HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**212 of 2025**
Date of filing:	**18.02.2025**
First date of hearing:	**05.05.2025**
Date of decision:	**21.05.2026**

Ms. Anju Batra D/o Manohar Lal Batra

R/o house no.11, Railway Road,

Near Govt. Girl Sec School Civil Line,

Subhash Marg, Karnal-132001

.....COMPLAINANT

Versus

M/s Aegis Value Homes,

Regd. Office, 55, 2nd floor, Lane-2, Westend Marg,
Saidullajab, near saket metro station,
south delhi, India-110030 .....RESPONDENT

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

Present: - Adv. Sarthak Mangla, proxy counsel for Adv. Rajan Kumar Hans counsel for the complainant through VC

Adv. Neeraj Goel, Counsel for the respondent through VC

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 18.02.2025 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.	108, TowerA3, 1st floor
5.	Unit area	535.08 sq.ft and balcony 87 sq.ft.
6.	Date of Apartment Buyer Agreement	25.06.2021

7.	Due date of offer of possession	25.06. 2024 (3 years from date of execution of bba)
8.	Possession clause in BBA	8.1
9.	Total sale consideration	19,04,540/-(as per agreement)
10.	Amount paid by complainant	₹20,99,017/-
11.	Offer of possession without oc/cc along with illegal demand	08.11.2024

B. FACTS AS PER THE COMPLAINT:

3. The Complainant, Ms. Anju Batra, D/o Sh. Manohar Lal Batra, R/o House No. 11, Railway Road, Near Govt. Girls Sr. Sec. School, Civil Line, Subhash Marg, Karnal-132001 (hereinafter referred to as the *Complainant*), falls within the definition of "Allottee" under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016.

4. The Respondent, M/s Aegis Value Homes, having its Registered Office at 55, 2nd Floor, Lane-2, Westend Marg, Saidullajab, Near Saket Metro Station, New Delhi-110030 and Corporate Office at Smart Homes, Sector-32A, Karnal-132001 (hereinafter referred to as the *Respondent/Promoter*), falls within the definition of "Promoter" under Section 2(zk) of the Act and is bound by the duties and obligations prescribed therein.

5. The present complaint relates to the affordable housing project namely "Smart Homes Karnal", situated at Village Budhakhera, Sector-32A, Karnal, Haryana, developed under the Affordable Housing Policy, 2013 of the Government of Haryana (hereinafter referred to as the *Project*).

6. On 24.04.2017, the Complainant applied in the draw of lots for the said project vide Application No. 5567, and paid a booking amount of ₹95,227/- through cheque drawn on State Bank of Patiala. ii. The draw of lots was held on 07.07.2017, pursuant to which the Complainant was allotted Unit No. A3/108 (2 BHK) on the 1st floor, having carpet area 535.08 sq. ft. and 87 sq. ft. balcony area. iii. The Allotment Letter is annexed as Annexure P-1.

7. The total sale consideration of the unit was ₹20,93,781/- (inclusive of taxes). The Complainant has paid a total amount of ₹20,99,017/- to the Respondent as per the demand letters raised by the Respondent from time to time. Copies of the demand letters, payment receipts and statement of account are annexed as Annexure P-3. Thus, the Complainant has paid more than 100% of the sale consideration.

8. As per Clause 1(iv) of the Affordable Housing Policy, 2013, possession of affordable housing units must be offered within 4 years from the date of grant of building plan approval or environmental

clearance, whichever is later. The Environmental Clearance for the project was granted on 24.10.2017, therefore the maximum due date of possession was 24.10.2021.

9. The Respondent issued an Offer of Possession dated 08.11.2024, i.e., after a delay of more than three years from the stipulated due date. The possession offer was issued without furnishing the Occupation Certificate, and with an increased area of 18 sq. ft. Copy of the possession offer letter is annexed as Annexure P-4.

10. Along with the possession offer, the Respondent raised unjustified demands amounting to ₹2,95,944/-, comprising Interest for alleged delayed payments – ₹2,59,950/- , Labour Cess – ₹15,994/- and Security deposit – ₹20,000/- These charges have been levied without any justification, despite all payments having been made as per the Respondent's demand schedule.

