



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1895 of 2024
Date of filing:	12.12.2024
First date of hearing:	10.02.2025
Date of decision:	28.09.2026

1. Amieett Deshpal Bajaj
S/o Deshpal Bajaj
R/o Flat no. 12-B,
1st Floor U&V Block
Shalimar Bagh, New Delhi-110088

2. Shweta Khanna
W/o Amieett Deshpal Bajaj
R/o Flat no. 12-B,
1st Floor U&V Block
Shalimar Bagh, New Delhi-110088

....COMPLAINANTS

VERSUS

Jotindra Steel & Tubes Ltd.
(through its Director and Managing Director)
Office at 14/3, Mathura Road, Sector-45,
Faridabad, Haryana- 121003

.....RESPONDENT

Present: - Adv. Neeraj Goel, counsel for the complainant through VC.

Adv. Amrit Singh, counsel for the respondent through VC.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 12.12.2024 by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

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

S.No.	Particulars	Details
1.	Name and location of the project.	<i>Shree Homes by Sarvome</i> situated at Sector-45, Faridabad, Haryana,
2.	RERA Registered/not registered	Registered vide no. 112 of 2019
3.	Details of allotted unit.	602, Tower-B vide allotment letter dated 04.07.2021
4.	Builder Buyer Agreement	23.07.2021



5.	Date of obtaining environmental clearance	30.08.2019
6.	Date of approval of building plan	07.03.2019
7.	Deemed date of possession	30.08.2023 (As clause 8.1 of the builder buyer agreement dated 23.07.2021)
8.	Total sale price	₹26,57,916/-
9.	Amount paid by the complainants	₹28,43,534/-

B. FACTS OF THE COMPLAINT AS STATED BY THE COMPLAINANTS

3. That the complainants are citizens of India and are residing at Flat No. 12-B, 1st Floor, U&V Block, Shalimar Bagh, New Delhi-110088. The complainants are aggrieved by the acts and omissions of the respondent company and have, therefore, filed the present complaint before this Authority.
4. That in the year 2019, the respondent company issued an advertisement announcing an affordable housing project namely "*Shree Homes by Sarvome*", situated at Village Mewla Maharajpur, Sector 45, Faridabad, under Licence No. 52 of 2019 dated 07.03.2019 issued by DTCP, Haryana, Chandigarh, and invited applications from prospective buyers for purchase of units in the said project. The respondent also represented that the project had obtained the requisite Building Plan Approval from the competent authority.



5. That in the year 2021, while searching for a residential unit in the NCR region, the complainants visited the office of the respondent company. The agents of the respondent made representations regarding the reputation of the company and its previous projects in the National Capital Region and gave detailed presentations regarding the project. The respondent also handed over a brochure to the complainants depicting the project and its proposed facilities and development, pursuant to which the complainants were induced to book a unit in the project.
6. That relying upon the representations and assurances made by the respondent, the complainants booked a residential unit in the said project on 04.07.2021 by paying the booking amount. Accordingly, vide allotment letter dated 04.07.2021, the complainants were allotted Unit No. 602, Tower-B, in the project "Shree Homes by Sarvome", having a carpet area of 645.40 sq. ft. and balcony area of 100 sq. ft. A copy of the allotment letter dated 04.07.2021 is annexed as Annexure C-1.
7. That despite repeated reminders and follow-ups, the respondent initially failed to provide the terms and conditions and the Builder Buyer Agreement in respect of the said unit.
8. That subsequently, after repeated requests, the Builder Buyer Agreement was executed between the parties on 23.07.2021. The complainants state that the



allotment of the unit and execution of the agreement took place after coming into force of the RERA Act, 2016. A copy of the Builder Buyer Agreement dated 23.07.2021 is annexed as Annexure C-2.

9. That as per Clause 4.2 of the Builder Buyer Agreement, the complainants had already paid a sum of ₹16,61,200/- towards the said unit at the time of execution of the agreement.
10. That as per Clause 8.1 of the Builder Buyer Agreement, the respondent was required to deliver possession of the unit within a period of four years from the date of approval of the building plans. The complainants have calculated the due date of possession with reference to the registration certificate granted by this Authority vide Registration No. PKL-RERA-112 of 2019 dated 11.04.2019, and according to the complainants, the due date of possession was 31.07.2023. A copy of the registration certificate dated 11.04.2019 is annexed as Annexure C-3.
11. That the complainants regularly made payments against the demands raised by the respondent on 04.07.2021, 03.09.2021, 09.02.2022 and 09.08.2022. The complainants also paid possession charges on 03.05.2024. Complainants have paid a total amount of ₹28,43,534/- towards the unit, which, as stated by them, is more than the total sale consideration of the said unit. Copies of the



receipts dated 06.11.2021, 09.02.2022 and 09.08.2022 and details of payments are annexed as Annexures C-4 and C-5.

