HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	779 of 2025
Date of filing:	**13.06.2025**
First date of hearing:	**18.08.2025**
Date of decision:	**20.08.2026**

1. **Tanya D/o Sh. Surinder Kumar;**
2. **Surinder Kumar S/o Sh. Jamna Dass,**

Both R/o House no. 714/08,

Kamali Mohalla, Near Lal Masjid, Panipat-132103.

.....COMPLAINANTS

Versus

Aegis Value Homes Ltd,
registered office at SCO 243, first Floor,
Sector 12, karnal-132001

.....RESPONDENT

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

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Present: - Adv. Sanjay Kumar Saini, Counsel for the complainant through VC

Mr. Neeraj Goel, Counsel for the respondent through VC

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 13.06.2025 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of handing over of the possession, if any, have been detailed in the following table:

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

4.	Unit no.	806, Tower-A-3, 8th Floor
5.	Unit area	538.70 sq.ft and balcony 100.10 sq.ft.
6.	Date of Apartment Buyer Agreement	16.08.2017
7.	Due date of offer of possession	16.05.2022 (details in par … of this order)
8.	Possession clause in BBA	2 (3.1)
9.	Total sale consideration	19,89,320/-
10.	Amount paid by complainant	₹18,19,297/-
11.	Offers of possession	1. 09.11.2023 2. 13.12.2024
12.	Cancellation	12.04.2025

B. FACTS AS STATED IN THE COMPLAINT:

3. "That the Complainant is an 'allottee within the meaning of Section 2(d) of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act). M/s Aegis Value Homes Limited i.e. the Respondent in the instant matter, launched a project by the name of Smart Homes Karnal Project (hereinafter referred to as the Project) offering BHK and 2BHK residential apartments along with all the amenities and other facilities at Sector 32-A, Karnal. The brochures for the same were issued by Respondent and the same were widely advertised.

4. That the Complainant was looking for an abode for her and her family. Thus, believing the claims of the Respondent and its representatives to be true and genuine, the Complainant applied for a residential apartment vide application bearing no. 7305 in 2017 at the Project under the Affordable Housing Policy (hereinafter also referred to as 'the Policy').

5. That the Complainant vide draw of lots dated 06.08.2017 was allotted a residential apartment i.e. #806, A-3, 8th Floor, (hereinafter referred to as 'the apartment) in the said Project. The residential apartment consisted of a 2 BHK with a carpet area of 538.70 square feet and balcony area of 100.10 square feet having a total consideration of INR 19,89,320. The Complainant was also allotted two-wheeler parking admeasuring 0.08 M X 2.50 M.

6. That on respective dates, 07.06.2017, 12.01.2018, 29.08.2020, 10.01.2023 the Complainant made a payment of INR 95227/- and IN 2,82,333, INR 7,30,987/-, IN 5,16,293 vide separate Cheques and the Respondent issued receipts for the same. Copies of the receipt dated 07.06.2017,12.01.2017, 29.08.2020,10.01.2023 issued by the Respondent are being annexed herewith as Annexure C-1, Annexure C-2, Annexure C-3 and Annexure C-4 respectively. The receipts has already been admitted by respondent in letter of offer of possession.

7. That the Respondent sent an Agreement to Sell to the Complainant with details of the apartment and the terms governing the parties. A copy of the Agreement to Sell (hereinafter also referred to as 'the agreement) dated 16.08.2017 is being annexed herewith as Annexure C-5. That it is pertinent to mention that the Agreement to Sell contained various unfair and arbitrary clauses which severely prejudiced the rights of the Complainant. A bare reading of the agreement establishes that it is against the well settled position of law in the field of contracts. The Agreement is a fit example of arm-twisting of a buyer by a builder by adding completely inequitable and one-sided provisions which favor the builder. Feeling aggrieved by such provisions, when the complainant discussed the issue with other allottees regarding the unfair agreement to sell then the complainant came to know that this promoter has manipulated the term and condition of agreement to other allottees also. Thereafter the complainants and other allotees time and again contacted the Respondent and its representatives at his office personally and through telephonic modes to ensure the change the manipulation in agreement. Then The representatives of the Respondent ensured the Complainant and other allottees that their demands with respect to change in the manipulation of clauses would be met soon.

8. That showing faith in the Respondent, the Complainant complied with her part of contractual liability towards the Respondent and continued to make payments towards the apartment, hoping for a solution in the meanwhile. And the complainant prior to offering of possession had paid more then 80% of the payment of Basic Sale Price.

9. That the possession of the floor is proposed to be delivered by the respondent no 1 within 04 years of signing of the contract. The respondent no 1/ developer, therefore as per the date of agreement ie. 16.08.2017 the respondents were under obligation to offer the physical possession of allotted unit by 15.08.2021. but despite many requests from complainant the respondents were not able to offer physical possession and linger on the matter on one to other pretext.