11. The Complainant issued a legal notice dated 18.01.2025 to the Respondent demanding redressal. The notice was duly delivered on 24.01.2025, however no reply has been received till date. Copies are annexed as Annexure P-4 & P-5.

12. The cause of action first arose on 24.04.2017 (date of application), then on 07.07.2017 (date of allotment), subsequently on 24.10.2021 (failure to hand over possession within stipulated time), and again on

08.11.2024 (illegal demands raised along with delayed possession offer). The cause of action is continuous and subsisting.

13. Under Section 18 of the RERA Act, 2016 and Rule 15 of the Haryana RERA Rules, 2017, the Respondent is liable to pay interest for delay in possession at SBI MCLR + 2%.

14. The Complainant claims interest for delayed possession as under (calculated till 07.02.2025):

- ₹15,14,110/- (from due date of possession) → ₹5,41,001/-
- ₹2,57,113/- → ₹90,721/-
- ₹2,57,110/-→₹50,977/-

Total Interest Claimed: ₹6,82,699/- @ 10.85%

15. The Respondent has failed to deliver possession within stipulated time, raised illegal and unjustified charges, failed to respond to legal notice and caused mental harassment and financial loss to the Complainant. Hence, the Respondent is liable for deficiency in service, breach of statutory obligations, and unfair trade practice.

16. The complainant has also filed a rejoinder dated **03.03.2026** in registry reiterating contentions mentioned in the complaint. The Authority has duly taken the said rejoinder on record for consideration and adjudication of the present matter.

C. RELIEF SOUGHT:

17. In View of the Facts mentioned above the complainant prays for the Following reliefs-

1. Pass an appropriate order directing to provide the copy of Occupation Certificate and to provide the possession after grant of OC.
2. Pass an appropriate order directing the respondent to provide Delayed Possession charges (DPC) from the due date of possession i.e 24.10.2021 till the actual Valid and legal Possession of the Plot to the Complainants after obtaining the OC.
3. Pass an appropriate order directing the respondent to not charge an amount of Rs. 15,994/- as Labour cess and an amount of Rs.20,000/-security deposit for the interior.
4. Pass an appropriate order directing the Respondent to consider the due date given in the demand letter as the due date for charging the interest if any.
5. Pass an appropriate order directing the respondent to provide an updated account statement with proper justification and explanation including Delayed possession charges to be given to the Complainant.

6. Pass an appropriate award directing the Respondent to provide the valid & legal possession of the Plot at the earliest.

7. Any other relief that the Honorable Authority deems suitable.

D. REPLY ON BEHALF OF RESPONDENT FILED IN REGISTRY ON 27.02.2026

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

19. That the complainant has wilfully defaulted in making timely payments as per the agreed payment schedule and has been in continuous breach of the Builder Buyer Agreement. Despite multiple reminders, demand notices, and offers of possession, the complainant has failed to clear outstanding dues and take possession of the allotted unit.

20. That in view of the complainant's own defaults and breaches, the present complaint is not maintainable in law and deserves to be dismissed with exemplary costs.

21. That Respondent No. 1 is developing an affordable group housing project namely "Smart Homes Karnal" at Sector-32A, Karnal, Haryana under License No. 02 of 2016 dated 05.03.2016 granted

by Director General Town & Country Planning, Haryana. True copy of the said License dated 05.03.2016 is annexed as Annexure R-1/1.

22. That the project is duly registered under RERA vide Registration No. 265 of 2017 dated 09.10.2017 and is being developed in accordance with the Affordable Housing Policy 2013 of the Government of Haryana. True copy of the said registration certificate dated 09.10.2017 is annexed herein as Annexure R-1/2.

23. 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 herein as Annexure R-1/3 & R-1/4 respectively.

24. That complainant was allotted Unit No. A3-108, 1 Floor, Tower A-3 having carpet area of 535.08 sq. ft. for a basic sale consideration of R19,69,988/- Terms of the agreement are as follow:

* Payment schedule spread over 36 months

* Possession clause with 4-year timeline from building plan approval/ environment clearance (whichever later)

* Force majeure provisions covering natural calamities, government orders, court orders

* Interest liability @ 15% p.a. on payment defaults

* Cancellation rights for material breach by either party

True copy of the Builder Buyer Agreement dated 25.06.2021 is annexed herein as Annexure R-1/5.

