no.1 on 01.12.2015 which implies that respondent is in receipt of total paid amount since year 2015 whereas fact remains that no valid offer of possession duly supported with occupation certificate of the booked flat has been made till date. Authority observes that the floor in question was allotted by respondent no.1 on 03.11.2015. Allotment letter cum Builder agreement was also executed between the parties on the said date. As per clause 10 of the agreement respondent was under obligation to handover possession of the flat "*That construction of the complex is likely to be completed as early as possible subject, however, to force majure circumstances. The possession of complete apartment will be*

handed over within fifteen months from the date of booking/ sanction or plan whichever is later."

106. **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.*

107. 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—" *within fifteen months from the date of booking/ sanction or plan whichever is later"*—raises a recurring question under the Real Estate (Regulation and Development) Act, 2016:

Whether such language permits the promoter to indefinitely postpone its obligation, or whether courts and authorities may construe the given language strictly?

The answer requires an application of the **mischief rule** of statutory interpretation, as set out in *Heydon's Case* (1584), which directs the adjudicator to identify

(i) the state of the law before the enactment,

(ii) the mischief that the statute intended to remedy

(iii) the legislative solution, and

(iv) the interpretation that would suppress the mischief and advance the remedy.

108. 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.

109. When the possession clause uses the words **"as early as possible"**, 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 four years but only to *try*, the mischief i.e indefinite postponement would re-enter through the back door. Courts have therefore consistently held that promoters cannot dilute statutory rights through contractual drafting. The Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan* (2019) 5 SCC 725 emphasised that one-sided clauses crafted by builders cannot bind the allottee when they defeat consumer protection; similar reasoning appears in *IREO Grace Realtech Pvt. Ltd. v. Abhishek Khanna* (2021) 3 SCC 241, where the Hon'ble Court held that contractual terms must be read in light of the legislative objective of protecting homebuyers.

110. Under this reasoning, the phrase "whichever is later" provides a determinable anchor point, and the addition of "as early as possible" cannot legally convert a mandatory timeline into an aspirational one.

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RERA, being a benevolent statute, must be construed purposively; any ambiguity must be resolved in favour of the allottee. The Authority is therefore entitled to read the clause as imposing a **definite possession period of fifteen months**, with the promoter's "as early as possible" 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.

111. Applying the statutory position above and the ratios of the Hon'ble Apex Court the deemed date of possession is ***03.02.2017***. Respondent has failed to deliver possession of the flat before or till 03.02.2017 to the complainant. On account of inordinate delay in delivery of possession, complainant had filed the present complaint on 03.11.2023 seeking withdrawal from the project.

112. From the above, it is evident that the respondent failed to deliver the possession of the unit to the complainant within time, thereby not fulfilling its obligation under the agreement. In present situation, respondent failed to honour its contractual obligations without any reasonable justification. Now the complainant has sought refund along with interest owing to the failure of the respondents to deliver possession within the stipulated time and their continued default thereafter. Hon'ble

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

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

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

114. The question that now falls for determination is with respect to the entity upon whom the liability to refund the amount ought to be fastened. In this regard, the Authority is of the considered opinion that in the present complaint, the core issue revolves around the unauthorised sale and non- delivery of possession of flats by M/s Asian Developers Ltd., allegedly acting under the authority of M/s Saera Auto India Pvt. Ltd., the landowner and allottee of the plot in question from HSIIDC. It is pertinent to note that the facts of the instant complaint are substantially similar to those adjudicated upon by this Authority at length in Complaint No. 513 of 2018 and connected matters, disposed of by a detailed order dated 29.10.2019.

115. In the said decision, this Authority, after a thorough examination of the MoU dated 16.11.2012 and the undertaking dated 29.07.2012 executed between M/s Saera Auto India Pvt. Ltd. and M/s Asian Developers Ltd., held that the respondent no. 1 was expressly authorised by the landowner respondent no. 2 to develop, market, and sell residential units. The Authority categorically concluded that both parties had acted in connivance, and that the landowner could not subsequently disown its liability under the garb of alleged fraud or ignorance. The Authority further held both respondents jointly and severally are liable to refund the amounts received from the allottees along with interest under Section 18 of the Real Estate (Regulation

and Development) Act, 2016, read with Rule 15 of the Haryana RERA Rules, 2017. Relevant paragraph of the order dated 29.10.2019 is being reproduced below for reference-