10. That on 09.11.2023 the respondent sent a letter to complainant offering physical possession of the allotted unit in Smart Homes along with the demand of payment. Since the respondent has not been issued (0/C) occupation Certificate on the day. Therefore, this letter is illegal in the eye of law. Hence liable to be withdrawn. A copy of letter dated 09.11.2023 is annexed as Annexure C-6.

11. That on 13.12.2024, the respondent no 1 has issued the offer of possession cum demand letter of apartment unit i.e. #806, A-3, as independent floor at Aegis Value Homes, Smart Homes, Sector 32A,

Karnal. Though this letter a conditional offer was made by Respondent no 1 and demanded total Rs 10,51,479/- which also included R's 05,91,779/- as interest on account of delayed payment charges. This act of the respondents is in clear cut violation of the RERA Act 2016 and rules made thereunder. The letter of offer of possession has also not disclosed that whether the respondent no 1 has obtained the completion or occupation certificate and about the status of the construction. The incomplete letter of offer of possession is no offer for possession in the eyes of law. The copy of letter of offer of possession is annexed as Annexure C-7.

12. That thereafter, on 12.04.2025, the Respondent no 1 sent a letter for Last and Final Notice for cancellation letter and demanded Rs 16,58,445/- including interest which will continue to accrue on or before 27.04.2025 with a warning to deposit and failing which the allotment of the floor will be cancelled. The letter dated 12.04.2025 is attached herewith as Annexure C-8.

13. That immediately after receiving the final notice of cancellation the complainant got sent the reply of notice to respondent no. 1 through his counsel apprising and requesting the respondent that the complainant to his Bonafide had been regularly paying the payment to respondent no. 1 despite the years of delay in offering the physical

possession to complainant on account of not obtaining of (O/C) Occupation Certificate and instead of paying Delayed Possession Charges to the complainant the respondent no. 1 sent a final notice of IN 1058445/- along with interest and the interest has been charged at the exorbitant rate arbitrarily, illegally, totally contravention of the guidelines issued by RERA and the State Bank of India and set by Hon'ble Supreme Court of India. The Letter is Annexed herewith as Annexure C-9.

14. That Section 18 of the Act further entitles the Complainant to claim refund along with interest and compensation. Section 18 is being reproduced herein below for the kind perusal of this Hon'ble Court;

" 18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

15. That the Complainant is suffering on all counts because of this undue delay on the part of the Respondent, inasmuch as, almost eight years have passed from the date of issuance of allotment letter and even more time has passed from the date of booking of the said unit. The Complainants are being unreasonably denied the possession of flat and delayed possession interest and being harassed for not reducing the delay payment interest in view of guidelines issued by RERA and the State Bank of India and set by Hon'ble Supreme Court of India.

16. That the Hon'ble Supreme Court in Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725 and Kolkata West International City (P) Ltd. v. Devasis Rudra, (2019) CPJ 29 (SC), and the Hon'ble National Consumer Disputes Redressal Commission in several cases has opined that "the buyers cannot be made to wait indefinitely for possession of the unit and such practices are manifestly arbitrary.

17. That till date the complainant has made complainant made payment of INR 18,19,297/- that is up to 80% against the Basin sale price ie 21,80,640/- and till date the respondent has not issued possession and further not giving delayed possession charges and not reducing the exorbitant rate of interest charged on account of delayed payment and further failed to change the manipulation clauses in the agreement to sell. Hence the aforesaid action of the respondent is illegal and arbitrary.

18. That no such Complainant is pending with any other court, etc. The complainant further declares that the matter regarding which this complaint has been made is not pending before any court ot law or any other authority or any other tribunal(s).

19. That Complainant has annexed copies/photocopies of the annexures, however, the originals of the same are available with the Complainant and the same may be produced before this Hon'ble Court, as and when directed. Further, the payment receipts of the amounts are available with the Complainant and the same may be produced as and when directed by this Hon'ble Court."

C. **RELIEF SOUGHT:**

20. In view of the facts mentioned above, the Complainant's prays for the following relief:

1. Respondent no 1 be directed to handover the possession of the Unit No. 806, 8th Floor, Tower A-3 in Smart Homes Sector, 32A Karnal independent Floors Project being developed by the respondent no 1.
2. Respondent No 1 be directed to withdraw the last and final notice of cancellation or the last and final notice of cancellation issued by the respondent no 1 be quashed.
3. Respondent no. 1 be directed to reduce the Exorbitant interest charged from the complainant on account of delay in payment charge in view of guidelines issued by RERA and the State Bank of India and set by Hon'ble Supreme Court of India.
4. Respondent no 1 be directed to pay the interest to complainant on account of delay in possession for a period of delay as per section 18 of RERA. And further directed to make changes in the manipulating clauses as promised in the agreement to sell.
5. The cost of litigation and compensation for mental pain and agony and harassment be given to the complainant.