12. That during the aforesaid period, the complainants visited the office of the respondent on several occasions and requested that they be permitted to visit the project site. However, they were not permitted to visit the site on the ground that buyers were not permitted to visit the site during the construction period.
13. That in April 2023, the respondent invited the complainants, along with other allottees, to the project site for inspection of the unit. However, the unit was not shown to them. The respondent also raised certain demands which, were not in accordance with the Builder Buyer Agreement and asked them to sign an indemnity/approval letter in relation to increase in FAR/density. The complainants refused to sign the same.
14. That after several requests and emails, the complainants received a demand letter through WhatsApp in connection with the offer of possession dated 07.05.2024. The complainants state that no physical copy of the said letter was received by them and only a WhatsApp communication was received. Along with the said offer of possession, the respondent raised various demands amounting to ₹1,85,600/-, which, were not payable under the



Builder Buyer Agreement. A copy of the offer of possession dated 07.05.2024 is annexed as Annexure C-6.

15. That at the time of the aforesaid offer of possession, the respondent had also not provided a copy of the Occupation Certificate of the said unit.
16. That the respondent required the complainants to sign an Indemnity Bond as a pre-condition for handing over possession. The complainants objected to the same, particularly on the ground that the respondent had not paid the delay in possession charges. The respondent refused to hand over possession unless the complainants signed the said indemnity bond.
17. That the complainants had never delayed any payment and had made the payments even before the respective due dates under the payment plan contained in the Builder Buyer Agreement.
18. That the complainants, under protest, paid the additional amount of ₹1,85,600/- demanded by the respondent in order to obtain possession of the subject unit. However, despite making the said payment, the respondent did not hand over physical possession of the unit.
19. That complainants had paid a total sum of ₹28,43,534/- towards the subject unit against the stated total sale consideration of ₹26,31,600/-.
20. That the complainants thereafter requested the respondent to hand over possession through various calls, messages and emails. The respondent failed



to respond to such communications. A copy of the communication dated 16.07.2024 is annexed as Annexure C-6.

21. That the complainants thereafter served a legal notice dated 02.09.2024 upon the respondent, raising their grievances regarding the demands and the requirement of signing the indemnity/approval letters. The respondent failed to provide any response to the said legal notice. A copy of the legal notice dated 02.09.2024 is annexed as Annexure C-7.
22. That the complainants further state that at the time of execution of the Builder Buyer Agreement, they had raised objections regarding certain clauses which, were highly tilted and one-sided. However, the respondent informed them that the terms and conditions were standard clauses and no changes could be made.
23. That the payment plan was structured in a manner whereby substantial payments were collected from the buyers in relation to the progress of the project. The complainants approached the respondent regarding the status of construction and also raised objections regarding non-completion of the project.
24. That the complainants allege that the respondent failed to honour the commitments made through the brochure, Builder Buyer Agreement and



advertisements issued from time to time and failed to provide the services and facilities represented to the complainants.

25. That, despite having paid the amounts towards the subject unit, they have not been given physical possession of the unit and have suffered loss on account of the time and money invested by them.
26. That the complainants have suffered mental agony and harassment on account of the acts and omissions attributed to the respondent.
27. That the complainants have relied upon the documents filed along with the complaint and have sought liberty to produce additional documents and list of witnesses, if required, with the permission of this Authority.

C. RELIEFS SOUGHT

28. Complainants have sought following reliefs:
 - i. To direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA;
 - ii. To direct the respondent to get the conveyance deed executed for the said unit in question.
 - iii. To direct the respondent to pay the interest on the total amount paid by complainants at the prescribed rate of interest as per RERA from due



date of possession till date of actual physical possession as the possession is being denied to complainants by respondent in spite of the fact that complainants desires to take the possession.