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

a) Occupation Certificate dated 20.09.2024 has been duly granted by the Director, Town and Country Planning, Haryana for Towers A1, A2, A3, A4, A5, A6, A7 & B1 covering 877 dwelling units including the complainant's Unit A3-108. True copy of the said Occupation Certificate is annexed herein as Annexure R-1/6.

b) Multiple Offers of Possession were issued on 08.11.2024 which remain unaccepted due to complainant's payment defaults; It is also worth mentioning here that as per the settled law by the Ld. Appellate Tribunal the complainant is only entitled for delay in possession charges up till valid offer of possession and consequently, promoter is eligible to claim same delay in payment charges on same rate of

interest. True copy of the said offer of possession is annexed herein as Annexure R-1/7.

c) The project completion has been achieved despite unprecedented force majeure events documented over 1147 days between 2017-2024.

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

* Made initial payment

* Subsequently defaulted on scheduled payments

* Again, defaulted on subsequent payments.

26. That the complainant is in gross breach of his statutory and contractual obligations under Section 19(6) and (T) 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)."

That the Financial Position and Outstanding Dues of the present complainant is about Rs. 2,59,950/- which are duly explained with offer of possession dated 08.11.2024.

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

a) Multiple demand notices and payment reminders sent between 2017-2025 which remained unheeded; True copy of the said demand letters are annexed herein as Annexure R-1/8.

b) SWAMIH funding of 200 crores sanctioned by Government of India for project completion;

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

That the Hon'ble Supreme Court in S.P. Chengalvaraya Naidu v. Jagannath & Ors. reported in (1994) 1 SCC 1 held at Para 17: "Suppression of material facts amounts to playing fraud on the court as well as on the opposite party... A litigant who approaches the court must come with clean hands and must make a true and full disclosure

of facts. He cannot be permitted to obtain an order by making a false or incomplete disclosure."

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

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

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

28. That the project faced unprecedented and well-documented force majeure events totaling 1147 days as detailed in the comprehensive Force Majeure documentation along with orders which are annexed herein as Annexure R-1/9.

29. That after the aforesaid defaults of the complainant, answering respondent was left with no other resort but to cancel the unit vide cancellation letter dated 10.04.2025 followed by publication in leading

newspapers. True copy of the said letter dated 10.04.2025 is annexed herein as Annexure R-1/10.

30. That recognizing the genuine challenges faced by the project, the SWAMIH Investment Fund I (Government of India initiative) sanctioned 2200 crores funding on 28.01.2021 for last-mile financing to ensure project completion. This demonstrates government recognition of the project's viability and completion timeline challenges.

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

That the Occupation Certificate specifically covers Unit A3-108 allotted to the complainant, thereby conclusively establishing that:

a) Project has been completed in accordance with approved plans.

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

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

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

"We are of the view that the promoter cannot be made liable for the delay which is caused at the instance of the allottee. In such cases, the allottee cannot claim any compensation or interest from the promoter. The object and scheme of the Act is very clear that the Parliament intended to protect the interest of allottees/ consumers and for that purpose, it imposed certain obligations on the promoters. But at the same time, it cannot be ignored that the allottees 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."

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 RERA 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."

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

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

Similarly in M/s Vatika Limited v. State of Haryana & Ors. Punjab & Haryana High Court in CWP-8003-2020 observed:

"The RERA Act creates reciprocal obligations. Where an allottee seeks refund despite his own default in payments, such claim cannot be sustained as it would amount to seeking benefit from his own breach."
That even Hon'ble Appellate Tribunal in M/s Venetian L.DF Projects LLP v. Rajni Singh & Ors. HREAT Appeal No. 755/2024 - The Tribunal at Para 24-26 held:

"The allottee who defaults in payment of installments as per agreed schedule cannot claim that the promoter is in breach. The promoter is entitled to charge interest at the agreed rate and withhold possession until full payment is made. The allotte's own breach disentitles him from claiming any relief under Section 18 of the RERA Adt." 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."
That in Section 51 of the Indian Contract Act, 1872 provides:

"When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise."
That Hon'ble Supreme Court in Union of India v. M/s Kailash Nath Associates (2015) 4 SCC 136 elaborated at Para 43:

"The principle of reciprocal promises is fundamental to contract law. A party who is himself in breach cannot demand performance from

the other party. The defaulting party cannot seek legal remedies while remaining in continuing breach of his own obligations."
That in Paragraph 7(v) of the Haryana Affordable Housing Policy 2013 specifically provides:

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

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

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

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

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

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

COUNTER-CLAIM AND SET-OFF

36. That the respondent is entitled to claim and set-off the outstanding amount of 72,59,950/- against any claimed relief by the complainant under Section 10 of the Code of Civil Procedure, 1908 and established principles of equity.