D. <u>REPLY FILED BY RESPONDENT IN REGISTRY ON 13.05.2026:</u>

21. That the present complaint is filed with unclean hands and lacks bona fides. The complainants have deliberately suppressed material facts from this Hon'ble Authority, misrepresented the true state of affairs, and have approached this Authority only after the issuance of Last and

Final Notice for Cancellation dated 12.04.2025, in a clear attempt to circumvent the legitimate contractual and legal consequences of their own persistent defaults.

22. That the complainants have wilfully and continuously defaulted in making timely payments as per the agreed payment schedule, despite issuance of more than 35 (thirty-five) demand/reminder letters over a period spanning from 2017 to 2025, and have been in gross and persistent breach of the Builder Buyer Agreement.

23. That despite multiple reminders, demand notices, and two Offers of Possession dated 09.11.2023 and 13.12.2024, the complainants have failed to clear their outstanding dues and take possession of the allotted unit, thereby defeating the very purpose of the allotment.

24. That in view of the complainants' own defaults, breaches, and suppression of material facts, the present complaint is not maintainable in law and deserves to be dismissed with exemplary costs.

25. That Respondent I.E. M/s Aegis Value Homes Ltd is developing an affordable group housing project namely "Smart Homes Karnal" at Sector-32A, Karnal, Haryana under License No. 02 of 2016 dated 05.03.2016 granted by Director General Town & Country Planning,

Haryana. True copy of the said License dated 05.03.2016 is annexed as Annexure R-1.

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

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

28. That pursuant to draw of lots held on 07.07.2017, complaint no.1 Ms. Tanya D/o Sh. Surinder Kumar(along with Co-Allotee Mr. Surinder Kumar S/o Sh. Jamna dass) was allotted Unit no. 806, 8th floor, tower A-3 having carpet area of 535.08 sq.ft. for basic sale consideration of

Rs. 20,46,740/-. Builder buyer agreement was duly executed, containing detailed terms and conditions including:

- Payment schedule spread over 36 months from the date of draw of lots.
- Possession clause within 4 years timeline from building plan approval/environment clearance (whichever later)
- **Force majeure provisions**
- Interest liability @ 15% p.a. on payment defaults as per Affordable Housing Policy 2013
- cancellation rights for material breach.

  True copy of the Builder Buyer Agreement is annexed herein as Annexure R-5.

29. That the Occupation Certificate dated 20.09.2024 has been duly granted by the Director, Town and Country Planning, Haryana for the project including Tower- A3, which covers the complainants unit no. 806. The present complaint has been filed with full knowledge of the Occupation Certificate, yet the complainants have deliberately suppressed this fact. In accordance with the law laid down in Newtech Promoters & developers Pvt. Ltd. Vs. State of U.P. & Ors.(2021) 17 SCC 607, the prayer for refund is not maintainable after the grant of Occupation Certificate. True copy of the Occupation Certificate is annexed herein as Annexure R 5.

30. Multiple Offers of Possession were issued on 09.11.2023 and 13.12.2024 which remain unaccepted due to complainant's

payment defaults. True copies of the said Offer of Possessions are annexed herein as Annexure R-7.

31. That as per the Ledger Account/Statement of Accounts of the complainants, the total amount received from the complainants as on date is Rs. 18,19,297/- (Rupees Eighteen Lakh Nineteen Thousand Two Hundred Ninety Seven Only), against the total payable amount of Rs. 29,78,031/- (including basic sale price, GST, external electrical connectivity charges, advance meter consumption charges, security deposit, meter charges, labour cess, and interest on delayed payments). Accordingly, the latest outstanding amount due from the complainants is Rs. 10,58,734/- Rupees Ten Lakh Fifty Eight Thousand Seven Hundred Thirty Four Only.

32. That the respondent has duly sent more than 35 (thirty-five payment demand and reminder letters to the complainants between 04.08.2017 and 03.04.2025. Despite repeated demands and opportunities, the complainants have grossly defaulted in their payment obligations. True copies of the demand/reminder letters are annexed herein as Annexure R-8.

33. That after the issuance of Last and Final Notice for Cancellation dated 12.04.2025 (which was duly received by the complainants

through their counsel Sh. Sanjay K. Saini, Advocate, vide reply dated 25,04.2025), the complainants failed to make payment of the outstanding amount of Rs. 10,38,445/-. Consequent upon continued default, the respondent duly published a notice in "The Savera Times" and "Jag Marg" on 30.04.2025 as per the terms and conditions and in accordance with the Affordable Housing Policy 2013 and the Builder Buyer Agreement. True copies of the Last and Final Notice and Publication are annexed herein as Annexure R-9.