- iv. To withdraw the illegal offer of possession cum demand letter dated 07.05.2024.
- v. To not raise any fresh demand for payment under any head, which is not the part of the payment plan as agreed at the time of booking.
- vi. To not to force complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed
- vii. Grant any other relief as this Hon'ble Authority deems fit in the peculiar facts and circumstances of the present complaint.

D. REPLY ON BEHALF OF RESPONDENT

Respondent has filed a detailed reply in the registry on 21.01.2026 pleading therein as under-

- 29. That the Affordable Housing Policy, 2013 was notified by the Town and Country Planning Department, Government of Haryana on 19.08.2013 under Section 9A of the Haryana Development and Regulation of Urban Areas Act, 1975. As per Clause 1(iv) of the said Policy, the project was required to be completed within four years from the approval of building plans or grant of



environmental clearance, whichever was later, and the said date was to be treated as the date of commencement of the project. The respondent has relied upon the said Policy as Annexure-1.

30. That Clause 5(iii)(b) of the Affordable Housing Policy, 2013 provided, inter alia, for payment of 5% of the total cost at the application stage, additional 20% at the time of allotment and recovery of the balance 75% in six equated instalments spread over three years. The said clause further provided for interest in case of default in payment. The respondent has also stated that the provision regarding penal interest was subsequently amended vide notification dated 09.07.2018, whereby any default in payment would bear penal interest as provided under Rule 15 of the Haryana Real Estate Regulatory Authority Rules, 2017. A copy of the notification dated 09.07.2018 has been annexed as Annexure-2.
31. That on 30.08.2019, environmental clearance was granted to the project by the State Environment Impact Assessment Authority, Haryana. In terms of Clause 1(iv) of the Affordable Housing Policy, 2013, the said date constituted the date of commencement of the project for the purpose of calculating the construction timeline. A copy of the environmental clearance is annexed as Annexure-3.



32. That on 05.11.2020, the Ministry of Environment, Forest and Climate Change issued a Gazette Notification constituting the Commission for Air Quality Management (CAQM) in National Capital Region and Adjoining Areas. A copy of the said Gazette Notification is annexed as Annexure-4.
33. That on 04.07.2021, the complainants applied for allotment of a 3-BHK apartment in the affordable group housing project of the respondent, namely "Shree Homes by Sarvome", situated at Sector-45, Faridabad. The complainants accepted the terms and conditions for allotment under the Affordable Housing Policy, 2013 and furnished an undertaking regarding maintenance of payment discipline under the payment plan. The respondent has relied upon the application form as Annexure-5.
34. That the complainants had already deposited a sum of ₹50,000/- on 27.06.2021 and were also informed regarding loan formalities, in case they intended to avail a loan for payment of the dues.
35. That on 04.07.2021, after accepting the terms and conditions, the complainants deposited ₹6,00,000/- vide cheque No.000963 drawn on ICICI Bank, ₹10,00,000/- vide cheque No.85692 drawn on Axis Bank and ₹8,00,000/- vide cheque No.85693 drawn on Axis Bank, all dated 04.07.2021. However, cheque for ₹10,00,000/- was returned dishonoured.



36. That the respondent thereafter allotted Unit No.602, Tower-B, to the complainants and issued an allotment-cum-demand letter dated 04.07.2021 demanding a balance amount of ₹2,11,208/- for confirmation of acceptance of the allotment. The respondent has stated that the payment schedule was agreed between the parties, under which 62.5% of the total cost was to be deposited by 10.02.2021, 12.5% by 10.08.2021, 12.5% by 10.02.2022 and the remaining 12.5% by 10.08.2022. The respondent further stated that any default in payment would invite penalty as per the Affordable Housing Policy, 2013 and the HRERA Rules, 2017. A copy of the allotment-cum-demand letter dated 04.07.2021 is annexed as Annexure-6 and a copy of the email dated 04.07.2021, containing the agreed payment schedule and information regarding loan facilitation is annexed as Annexure-7.
37. That on 06.07.2021 and 07.07.2021, the complainants deposited ₹1,00,000/-, ₹11,208/- and ₹1,00,000/- towards the aforesaid demand. On 10.07.2021, the respondent issued a letter of appreciation to the complainants regarding timely payment as per the schedule. A copy of the said letter is annexed as Annexure-8. On 17.07.2021, the respondent shared the complainant's ledger on the email address provided by them. The said ledger has been relied upon as Annexure-9.