> *"7. The Authority has gone through all the facts and circumstances of the matter. It observes and orders as follows:-*
>
> *(i) Admittedly, M/s Saera Auto India Pvt. Ltd. is owner in possession of the plot in question on which a group housing colony was approved to be set up in accordance with the terms & conditions set out by HSIIDC. No documents have been placed before the Authority in this regard, but from various submissions made it can be safely concluded that apartments in the group housing colony could have been allotted only to industrial workers and were not meant to be sold in the open market for profit. However, for having sold the apartments to the general public, an explanation of the allottee M/s Saera was called by HSIIDC.*
>
> *(ii) The building plans of the group housing colony was got approved from HSIIDC by the respondent M/s Saera Auto India Pvt. Ltd. Being owners of the plot as well as holder of the approved plans they were fully responsible and answerable for development and allotment of the colony in accordance with the approved plans and other terms and conditions of allotment. It was the duty of the M/s Saera Auto to ensure that the development of the colony took place in accordance with lawful terms & conditions agreed by them with HSIIDC. As the facts reveal, M/s Saera have failed to abide by the terms and conditions of allotment of land.*
>
> *(iii) A letter dated 13.12.2013 has been place on record by the complainants vide*

which an explanation of M/s Saera Auto was sought by HSIIDC for unauthorised selling of flats in the said group housing colony by M/s Asian Developers Ltd. As a consequence of the above notice M/s Saera wrote the letter dated 31.3.2014 seeking explanation from M/s Asian Developers Ltd. Thereafter, they sent a reply to the HSIIDC showing their complete ignorance about the activities of M/s Asian Developers. M/s Saera has also pleaded that since they were basically an auto company had no knowledge regarding construction and allied activities, therefore, for development of the colony they executed the said undertaking and MoU with M/s Asian Developers.

This line of arguments of M/s Saera Auto is totally unacceptable. They are a large auto company. The terms & conditions settled between them and HSIIDC were very clear to them. They could have taken legal advice in the matter from their experts. They kept ignoring activities of M/s Asian Developers of selling the apartments and developing the colony and now they are pleading innocence in the matter which is difficult to accept.

In fact vide their letter dated 7.07.2014 and 6.09.2014, written to HSIIDCM/s Saera has sought to justify the MoU executed by them with M/s Asian vide which all the powers including for sale of apartments had been conferred by them in favour of M/s Asian. After having done so and after signing all the Authorisations, now M/s Saera cannot plead assume that activities of M/s Asian were unauthorised and M/s Saera is not responsible at all for the same. The landowner-licensee is duty bound to ensure that development takes place as per conditions of allotment. The attending facts and circumstances, in fact, clearly proves that all *the actions have been taken by M/s Asian with active consent and authorisation of the landowner i.e. M/s Saera.*

(iv) It is assumed that the respondent No.1 M/s Saera Auto India Pvt. Ltd. is a huge company. They have all kind of staff and managers and legal experts working with them. They initially got the allotment of the plot done in their favour at their own level. After allotment of the plot and after execution of the conveyance deed where was the need for signing the undertaking of the MoU with respondent No.2 vide which extensive powers were conferred upon the respondent No.1. Para No.3 of the MoU clearly confers the rights to sell and allot the flats to the respective buyers. Furthermore, para No.10 of the agreement dated 16.11.2012 facilitate the adjustment of the payments to respondent No.2 from the sale proceeds of the flats and receipts.

The Corporation Bank sanctioned the loan in favour of respondent No.2on the strength of the legal documents presented to them. Shri Brij Bihari Lal Sharma, Advocate for the Corporation Bank has given a detailed legal opinion regarding the legal title over the land etc.by taking into consideration the documents executed by respondent No.1 singularly or respondent No.1 & 2 together.

(v) Keeping the afore-mentioned facts and circumstances in view the authority rejects the pleas of M/s Saera that they were unaware of the activities of respondent No.2 and that they had never authorised the sale of the apartments in the colony. The facts captured in this order tells a totally different story. M/s Saera has been constantly defending to HSIIDC the signing of MoU with M/s Asian. It is further surprising that even after becoming aware of the facts of sales

having been effected by M/s Asian in the year 2013, they merely sought an explanation from them in February,2014 and never proceeded to terminate their agreement or to file a civil suit or to lodge a criminal complaint against them. They took no action whatsoever to safeguard the interest of the group housing colony or of the allottees of the colony. It was only after when this Authority took recognizance of the matter in September 2018 that they filed a civil suit and a criminal complaint in November,2018.