34. That the complainants are in gross breach of their statutory and contractual obligations under Section 19(6) and (7) of the Real Estate (Regulation and Development) Act, 2016, which mandate:

Section 19(6): "Every allottee, who has entered into an agreement for sale to take an apartment, plot or building shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."
Section 19(7): "The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)."

35. That as per Clause 1.13 of the Builder Buyer Agreement, upon failure of the allottee to make payment of all outstanding dues, the Developer is unconditionally entitled to cancel the allotment and

forfeit an amount of 5% of Agreement Cost + Interest on all due payments + Administrative Charges + GST and refund the balance to the allottee. The respondent has proceeded strictly in accordance with these contractual and statutory provisions.

36. That the area of the unit was increased from 516.96 sq. fu. carpet area (87,42 sq. ft. balcony area) at the time of agreement to 535.08 sq. ft. carpet area (87 sq. ft. balcony area) at the time of final calculations, which is within the permissible 5% variation as per Clause 1.6 of the Builder Buyer Agreement, and the complainants ate bound to pay the revised consideration accordingly.

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

(a) More than 35 (thirty-five) demand/payment reminder letters sent between 2017 and 2025, all of which were ignored;

(b) The grant of Occupation Certificate on 20.09.2024, establishing project completion;

(c) Two valid Offers of Possession dated 09.11.2023 and 13.12.2024, both of which were unacknowledged;

(d) The SWAMIH Investment Fund I (Government of India initiative) sanction of 200 Crores for last-mile financing, demonstrating government recognition of the project's viability;

(e) The Publication dated 30.04.2025 in two newspapers as required under the Affordable Housing Policy 2013.

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

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

38. That the delay in project completion, to the extent it occurred, was caused by documented force majeure events totalling approximately 1147 days, including:

a) Environmental bans by the Pollution Control Board applicable to Kamal district (Katnal being in the NCR region), amounting to approximately 2 months every year;

b) The outbreak of COVID-19 and the consequent lockdowns and construction prohibitions, which have been recognised as force majeure events by the Ministry of Housing & Urban Affairs, Government of India vide Advisory dated 13.04.2020, and by HRERA Panchkula vide extension of registration up to 23.07.2023;

c) Delays caused by the complainants' own failure to make timely instalment payments, which adversely affected the respondent's cash flow and ability to raise finances, requiring the respondent to seek project financing from financial institutions.

These force majeure events are expressly covered under the terms of the Builder Buyer Agreement and its detailed is provided in Annexure R-10.

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

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

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

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

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

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

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

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

43. That the complainants, having availed the benefits of the Haryana Affordable Housing Policy 2013 at subsidized and concessional rates, cannot simultaneously seek to avoid their corresponding

payment obligations. This violates the established doctrine that one cannot approbate and reprobate the same instrument. The Hon'ble Supreme Coutt in Mahabir Prasad Santuka v. Mahabit Prasad Mantri (2004) 9 SCC 681 held that "*no party can accept and reject the same instrument and... take benefit under the document and then turn around and claim that the document is not binding upon him.*"

44. That Section 51 of the Indian Contract Act, 1872, provides that when a contract consists of reciprocal promises, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise. The complainants, having failed to perform their payment obligations, are not entitled to seek any relief against the respondent.

45. That the respondent is entitled to claim and set-off the outstanding amount of Rs. 10,58,734/- (Rupees Ten Lakh Fifty Eight Thousand Seven Hundred Thirty Four Only) against any claimed relief by the complainants, along with continuing interest @ 15% per annum from the respective due dates till the date of actual payment as per the Builder Buyer Agreement and Affordable Housing Policy 2013.

46. That the respondent further claims:

i. Interest (@ 15% per annum on outstanding amounts of Rs, 10,58,734/-from the respective due dates till actual payment;

ii. Holding charges as per the agreement from the date of first Offer of Possession dated 09.11.2023);

iii. Litigation costs and legal expenses incurred due to this frivolous and vexatious complaint.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

47. During oral arguments, learned counsel for the complainants reiterated the submissions set forth in the complaint and noted that a replication to the reply was filed in the registry on 14.07.2026.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

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

Homes Ltd.". Thereafter, flat buyer agreement was executed between the parties on 16.08.2017 for unit bearing no. A3-806 admeasuring 638.80 sq.ft including balcony area.