38. That on 23.07.2021, Builder Buyer Agreement was executed between the complainants and the respondent. The terms and conditions of the Affordable Housing Policy, 2013, along with subsequent amendments as incorporated in the application form, were reiterated in the BBA. Clause 8 of the BBA provided for completion of construction within four years, subject to force majeure circumstances. The payment schedule was also incorporated in the BBA as Annexure-C.
39. That on 02.08.2021, the respondent was granted a special extension of three months for the period from 01.04.2021 to 30.06.2021 on account of the second wave of COVID-19, which constituted a force majeure event. The respondent has relied upon the said extension as Annexure-10.
40. That on 10.08.2021, the parties executed a Tripartite Agreement with Hinduja Housing Finance Limited and the Respondent issued permission to mortgage in favour of the finance company. The original documents were received by the complainants. Copies of the Tripartite Agreement and permission to mortgage have been annexed collectively as Annexure-11.
41. That on 12.08.2021, the Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 was promulgated and notified in the Gazette dated 13.08.2021. The respondent has referred to the powers of



the Commission to issue directions and take measures for protection and improvement of air quality in the NCR and adjoining areas.

42. That on 03.09.2021, the finance company disbursed a sum of ₹3,32,482/- to the respondent towards payment of the instalment, after conducting its due diligence, for the payment of the instalment within 24 months. On 16.11.2021, CAQM issued Direction No.44 directing stoppage of construction and demolition activities in the NCR till 21.11.2021. On 24.11.2021, the Hon'ble Supreme Court of India in Writ Petition (C) No.1135/2020 titled *Aditya Dubey (Minor) and Anr. v. Union of India & Ors.* re-imposed a ban on construction activities in the NCR. Thereafter, CAQM issued directions dated 27.11.2021 in compliance with the said order. A copy of the order dated 24.11.2021 is annexed as Annexure-12. That the ban on construction activities remained in force up to 20.12.2021, when the actions under GRAP relating to stoppage of construction activities were revoked.
43. That on 10.01.2022, the respondent raised a demand of ₹3,34,639/- towards the instalment payable within 30 months from the date of issuance of the allotment letter, in terms of the Affordable Housing Policy, 2013. On 09.02.2022, the complainants deposited ₹1,33,002/- through NEFT and ₹1,99,000/- in cash. Thereafter, on 07.03.2022, complainants deposited a further sum of ₹1,99,000/- in cash. On 09.07.2022, the respondent raised a



further demand of ₹3,35,016/- towards the instalment payable within 36 months from the date of issuance of the allotment letter in terms of the Affordable Housing Policy, 2013.

44. That on 09.08.2022, the parties executed an Addendum to the Builder Buyer Agreement dated 23.07.2021. Clause 3.1 was amended to include certain charges which were not specifically mentioned in the original BBA. It was agreed that the charges mentioned against Points D to K were mandatorily payable by the complainants at the time of offer of possession and that stamp duty, legal and administrative charges were also to be borne by the complainants and paid to the nominated agency. The complainants also deposited ₹1,00,000/- in cash. A copy of the Addendum is annexed as Annexure-13.
45. That thereafter, minutes of interaction were executed between the respondent and the complainants, wherein, the Complainants did not opt for parking or power backup. A copy of the minutes of interaction is annexed as Annexure-14. The project thereafter faced various restrictions under GRAP relating to stoppage of construction activities. Such restrictions were imposed and subsequently revoked during the following periods:
- (i) 29.10.2022 to 14.11.2022;
 - (ii) 04.12.2022 to 07.12.2022



- (iii) 30.12.2022 to 04.01.2023; and
 - (iv) 06.01.2023 to 15.01.2023.
46. That on 25.02.2023, re-KYC was carried out by the complainants, who informed the respondent regarding amendment of their address to 12-B, U & V Block, Shalimar Bagh, Delhi-110088. Further GRAP restrictions relating to stoppage of construction activities were imposed and subsequently revoked during the periods from 02.11.2023 to 28.11.2023, 22.12.2023 to 01.01.2024 and 14.01.2024 to 18.01.2024.
47. That on 23.04.2024, the project received the Occupancy Certificate from DTCP, Government of Haryana. A copy of the Occupancy Certificate is annexed as Annexure-15. That on 03.05.2024, the complainants deposited the possession charges. That on 07.05.2024, the respondent informed the complainants that the Occupancy Certificate had been obtained and offered possession of the allotted unit. The intimation was delivered to the complainants on 07.05.2024 at 1:11 p.m. and it was also informed that holding charges would be applicable from 01.06.2024 on a pro-rata basis. A copy of the possession intimation/communication are annexed collectively as Annexure-16. Despite the offer of possession and payment of possession charges, the complainants did not take physical possession of the unit.