37. That the respondent further claims:

i. Interest @ 15% per annum on outstanding amounts till payment.

ii. Holding charges @ 10/- per sq.ft. per month from the date of offer of possession.

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

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

38. Ld. counsels for both the parties reiterated their submissions as mentioned in the complaint and reply. The learned counsel for the complainant requested the Authority to take on record the affidavit filed on 09.03.2026. Through this affidavit, the complainant has placed on record her bank account statements to substantiate two

payments of ₹70,685/- and ₹90,359/- made to the respondent, given that the formal receipts for these transactions are currently missing.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

40. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainant booked an apartment in the real estate project; "Smart Homes Karnal, being developed by the promoter namely; "Aegis Value Homes Ltd.". Thereafter, apartment buyer agreement was executed between the parties on 25.06.2021 for unit bearing no. 108, Tower A3, admeasuring 535.80 sq. ft. and 87 sq.ft balcony. Further, the complainant has alleged to pay total amount of ₹20,99,017/- out of the total sale consideration of ₹19,04,540/-. In this regard, it is observed that as per order dated 18.09.2025, complainant was given opportunity to file missing receipt of Rs. 70,685/- by 30.10.2025 in registry. As per office record, no such document has been filed by the complainant till date.

41. As per page no.5 and 6 of complaint book complainant had made following payments:

Amounts Paid	Date of payment	Mode of payment	Proof payment annexed in complaint book at Page nos.
95,227/-	05.05.2017	Cheque	19
2,00,000/-	02.08.2017	Cheque	21
1,75,243/-	16.08.2017	Cheque	23
2,72,301/-	13.02.2018	Cheque	25
2,57,113/-	21.08.2019	Cheque	28
2,57,113/-	30.11.2019	Cheque	30
2,57,113/-	19.03.2021	Cheque	32
2,57,113/-	08.11.2021	Cheque	**35**
2,57,110/-	12.04.2023	Cheque	38
70,685/-			No receipt available
Total- **20,99,017/-**			

The statement of account provided by the respondent, annexed to the offer of possession dated 08.11.2024, acknowledges a payment of ₹20,93,781/- from the complainant, alongside an additional sum of ₹90,359/- (as detailed on page 83 of the reply). Furthermore, the

complainant's affidavit filed on 09.03.2026, establishes that both the amounts mentioned in para 38 of this order were successfully paid to the respondent on 25.01.2024. The respondent has formally admitted to receiving the ₹90,359/-.

The sole remaining dispute concerns a payment of ₹70,685/-. The complainant has submitted her bank statement confirming that this sum was transferred to "Aegis" on 25.01.2024. Because the respondent has failed to challenge or rebut this affidavit to date, and given that the complainant's receipts and bank statements corroborate these transactions, the Authority hereby fixes the total amount paid by the complainant as **₹21,89,376/-**

H. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT:

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

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

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

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

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

The respondent during hearing also stated that since it is an affordable housing policy, complainant was bound to pay as per Timely payment plan. Learned counsel for complainant on the other hand argued that till 2023, more than total sale consideration stands paid by the complainant. It is the respondent who did not develop the project on time and still raised illegal demands even after receiving more than the sale consideration. On perusal of buyer agreement, it is clear that complainant had opted for a Timely Payment Plan (TPP). Further, as per table mentioned at page no. 5 and 6 of complaint book, it is clear that complainant had made payments from year 2017- 2024, totalling to ₹ **21,89,376/-** out of

total sale consideration of ₹19,04,540/-. Meaning thereby, more than 100% of the payment on part of complainant 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 as per timely plan, accordingly the deemed date of possession mentioned in Clause 8.1 of builder buyer agreement also got expired.