50. The complainants state that they have paid a total sum of **₹18,19,297/-** against the total sale consideration of **₹19,89,320/-**. To substantiate this claim, the complainants rely upon payment receipts annexed at pages 25–28 of the complaint, alongside the final Statement of Account issued by the respondent with its offer of possession dated 09.11.2023 (annexed at page 57). Upon verification of the record, the physical receipts placed on record account for **₹17,20,067/-**. For the balance amount of **₹99,230/-**, the complainants have not produced direct payment receipts issued by the respondent. However, the final Statement of Account attached to the offers of possession dated 09.11.2023 and 13.12.2024 (pages 60–66) explicitly reflects a total received amount of **₹18,19,297/-**.

As the respondent has not disputed or controverted this total receipt, the Authority hereby admits the total payment made by the complainants as **₹18,19,297/-**.However, regarding the two disputed individual payments of **₹24,543/-** and **₹74,687/-** (totaling ₹99,230/-)—which the complainants claim to have paid in 2018 and 2021, respectively—in the absence of physical receipts, these payments shall be deemed credited on **09.11.2023**, the date on which the respondent formally acknowledged the consolidated total paid amount.

H. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT:

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

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

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

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

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

The respondent during hearing also stated that since it is an affordable housing policy, complainants were bound to pay as per Timely payment plan. Complainants on the other hand argued that till 2023, payments were made as per demand of respondent, thereafter, taking note that no development over construction has been made by respondent, complainant lost faith in respondent and had stopped making further payments. On perusal of buyer agreement, it is clear that complainant had opted for a Timely Payment Plan (TPP) as annexed at page no. 69 of reply. Further, as per table mentioned at page no. 9 of the complaint book, it is clear that complainants had made payments from year 2017- 2023 and last payment of ₹5,16,293/- was paid on 12.01.2023 to respondent which was after expiry of deemed date of possession, i.e., 16.05.2022. This shows the intention of the complainants that they were ready to pay even after delay caused on part of respondent. Furthermore, the total sale consideration of unit was ₹/- 19,89,320/- out which ₹ 18,19,297/- stands paid by the complainants. Meaning thereby, 95% of the payment on part of complainants stands paid to respondent till date.

On the other hand respondent was also bound to construct the project as per above stated timely plan. However, actual position as stated by respondent in its reply is that occupation for the project was granted by competent Authority on 20.09.2024. Meaning thereby, in any case, the construction was delayed and not as per timely plan, accordingly the deemed date of possession mentioned in clause 2 (3.1) of builder buyer agreement also got expired.

Further, it is important to note that the clauses pertaining to builder buyer agreement stated above and Section 19 of the RERD Act, 2016 cannot be read in isolation. Builder buyer agreement is one comprehensive document and as per said document, responsibility of the promoter was to complete the project by the timeline provided therein. However, respondent has failed to do the same. This failure on the part of the respondent at one stroke takes away the duty of full payment from the domain of allottees.

In case of **Nathulal v. Phoolchand**. *AIR 1970 SC 546, the Hon'ble Supreme Court categorically held that where the obligations of the parties are* ***reciprocal and inter-dependent****, the performance of one party is conditional upon the prior performance of the other, and therefore,* ***a party who has failed to perform his part of the contract cannot compel performance from the opposite party****. The Court further observed that unless the vendor was* ***ready and willing to perform his own obligations****, he was not entitled to insist upon the purchaser fulfilling his part of the contract."*

Above stated judgment squarely applies to the present case, as the complainants cannot be expected to perform or continue performance of their obligations once the respondent has already committed breach of its primary contractual duties of not constructing unit booked on the date promised as per agreement. Accordingly, the complainants were fully justified in withholding further payments in view of the respondent's default.

Further, it is important to note that complainants have made various payments as stated above out of the total sale consideration and played their part of the builder buyer agreement. However, respondent, on the other hand has failed to complete construction on prescribed time or failed to perform his part of the act.

In view of the above facts the respondent's claim that the complainants are not entitled to relief under RERD Act, 2016 is unsustainable. Failure to meet statutory obligations by the Promoter entitles the buyer to seek relief under RERD Act, 2016, such as compensation for delays or refund with interest.