From 2014 to 2018 M/s Saera was fully aware of the alleged wrongdoings of M/s Asian, but still they did not bother themselves at all to take corrective actions. It clearly proves that all that was done by M/s Asian was with the consent and with the approval of M/s Saera Auto. This Authority also is surprised as to why even HSIIDC failed to follow through the matter after taking recognizance of the violations of the conditions of the allotment letter by the respondent No.1. No correspondence whatsoever between the allottee respondent No.1 and HSIIDC has been brought on record for taking corrective steps. After becoming aware of the fact that respondent No.1 or his delegates were unauthorisedly selling the apartments in the colony, HSIIDC should have taken corrective steps. In the light of the foregoing discussions and findings, this authority is of the confirmed view that the owner in possession of the plot M/s Saera Auto India Pvt.Ltd. shall be liable jointly and severally with the promoters of the project who was authorised by them to sell and develop the apartments. For achieving their objective, both parties executed several documents including an MoU and an agreement. For active participation or for the passive ignorance of the facts happening on

> *the ground, both respondent No.1 & respondent no.2 are answerable and liable towards the complainants jointly and severally.*
>
> *8. In the light of the foregoing discussions and findings, this authority is of the confirmed view that the owner in possession of the plot M/s Saera Auto India Pvt.Ltd. shall be liable jointly and severally with the promoters of the project who was authorised by them to sell and develop the apartments. For achieving their objective, both parties executed several documents including an MoU and an agreement. For active participation or for the passive ignorance of the facts happening on the ground, both respondent No.1 & respondent no.2 are answerable and liable towards the complainants jointly and severally."*

116. Therefore, this Authority finds no reason to depart from the findings rendered in the earlier order dated 29.10.2019 in Complaint No. 513 of 2018.

117. Accordingly, this Authority holds that both respondent no. 1 (M/s Asian Developers Ltd.) and respondent no. 2 (M/s Saera Auto India Pvt. Ltd.) are jointly and severally liable to refund the amounts deposited by the complainant, along with interest as per Rule 15 of the Haryana RERA Rules, calculated from the respective dates of payment till the actual realization of the amount.

118. 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. 06.08.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

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

"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".

120. Authority directs respondents to refund to the complainants the paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.80% from the date amounts were paid till the actual realization of the amount. Authority has calculated the interest as per detail given in the table below:

In complaint no. 2396 of 2023:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 06.08.2026
1.	1,50,000/- (page no- 24 of complaint book)	19.10.2015	1,75,093/-
2.	4,00,000/- (page no- 61 of complaint book)	09.11.2015	4,64,430/-
3.	34,96,800/- (page no- 62 of complaint book)	01.12.2015	40,37,281/-
Total	₹40,46,800/-		**₹46,76,804 /-**
Total payable to the complainant	**₹87,23,604/-**		

In complaint no. 2398 of 2023:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 06.08.2026
1.	2,00,000/- (page no- 26 of complaint book)	28.08.2015	2,36,535/-
2.	2,95,000/-	29.09.20	3,46,096/-

	(page no- 61 of complaint book)	15	
2.	3,00,000/- (page no- 64 of complaint book)	30.09.2015	3,51,873/-
3.	30,86,035/- (page no- 65 of complaint book)	30.09.2015	36,19,640/-
Total	₹38,81,035/-		**₹45,54,144 /-**
Total payable to the complainant	**₹84,35,179/-**		

I. DIRECTIONS OF THE AUTHORITY

121. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA 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. Respondents are directed to refund the entire paid amount as mentioned in para 120 of this order. It is further clarified that respondents will remain liable to pay interest to the complainant till the actual date of realization of the amount.

ii. A period of 90 days is given to the respondents to comply with the directions given in this order as provided in Rule 16 of Haryana Real

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Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

122. In view of aforesaid observations, captioned complaints stands **Disposed of**. Files 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]

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PARNEET S SACHDEV
[CHAIRMAN]