48. That on 02/03.09.2024, the complainants issued a legal notice through counsel raising objections regarding the possession and other issues. The allegations made in the said notice were false and fabricated and the notice was issued to avoid payment of holding charges for failure to take possession within the time granted. A copy of the legal notice has been annexed as Annexure-17.
49. That the project was thereafter affected by further GRAP restrictions, including implementation of restrictions on 14.11.2024 and 16.12.2024, followed by revocation on 05.12.2024 and 27.12.2024 respectively, and further implementation and revocation during January 2025.
50. That the respondent has relied upon the aforesaid events and documents to contend that the construction timeline was affected by COVID-19 and restrictions imposed under GRAP, that the project obtained the Occupancy Certificate on 23.04.2024 and that possession was offered to the complainants on 07.05.2024.
51. That the complainants had accepted the terms of the Affordable Housing Policy, 2013, the Builder Buyer Agreement and the Addendum and that the charges mentioned therein, including the charges payable at the time of offer of possession, were agreed to be borne by the complainants.



52. That the respondent has also relied upon Clause 9.1 of the Builder Buyer Agreement, according to which, upon receipt of the cost of the apartment and completion of the requisite pre-conveyance formalities, including execution of necessary indemnities and undertakings, the company was to execute the conveyance deed within the period stipulated therein. The respondent has further relied upon Clause 9.2 regarding the obligation of the allottee to execute the conveyance deed within the period intimated by the company.
53. That the demand towards stamp duty arose pursuant to Government Circular No.132-STR-1-2024/10652 dated 31.12.2024, whereby stamp duty was required to be paid on the prevailing circle rates instead of the allotment value. The respondent has contended that the increased amount represented statutory government charges and was not retained by the respondent. A copy of the said circular has been annexed as Annexure-18.
54. That on the basis of the aforesaid facts, the respondent has contended that it obtained the Occupancy Certificate, offered possession to the complainants and that the delay, if any, in taking physical possession thereafter was attributable to the complainants. The respondent has accordingly sought dismissal of the complaint and has contended that the complainants are liable for holding charges for the period after the date from which such charges became applicable.



55. That in addition to the aforesaid period affected by the second wave of COVID-19, the respondent was granted extensions in the project completion period vide notifications dated 26.05.2020 and 02.08.2021, with reference to Memo No. O-17024/230/2018-Housing-UD-/EFS-9056405 dated 13.05.2020 issued by the Ministry of Housing and Urban Affairs, Government of India, on account of the COVID-19 pandemic. A period of six months and a further period of three months were granted as extension in the project completion timeline.
56. That the respondent has further relied upon the "Zero Period" stated to have been notified by the State Government for the period from 01.04.2021 to 31.05.2021 and has contended that the said period was liable to be excluded while computing the period available for completion of the project.
57. That the respondent has further contended that, apart from the aforesaid COVID-19 related extensions, the project was also affected by various restrictions imposed upon construction activities in the NCR pursuant to the directions issued by the Commission for Air Quality Management and the orders passed by the Hon'ble Supreme Court in W.P.(C) No.1135/2020 titled *Aditya Dubey (Minor) and Anr. v. Union of India & Ors.* The periods during which construction activities remained prohibited under the aforesaid



directions/orders were beyond its control and constituted force majeure circumstances.