Further, it is important to note that the clauses pertaining to builder buyer agreement stated above and Section 19 of the RERD Act, 2016 cannot be read in isolation. Builder buyer agreement is one comprehensive document and as per said document, responsibility of the promoter was to complete the project by the timeline provided therein and complainant was also bound to make payment as per the plan opted. In the present case, complainant has fulfilled her part of performance. However, respondent has failed to complete the project in stipulated time.

In view of the above facts the respondent's claim that the complainant is not entitled to relief under RERD Act, 2016 is

unsustainable. Failure to meet statutory obligations by the Promoter entitles the buyer to seek relief under RERD Act, 2016, such as compensation for delays or refund with interest.

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

To deal with above stated objection, it is important to first ascertain the deemed date of possession in the present case. It is pertinent to mention that complainant has stated in the pleadings that as per clause 1(iv) of the Affordable Housing Policy, 2013, possession of affordable housing units must be offered within 4 years from the date of grant of building plan approval or environmental clearance, whichever is later. The Environmental Clearance for the project was granted on 24.10.2017, therefore the maximum due date of possession was 24.10.2021.

On the other hand respondent in its pleading has stated 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.

However perusal of the builder buyer agreement reveals that as per clause 8.1 of the builder buyer agreement, timeline for handing over of possession has not been specified by the respondent/promoter. Said clause of the agreement is reproduced below for ready references:

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

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

Properly applied, the mischief rule ensures that statutory provisions are interpreted so as to give effect to the legislative intent and to prevent the re-emergence of the very mischief the law was enacted to eliminate. The clause—*" The Developer assures to hand over possession of the said Apartment as per agreed terms and conditions unless there is delay due to "force majeure", Court orders,*

Government policy/ guidelines, decisions affecting the regular development of the real estate project."—raises a recurring question under the Real Estate (Regulation and Development) Act, 2016: ***Whether such language permits the promoter to indefinitely postpone its obligation, or whether courts and authorities may construe the given language strictly?***

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

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

(ii) the mischief that the statute intended to remedy

(iii) the legislative solution, and

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

Before RERA, Indian real-estate contracts routinely contained ambiguous possession clauses couched in phrases like "best endeavour," "subject to approvals," or "tentatively by," which enabled promoters to defer delivery for years without consequence. The mischief the legislature sought to address was precisely this asymmetry: homebuyers were advancing substantial sums yet had little control or remedy against such delays. RERA's architecture—

Sections 11 and 18 and the mandatory model agreement—places **time-bound delivery** at the heart of the regulatory framework. Section 11(4)(a) requires the promoter to "responsibly discharge" all obligations as per the terms of the agreement for sale; and Section 18 obligates the promoter to provide interest etc to the allottee for delay.

When the possession clause uses the words **"agreed terms and conditions"**, the *literal reading suggests a mere obligation of effort rather than a mandatory timeline*. However, applying the mischief rule, such an interpretation would defeat the very purpose of RERA, which is to eliminate the opacity and uncertainty that characterised the pre-RERA regime. If the clause were construed to mean that the promoter has no strict obligation to deliver **within a specific period of time** but only to *try*, the mischief i.e indefinite postponement would re-enter through the back door. Courts have therefore consistently held that promoters cannot dilute statutory rights through contractual drafting. The Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan* (2019) 5 SCC 725 emphasised that one-sided clauses crafted by builders cannot bind the allottee when they defeat consumer protection; similar reasoning appears in *IREO Grace Realtech Pvt. Ltd. v.*

Abhishek Khanna (2021) 3 SCC 241, where the Hon'ble Court held that contractual terms must be read in light of the legislative objective of protecting homebuyers.

Under this reasoning, the phrase "**agreed terms and conditions**" provides a determinable anchor point, and the addition of "**agreed terms and conditions**" cannot legally convert a mandatory timeline into an aspirational one. RERA, being a benevolent statute, must be construed purposively; any ambiguity must be resolved in favour of the allottee.