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

To deal with above stated objection, it is important to first ascertain the deemed date of possession in the present case. As per clause 2, 3.1

of flat buyer agreement dated, "*.....the developer will endeavour to offer possession of the said apartment to the allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later.*"

This clause invites the Authority to consider a question of considerable interpretative significance. Before examining its substantive effect upon the rights of the parties, it is apposite to recall the well-established principle of statutory construction commonly referred to as the ***Mischief Rule***. Derived from the formulation in *Heydon's Case (1584),* this principle has long guided courts in common law jurisdictions in discerning the true import of legislative enactments. The rule requires the adjudicator to identify the defect or mischief which the statute was intended to suppress and to construe the provision in a manner that advances the remedy contemplated by the legislature. *It is, in essence, an aspect of purposive interpretation, directing the Court to look beyond the literal wording where such wording, if read mechanically, would frustrate the legislative objective or produce results that are unreasonable or unjust.*

Properly applied, the mischief rule ensures that statutory provisions are interpreted so as to give effect to the legislative intent and to prevent the re-emergence of the very mischief the law was enacted to eliminate. The clause—"*the developer will endeavour to offer possession ... within a period of four years from the date of approval of building plans or grant of environment clearance whichever is later*"—raises a recurring question under the Real Estate (Regulation and Development) Act, 2016:

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

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

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

(ii) the mischief that the statute intended to remedy

(iii) the legislative solution, and

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

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

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asymmetry: homebuyers were advancing substantial sums yet had little control or remedy against such delays. RERA's architecture—Sections 11 and 18 and the mandatory model agreement—places **time-bound delivery** at the heart of the regulatory framework. Section 11(4)(a) requires the promoter to "responsibly discharge" all obligations as per the terms of the agreement for sale; and Section 18 obligates the promoter to provide interest etc to the allottee for delay. When the possession clause uses the words **"will endeavour"**, 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.

Under this reasoning, the phrase "whichever is later" provides a determinable anchor point, and the addition of "will endeavour" cannot legally convert a mandatory timeline into an aspirational one. RERA, being a benevolent statute, must be construed purposively; any ambiguity must be resolved in favour of the allottee. The Authority is therefore entitled to read the clause as imposing a **definite possession period of four years**, with the promoter's "endeavour" language having no effect in diluting statutory consequences. The mischief rule thus becomes entirely appropriate: by interpreting the clause in a manner that enforces certainty rather than permissive delay, the decision suppresses the mischief RERA sought to eliminate.

Applying the statutory position above and the ratios of the Hon'ble Apex Court the ***deemed date of possession is 16.08.2017.*** Further, with regard to objections raised by the respondent **regarding force majeure conditions**. Respondent for explaining the delay in construction, had claimed *force majeure* at page no. 2, 3 and 7 of reply citing various natural calamities, government orders, court orders contributing to delay of **1147 days in**

completion of project. The onus squarely lies with the respondent to explain how mere writing one line in pleading explains the nature of force majure faced by respondent (except Covid). Further onus also lies upon the respondent to explain how each order directly affected its construction activities. It is the stand of respondent that force majeure provisions covering natural calamities, government orders, court orders affected the project completion for 1147 days. However, no detailed explanation with regard to the same has been filed by respondent.

Force majeure is a French expression which translates, literally, to "superior force". To appreciate its nuances, jurisprudence of the concept under the Indian Contract Act, 1872 need to be elucidated. In the context of law and business, the Merriam Webster dictionary states that force majeure usually refers to "those uncontrollable events (such as war, labor stoppages, or extreme weather) that are not the fault of any party and that make it difficult or impossible to carry out normal business. A company may insert a force majeure clause into a contract to absolve itself from liability in the event it cannot fulfill the terms of a contract (or if attempting to do so will result in loss or damage of goods) for reasons beyond its control". Black's Law Dictionary defines Force Majeure as follows, "In the law of insurance, superior or irresistible force. Such clause is common in construction contracts to protect the parties in the event a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care. Typically, such clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance."

In India, it is often referred to as an "act of God". Various courts have, over time, held that the term force majeure covers not merely acts of God, but may include acts of humans as well. The term *"Force Majeure" is based on the concept of the Doctrine of Frustration under the Indian Contract Act, 1872*; particularly Sections 32 and 56. The law uses the term "impossible" while discussing the frustration of a contract, i.e., a contract which becomes impossible has been frustrated. In this context, *"impossibility"* refers to an unexpected subsequent event or change of circumstance which fundamentally strikes at the root of the contract. In the case of Alopi Parshad and Sons Ltd vs Union of India, AIR 1960 SC 588 and the landmark Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017) – 2017 3 AWC 2692 SC, the Supreme Court of India has categorically *stated that mere commercial onerousness, hardship, material loss, or inconvenience cannot constitute frustration of a contract. Furthermore, if it remains possible to fulfil the contract through alternate means, then a mere intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated.*

Section 56 of the Indian Contracts Act (Agreement to do impossible act) states that "a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful." It is the performance of contractual obligations that must become unlawful/impossible, not the ability to enjoy benefits under the contract. *The Supreme Court in Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017)* – 2017 3 AWC 2692 SC lent further insight into interpreting a Force Majeure situation i.e

- Events beyond the reasonable control of one party should not render that party liable under a contract for performance, if that event prevents the party's performance;
- The language of the agreement relating to duty to mitigate, best efforts, prudent man obligations to nevertheless perform etc., will all be taken into consideration in understanding the parties' intent;
- *Force majeure events must be unforeseeable by both parties;*

- The requirement to put the other party on notice must be met with if the contract provides for notice requirements; and
- Burden of proof rests with the party relying on the defense of force majeure for its inability to perform the obligation.