58. That with regard to the amount of ₹1,85,600/- demanded at the time of offer of possession, the respondent has stated that the complainants had already deposited the said amount on 03.05.2024. After making the said payment and completing the payment formalities, the complainants subsequently challenged the said demand before the Authority.
59. That the respondent has further relied upon Clauses 9.1 and 9.2 of the Builder Buyer Agreement regarding execution of the conveyance deed. Clause 9.1 provides that upon receipt of the cost of the apartment and completion of the requisite pre-conveyance formalities, including execution of necessary indemnities and undertakings, the company is required to execute the conveyance deed. The said clause further provides for payment of stamp duty and registration charges by the allottee and permits withholding of registration in case the requisite stamp duty and/or registration charges are not deposited within the stipulated period.
60. That Clause 9.2 of the Builder Buyer Agreement requires the allottee to execute the conveyance deed within the period intimated by the company in writing and provides that the consequences arising from failure to do so,



including any increase in stamp duty, registration fee or other charges, shall be borne by the allottee.

61. That with regard to the increased demand towards stamp duty, the respondent has stated that the same arose pursuant to Government Circular No.132-STR-1-2024/10652 dated 31.12.2024, whereby stamp duty was required to be calculated on the prevailing circle rates. As the prevailing circle rates were higher than the allotment value, the amount of stamp duty payable consequently increased. The respondent has relied upon the said circular as Annexure-18.
62. That the respondent has further relied upon Clauses 6.5 and 9.2 of the Builder Buyer Agreement and has contended that the complainants had agreed to bear all government charges, taxes and levies, including any increase in stamp duty or registration charges, whether prospective or retrospective. The amount towards stamp duty constituted a statutory government charge and no part thereof was retained by the respondent, which was merely facilitating its collection and deposit.
63. That the respondent has further stated that the conveyance deed/registration of the apartment has not been completed on account of non-payment of the requisite stamp duty by the complainants. The execution of the conveyance deed could not proceed until the requisite statutory charges were deposited.



64. That the respondent has further contended that the complainants had voluntarily accepted the terms and conditions of the Haryana Affordable Housing Policy, 2013, the Builder Buyer Agreement and the Addendum and were accordingly bound with them. The complainants could not subsequently resile from or challenge the contractual obligations voluntarily undertaken by them.
65. That the respondent has also contended that it has acted in accordance with the Haryana Affordable Housing Policy, 2013, as amended from time to time, and the applicable statutory directions, rule

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANTS AND RESPONDENT

66. Learned Counsel appearing on behalf of both the parties reiterated the submissions made in their respective complaint, reply and supporting documents. The issues arising therefrom have already been addressed and dealt with in the foregoing paragraphs of this order.

F. ISSUE FOR ADJUDICATION

67. Whether the complainants are entitled to the relief of possession of plot booked by her along with interest for delay in handing over the possession in terms of Section 18 of the RERA Act of 2016?



G. OBSERVATIONS AND DECISION OF AUTHORITY

The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties.

68. It is an admitted position on record that the complainants were allotted Unit no. 602, in Tower-B, admeasuring carpet area of 640.40 sq. ft. in the respondent's project namely "*Shree Homes by Sarvome*", *Sector-45, Faridabad, Haryana* vide allotment letter dated 04.07.2021. Thereafter, a Builder Buyer Agreement was executed between the parties on 23.07.2021 in accordance with the Affordable Housing Policy, 2013. Complainants had paid an amount of ₹28,43,534/- against the total sale consideration of ₹26,57,916/-. It is also a matter of fact that respondent had already obtained an occupation certificate on 23.04.2024.
69. As per clause 8.1 of the agreement, "*that the company shall, under normal conditions, subject to force majeure circumstance, complete the construction of the said project in which the said apartment is to be located within 4 (four) years from the date of approval of building plans or grant of environmental clearance whichever is later....*"
70. The Authority has considered the aforesaid stipulation contained in Clause 8.1 of the Agreement. As per the said clause, the respondent was required, under



normal circumstances and subject to force majeure circumstances, to complete the construction of the project within a period of four years from the date of approval of the building plans or the grant of Environmental Clearance, *whichever is later*. Thus, for determining the contractual period for completion of the project, both the aforesaid dates are required to be taken into consideration and the four-year period is to commence from the later of the two dates. In this regard, the respondent has placed on record a copy of the Environmental Clearance granted for the project, showing that the same was obtained on 30.08.2019, which has been annexed by the respondent as Annexure-3 at page 31 of its reply. The Authority has further verified the records available on its website, particularly the registration particulars of the project bearing Registration No. 112 of 2019, from which the date of approval of the building plans is found to be 07.03.2019. Accordingly, the two relevant dates for the purpose of Clause 8.1 are 07.03.2019, being the date of approval of the building plans, and 30.08.2019, being the date of grant of Environmental Clearance. Since 30.08.2019 is the later of the two dates, the Authority is of the considered view that, in terms of the express stipulation contained in Clause 8.1 of the Agreement, the period of four years is required to be reckoned from 30.08.2019. Consequently, the contractual period of four years for completion of the project would expire on **30.08.2023**. Accordingly,



for the purpose of examining the issue of delay in completion/handing over of possession, the Authority considers **30.08.2023** as the contractual date of completion of the unit.