In the present case, builder buyer agreement was executed between the parties on 25.06.2021. However, the agreement does not stipulate any specific time frame for handing over possession. Authority observes that in absence of clause with respect to handing over of possession in the builder buyer agreement, it cannot rightly ascertain as to when the possession of said apartment was due to be given to the complainants. It has been observed that period of 3 years is reasonable time for development of a project and handing over of possession as held by **Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.**

The Authority is therefore entitled to read the clause as imposing a **definite possession period of three years**, with the promoter's "terms and conditions," language having no effect in diluting statutory consequences. The mischief rule thus becomes entirely appropriate: by interpreting the clause in a manner that enforces certainty rather than permissive delay, the decision suppresses the mischief RERA sought to eliminate. Applying the statutory position above and the ratios of the Hon'ble Apex Court the deemed date of possession is **25.06.2024.**

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. 3 and 5 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 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 on 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 respondent cannot be allowed to take advantage of the delay on their part by claiming delay in statutory approvals/directions. As a result, this plea stands rejected.

Further with regard to *force majeure* on account of ***COVID-19***, in the present case, due to the various decisions of the Government of India and the Government of Haryana Authority, *force majeure* may be accepted *for a maximum period* of Covid i.e 9 months. Reference is made to Advisory issued by Authority in its 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.

In the present case, the request for a waiver or extension on account of the COVID-19 pandemic is denied based on the following two-fold reasoning:

1. **Foreknowledge of Construction Pace**: The respondent executed the builder-buyer agreement on 25.06.2021. At that time, the Respondent was fully aware of the on-going pandemic conditions and the actual pace of construction at the site. Despite this, the respondent voluntarily committed to a possession deadline of 25.06.2024.
2. **Possession Timeline**: The deemed date of possession i.e. 25.06.2024 falls entirely outside the window of COVID-19 extensions previously granted by this Authority.

Consequently, the Authority holds that the respondent cannot be permitted to benefit from its own delays or oversights. The plea for a COVID-19 related waiver is hereby rejected.

42. The facts presented in the preceding paragraphs definitively establish that the respondent failed to fulfil its contractual and statutory obligations. Specifically, the respondent did not deliver possession of the subject apartment by the deemed date of **25.06.2024**. Further, the record indicates that the Occupation Certificate (OC) was obtained on **20.09.2024**. Following this, the respondent issued a formal offer of possession to the complainant on **08.11.2024**, accompanied by the requisite certificate. The Authority finds this offer to be **legally valid**, as it was:

- Issued subsequent to the receipt of the Occupation Certificate.
- Free from any legal or procedural encumbrances.

Upon receipt of the valid offer on **08.11.2024**, the complainant was legally obligated to accept possession. However, the complainant remained silent and failed to approach the respondent. By ignoring the offer, the complainant neglected her duty to take possession at the appropriate time. The Authority notes that there was no justified reason for this delay, as the respondent had met all legal prerequisites for the handover. In light of these circumstances, the

Authority concludes that the complainant is entitled to interest for the period of delay. The interest shall be calculated from the **deemed date of possession (25.06.2024)** up until the date the valid offer of possession was made **(08.11.2024)**.

43. Further, the record indicates that the respondent, as part of the valid offer of possession dated **08.11.2024**, raised a demand of **₹2,59,950/-** attributed to interest on delayed payments. On perusal of buyer agreement, it is clear that complainant had opted for a Timely Payment Plan (TPP) as annexed at page no. 73 of reply. Further, as per table mentioned in the affidavit filed on 09.03.2026 by complainant, it is clear that complainant had made payments from year 2017- 2024 and last payment of ₹90,359/- was paid on 25.01.2024 to respondent. The total of said table shows that complainant had already paid amount of ₹ 21,89,376/- out of total sale consideration of ₹19,04,540/- on 25.01.2024, even before the expiry of deemed date of possession, i.e., 25.06.2024. This shows the intention of the complainant that she had paid more than total consideration to respondent even after delay caused on part of respondent in developing the project.

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

position as stated by respondent in its reply is that occupation for the project was granted by competent Authority on 20.09.2024. Meaning thereby, in any case, the construction was delayed and not as per timely plan, accordingly the deemed date of possession mentioned in clause 8.1 of builder buyer agreement also got expired.

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

In case of **Nathulal v. Phoolchand**, *AIR 1970 SC 546, the Hon'ble Supreme Court categorically held that where the obligations of the parties are* ***reciprocal and inter-dependent****, the performance of one party is conditional upon the prior performance of the other, and therefore,* ***a party who has failed to perform his part of the contract cannot compel performance from the opposite***

***party**. The Court further observed that unless the vendor was **ready and willing to perform his own obligations**, he was not entitled to insist upon the purchaser fulfilling his part of the contract."*

Above stated judgment squarely applies to the present case, as the complainant cannot be expected to pay delay interest, when the respondent has already committed breach of its primary contractual duties of not constructing unit booked on the date promised as per agreement. Accordingly, the complainant cannot be compelled to pay delay interest charges when respondent itself has delayed the project.