In the present case, respondent has merely written one line with regard to force majeure, stating nothing and no explanation has been provided by respondent that how the force majeure effected the construction of the project. In absence of any relevance that how force majeure effected the development and construction of project and mere mentioning of various issues in arguments does not meet the rigours of the statute. Therefore the respondents cannot be allowed to take advantage of the delay on their part by claiming delay in statutory approvals/directions. **As a result, this plea stands rejected.**

Further with regard to *force majeure* on account of COVID-19, in the present case, due to the various decisions of the Government of India and the Government of Haryana Authority, *force majeure* may be accepted *for a maximum period* of Covid i.e 9 months. Reference is made to Advisory issued by Authority in its 93rd meeting held on 18.05.2020 wherein time period of maximum 6 months 25.03.2020 to 24.09.2020 was considered as force majeure being natural calamity affecting the whole world and extension of three months, i.e. 01.04.2021 to 30.06.2021 due to second wave of Covid-19 was considered as force majeure by the Authority in its meeting held on 02.08.2021. Therefore, the Authority holds that the only *force majeure* condition accepted in this case is Covid, i.e. 9 months as claimed by the respondent at page no. 2 of reply. Accordingly, new, deemed date will be taken as ***16.05.2022*** (16.08.2021 + 9 months days).

51. It is an undisputed fact on record that the Occupation Certificate in respect of the project was obtained on 20.09.2024. The complainants have admitted that the respondent had issued two offers of possession dated 09.11.2023 and 13.12.2024. However, they contended that both the offers were not valid since both were accompanied with illegal demands and without occupation certificate. **Now, before deciding the demands on merits it is important to decide whether the offers of possession are valid or not?**

52. The first offer of possession issued by respondent was on 09.11.2023, which admittedly preceded the grant of the Occupation Certificate by the competent authority. It is well settled that an offer of possession made prior to obtaining a valid Occupation Certificate

cannot be regarded as a lawful or valid offer in the eyes of law. **Accordingly, the Offer of Possession dated 09.11.2023, having been issued in the absence of the requisite Occupation Certificate, is held to be premature and bad in law.**

53. On the contrary, the second offer of possession dated 13.12.2024 was issued after receipt of occupation certificate dated on 20.09.2024. Same is annexed at page no. 60 of the complaint book. This seems to be a valid offer of possession as far as the OC is concerned. However, further facts need to be seen to discover the true nature of this offer.

54. Further, record reveals that respondent has raised various demands along with valid offer of possession dated 13.12.2024 under different heads such as illegal Demand of Rs. 22,637/- on account of External Electricity Connectivity to Project Charge (23.79 Sq. Feet); Advance meter consumption charge of Rs. 27,814/- ; Security Deposit Charge of Rs. 20,000/-; Meter Charge of Rs. 6490/-; Labour Cess charges of Rs. 16,823/-. Moreover, the builder has illegally charged exorbitant amount of Rs. 5,91,779/-as delay interest.

Above stated demands are being adjudicated upon merits as below:

i. As per final statement of accounts annexed with offer of possession dated 13.12.2024, respondent had levied 5 charges upon complainants i.e., External Electricity Connectivity to Project Charges; Advance meter consumption charges; Security Deposit Interior; Meter Charge; Labour Cess, delayed payment interest. For all these services, respondent had cited amount of ₹ 93,764/- and amount of ₹ 4,03,308/- on account delayed payment interest upon the complainants. On perusal of builder buyer agreement, it is observed that no clause of said agreement imposes the above stated 5 charges upon complainants. With regard to delayed payment interest, since project of the respondent is itself delayed as already explained in para H.i Of this order. Respondent cannot charge delayed interest from the complainants.

In view of above, Authority deems appropriate to quash all the above 5 charges demanded by the respondent as well as the delayed payment interest.

55. The facts enumerated in the preceding paragraphs establish that even though the second offer of possession in question was made after obtaining an OC, it was conditional upon the payment of illegal demands of money. An "offer of possession" does not become legally

valid merely because it encloses a valid Occupancy Certificate (OC), if the offer is coupled with demands that are not contractually/statutorily due. In **Utpal Trehan v. DLF Home Developers Ltd., Civil Appeal No. 4690 of 2022** (Supreme Court, judgment dated 11 July 2022), the builder relied on its "offer for possession" letter to argue that delay-compensation should stop from that date. The Supreme Court rejected that argument because the possession was offered only upon payment per a statement of account that contained illegal demands.