71. 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. 5-8 of reply citing various natural calamities, government orders, court orders contributing to delay in **completion of project**. The onus squarely lies with the respondent to explain how each of the mentioned orders of authorities (except Covid) lies within the definition of *force majeure*. Further onus also lies upon the respondent to explain how each order directly affected its construction activities.

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

- i.* 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;
- ii.* 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;

iii. Force majeure events must be unforeseeable by both parties;

iv. The requirement to put the other party on notice must be met with if the contract provides for notice requirements; and

v. 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 cited issues related to environmental restrictions, construction bans and judicial interventions but has failed to explain its effect on the construction of project. Respondent neither has explained how his construction work was covered under above stated situations nor has substantiated its *force majeure* claim with concrete evidence or documentation. Also, constructions bans etc are regularly imposed during periods of extreme pollution. Since these are events that are easily foreseen, the obvious presumption is that they are inbuilt into the contract i.e., the due date of possession is calculated with the aforementioned knowledge. Therefore, mere mention of various issues in arguments does not meet the rigours of the statute. Therefore the respondent cannot be allowed to take advantage of the delay on their part by claiming delay in statutory approvals/directions. *As a result, this plea stands rejected.*



Further with regard to *force majeure* on account of COVID-19, in the present case, due to the various decisions of the Government of India and the Government of Haryana Authority, *force majeure* may be accepted for a *maximum period* of Covid i.e., 9 months. Reference is made to Advisory issued by Authority in its 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 Builder-Buyer Agreement was executed on 23.07.2021, i.e. after expiry of the aforesaid COVID-19 period of 01.04.2021 to 30.06.2021. Therefore, the respondent cannot claim any further extension of the possession period merely on the ground of COVID-19, particularly when the period specifically recognized by the Authority had already expired before execution of the Builder-Buyer Agreement. Accordingly, no further extension on account of COVID-19 is found admissible to the respondent.*

72. Another issue which has to be adjudicated by the Authority is whether the offer of possession made by the respondent on 07.05.2024 is valid or not?



73. Authority observes that the Occupancy Certificate in respect of the unit in question was obtained by the respondent from the competent authority on 23.04.2024. Thereafter, on 07.05.2024, the respondent issued an offer of possession to the complainants. The said offer of possession has been relied upon by both parties. The complainants have themselves annexed the said offer with the complaint at Annexure- C-6 at page no. 63 of the complaint book and have also referred to the same in the rejoinder at page no. 3, while the respondent has annexed the same at Annexure- 16 at page no. 84-85 of its reply. The said offer of possession also intimated the complainants regarding the grant of the Occupancy Certificate by the competent authority. Therefore, it is evident that the complainants were duly informed of both the grant of the Occupancy Certificate and the offer of possession. The complainants have primarily challenged the validity of the said offer on the ground that an amount of ₹1,85,600/- was demanded towards certain charges which, according to the complainants, were illegally levied by the respondent. However, the Authority observes that the pleadings and documents placed on record do not disclose any breakup or specific description of the said amount. The amount appears to have been paid as a lump-sum amount, and from the material available on record, the Authority is unable to ascertain with certainty the precise nature or individual components of the charges



constituting ₹1,85,600/-. It is, however, an admitted position emerging from the pleadings that the complainants paid the said amount of ₹1,85,600/- to the Respondent on 03.05.2024. The complainants themselves have reflected the said payment at page 59 of the complaint book as payment towards possession charges. At the same time, mere payment of the said lump-sum amount cannot, by itself, establish the nature or legal admissibility of each component thereof, particularly when no detailed breakup of the amount has been placed on record by either party. The Authority further observes that, although the complainants have subsequently disputed the said charges, no contemporaneous written communication or email specifically identifying and protesting the particular components of the amount of ₹1,85,600/- has been placed on record. Even in the rejoinder, while the complainants have reiterated their objection to the said amount, the exact nature of the charges constituting the said amount remains unspecified. The Authority also deems it appropriate to refer to Clause 4.3 of the Builder-Buyer Agreement, which provides that *"The Allottee further agrees and undertakes to pay the remaining cost and all other charges as described in the Schedule of payment annexed as Annexure-C and in this Agreement and in the manner indicated in this Agreement"*. The said contractual provision may be relevant for determining the liability of the parties in respect of charges payable under the