44. Finally, the Authority has reviewed the cancellation letter dated **10.04.2025** placed on record by the respondent. A perusal of this document reveals that it does not constitute an actual cancellation of the unit, but is instead titled **"Last and Final Notice for Cancellation."** This notice demanded the payment of **₹2,59,950/-** (inclusive of accruing interest) by **25.04.2025**, failing which the allotment would be revoked. The Authority finds this notice to be legally unsustainable based on the following:

- **Prior Legal Action:** The complainant had already initiated the present proceedings before this Authority on **18.02.2025**, seeking delivery of possession and interest for the delay.

- **Principle of *Lis Pendens*:** Because the cancellation notice was issued while the present complaint was actively pending, it is barred by the legal principle of **"lis pendens"** (pending litigation). A party cannot unilaterally alter the status of the subject matter while it is under adjudication.

  In light of the above, *the Authority deems it appropriate to **set aside** the cancellation letter dated **10.04.2025** issued by the respondent.* The allotment remains valid and subject to the directives issued in this order.

45. In view of the above, Authority is of the considered view that complainant is well within her rights to claim delay interest from the respondent for the amount paid by her and thus deems fit to allow interest for delay in handing over of possession from the deemed date of possession i.e. 25.06.2024 upto the date on which a valid offer is sent to her after receipt of occupation certificate i.e. **08.11.2024**. 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".

46. Consequently, as per website of the State Bank of India, i.e., https://sbi.co.in, the Highest Marginal Cost of Lending Rate (in short MCLR) as on date, i.e. 21.05.2026 is **8.80%.** Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., **10.80%**.

47. Authority has calculated the interest on total paid amount from the deemed date of possession i.e., **25.06.2024** till the date of valid offer

of possession i.e, 08.11.2024 at the rate of **10.80%** till, and said amount works out to **₹88,751/-** as per detail given in the table below:

Sr. No.	Principal Amount	From deemed date of possession or date of payments whichever is later	Date of valid offer of possession	Interest Accrued till 08.11.2024
1.	**21,89,376/-**	25.06.2024	08.11.2024	**₹88,751/-**
Total amount				**₹88,751/-**

48. Accordingly, the respondent is liable to pay the upfront delay interest of **₹88,751/-** to the complainant towards delay already caused in handing over the possession. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondents when an offer of possession is made to them.

49. With respect to the specific reliefs sought by the complainant in **Para C17(3)**, the complainant has requested that the respondent be restrained from charging ₹15,994/- toward Labour Cess and ₹20,000/- as a Security Deposit for Interior Works. Upon a thorough perusal of the builder-buyer agreement executed between the parties, the Authority observes the following:

- **Absence of Contractual Basis:** No provision or clause within the signed agreement imposes these specific charges upon the complainant.
- **Unauthorized Demands:** In the absence of a clear contractual mandate or statutory requirement cited by the respondent, these demands are found to be unsubstantiated. In view of the above, the Authority deems it *appropriate to* ***quash*** *both the demand for Labour Cess and the Interior Security Deposit*. The respondent is directed to strike these charges from the complainant's statement of account.

I. DIRECTIONS OF THE AUTHORITY

50. 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. Complainant is directed to accept the offer of possession issued by the respondent on **08.11.2024** and take physical possession of the booked unit from the respondent.

ii. Respondent is directed to pay upfront delay interest as calculated in para 47 and 48 of the order to the complainant towards delay already caused in handing over the possession,

along with fresh statement of account clearly stating therein amounts paid by the complainant in accordance with the principle laid down above and also the amounts to be paid by the respondent to the complainant for delayed offer of possession within 90 days from the date of uploading of the order.

iii. Complainant will remain liable to pay balance consideration amount as discussed above to the respondent at the time of possession offered to her.

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

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CHANDER SHEKHAR
[MEMBER]

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

.....
PARNEET S SACHDEV
[CHAIRMAN]