The Court records that the "offer" required remittance "as per statement of accounts" and an undertaking, and that the consumer fora had found the underlying demand/statement illegal; therefore, the offer itself was not a valid offer for possession.

Most importantly, the Hon'ble Supreme Court expressly concludes (while dealing with the builder's "offer stops liability" argument) that "in this case, we have already held that there was no valid offer for possession".

A similar approach appears in Capt. **Rajinder Singh Sidhu & Anr. v. M/s Bestech India Pvt. Ltd. & Anr. (23 Oct 2024)**, where the adjudicating forum notes a "conditional offer of possession" and allegations of maintenance and other demands contrary to the Buyer's Agreement.

This supports the broader proposition: a possession offer that departs from the BBA by adding unauthorized monetary conditions is legally vulnerable as a genuine offer of possession.

Hence, ***the Authority holds that the even the second offer of possession was not legally valid***.

56. **Regarding the Cancellation Letter Dated 12.04.2025:** The Authority examined the cancellation letter dated 12.04.2025 issued by the respondent (annexed at page 67 of the complaint book), which claimed that an outstanding amount of ₹10,58,445/- (inclusive of interest) was due from the complainants. Upon review, the Authority finds a two-fold rationale to set aside and quash the said cancellation letter:

1. Dependency on a Quashed Offer of Possession: The respondent issued the cancellation letter on the grounds that the complainants failed to respond to the offer of possession dated 13.12.2024. However, as established in the preceding paragraphs of this order, that specific offer of possession has already been quashed by this Authority due to the illegal demands embedded within it.

Consequently, any subsequent cancellation based on a non-existent or invalid offer cannot hold ground.

2. Violation of Principles of Natural Justice and Equity: A perusal of the letter dated 12.04.2025 reveals it operated effectively as a demand notice, directing the complainants to clear the outstanding sum of ₹10,58,445/- on or before 27.04.2025 under the threat of allotment cancellation. Despite the lapse of this deadline, the respondent has failed to refund the deposited amounts to the complainants. Now, the respondent cannot simultaneously cancel an allotment and retain the allottee's hard-earned money. This conduct is entirely untenable under the law and directly violates the principles of natural justice.

In light of the aforementioned grounds, the Authority hereby **quashes and sets aside** the cancellation notice dated 12.04.2025 issued by the respondent.

57. In view of the above, Authority is of the considered view that complainants are well within his rights to claim delay interest from the respondent for the amount paid by them and thus deems fit to allow interest for delay in handing over of possession from the deemed date of possession i.e. 16.05.2022 upto the date on which fresh offer of possession will be given to the complainant in accordance with the

directions issued in this order. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

> *(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
>
> *Explanation.-For the purpose of this clause-*
>
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
>
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

Such interest shall be calculated at the rate prescribed in 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]*
>
> *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".

58. 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. 20.08.2026 is 8.80 %. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80 %.

59. Authority has calculated the interest on total paid amount from the deemed date of possession or date of payment whichever is later till the date of this order, i.e,20.08.2026 at the rate of 10.80% in all captioned cases and said amounts works out as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession(16.05.2022) or date of payment whichever is later	Interest Accrued till 20.08.2026
1.	₹12,03,774/-	16.05.2022	₹5,54,937/-
2.	₹5,16,293-	12.01.2023	₹2,01,193 /-
3.	₹ 24,543/-	09.11.2023	₹ 7,378/-
4.	₹ 74,687/-	09.11.2023	₹ 22,453/-
Total paid amount	**₹18,19,297/-**		**₹ 7,85,961/-**
Monthly interest	**₹ 16,688/-**		

60. With regard to relief sought at para no. 20(5), the complainants are seeking compensation and litigation cost. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors."* (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. Therefore, the complainant is free to approach the Adjudicating Officer for seeking the relief of litigation expenses/ compensation.

I. DIRECTIONS OF THE AUTHORITY

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

(i) Respondent is directed to issue fresh offer possession of unit in question within 7 days of passing of this order along with fresh statement of account issued in compliance of directions passed in this order.

(ii) Respondent is directed to pay upfront delay interest as stated in para 59 of this order to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount paid the monthly interest shall be payable by the respondent to the complainants up to the date of actual handing over of the possession after obtaining occupation certificate.

(iii) Complainant will remain liable to pay balance consideration amount to the respondent within 90 days of the fresh offer of possession strictly as per terms of builder buyer agreement.

Disposed of. File be consigned to record room after uploading on the website of the Authority.

....
CHANDER SHEKHAR
[MEMBER]

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

....
NADIM AKHTAR
[MEMBER]

....
PARNEET S SACHDEV
[CHAIRMAN]