agreement; however, in the absence of any breakup of the amount of ₹1,85,600/-, the Authority is presently unable to determine the exact nature of the charges forming part thereof. In view of the aforesaid facts, the Authority observes that the mere inclusion of the aforesaid lump-sum amount of ₹1,85,600/- in the possession-related demand, in the absence of any specific material establishing that the offer of possession itself was incapable of being acted upon, does not render the offer of possession dated 07.05.2024 invalid. The Occupancy Certificate had already been obtained on 23.04.2024 and the complainants were duly informed thereof through the offer of possession. Accordingly, *the Authority holds that the offer of possession dated 07.05.2024 cannot be held to be invalid merely on the ground of inclusion of the aforesaid amount of ₹1,85,600/-. However, the exact nature and admissibility of the said amount cannot be conclusively determined from the material presently available on record, there being no breakup of the said lump-sum demand. Therefore, a valid offer of possession has been made to the complainants on 07.05.2024.*

74. Accordingly, the Authority finally observes that the complainants have expressed its willingness and interest in obtaining possession of the unit in question and have already paid a substantial amount towards the consideration of the said unit. The respondent, on the other hand, obtained the Occupancy



Certificate from the competent authority on 23.04.2024 and thereafter issued an offer of possession to the complainants on 07.05.2024, In the facts and circumstances of the present case, the Authority is of the considered view that the respondent has fulfilled its primary obligation of completing the project and offering possession of the unit to the complainants. Therefore, keeping in view the intention of the complainants to obtain possession, the substantial payments already made by the complainants and the valid offer of possession made by the respondent. *Complainants are directed to accept the offer of possession issued by the respondent on 07.05.2025 and take physical possession of the booked unit from the respondent.*

75. In the present complaint, the complainants intend to continue with the project and are seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Section 18 (1) proviso reads as under:-

“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

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”.

Complainants however are interested in getting the possession of the booked unit. They do not wish to withdraw from the project. In such circumstances,



the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the plot the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. Hence, the Authority hereby concludes that the complainants is entitled for the delay interest from the deemed date, i.e., 30.08.2023 till the date on which a legally valid offer is made to them after obtaining occupation certificate, i.e., 07.05.2024. 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;

76. 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.,



28.09.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

77. 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".

Authority has got calculated the interest on total paid amount from due date of possession, i.e., 30.08.2023 till the date of legally valid offer of possession is made i.e. 07.05.2024 which works out to ₹1,98,462/-/-

Sr. No.	Principal Amount in ₹	Deemed date of possession or date of payment whichever is later	Interest Accrued till 07.05.2024 (valid offer of possession) in ₹
1.	26,57,926/-	30.08.2023 (Deemed date of possession)	1,98,187/-
2.	1,85,600/-	03.05.2024	275/-
TOTAL-	28,43,534/-		1,98,462/-

78. Complainants with regard to relief no (v), (vi), of this order has neither pressed upon nor argued during hearing. Therefore, Authority deems appropriate not to adjudicate upon these reliefs.

H. DIRECTIONS OF THE AUTHORITY

79. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA Act, 2016 to ensure the compliance of obligations cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016
- i. Complainants are directed to accept the offer of possession issued by the respondent on 07.05.2025 and take physical possession of the booked unit from the respondent.
 - ii. Respondent is directed to pay upfront delay interest as calculated in para 77 of the order to the complainants towards delay already caused in handing over the possession within 90 days from the date of uploading of the order.
 - iii. Respondent is directed to get conveyance deed of flat of the complainants executed within 90 days of actual handover of possession of floor.
 - iv. The rate of interest chargeable from the allottees by the promoter in case of default shall be charged at the prescribed rate, i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.



- v. The respondent shall not charge anything from the complainants which is not a part of agreement to sell.
80. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]