HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**286 of 2024**
Date of filing:	**21.03.2024**
First date of hearing:	**22.08.2024**
Date of decision:	**08.10.2026**

Pawan Kumar S/o Mohan Lal,

R/o, House no. 61, Gali no. 0, Ward no. 22, Kishan Poora,

Panipat, Haryana -132103

.....COMPLAINANT

Versus

M/s Aegis Value Homes Ltd

through its Authorised Signatory

Head office at SCO 243, First Floor,

Sector-12,

Karnal, Haryana-132001 .....RESPONDENT

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

Present: - None for the complainant

Adv. Neeraj Goel, Counsel for the respondent.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 21.03.2024 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 complainants, date of handing over of the possession, if any, have been detailed in the following table:

Sr.	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.	602,6th floor, A5
5.	Unit area	638.80 sq.ft including balcony area
6.	Date of Apartment Buyer Agreement	14.08.2017
7.	Due date of offer of possession	14.08.2021 (as per para Hii of this order)
8.	Possession clause in BBA	3.1
9.	Total sale consideration	19,89,320/-
10.	Amount paid by complainant	₹18,49,000/- (As per application dated 17.09.2025 at page no.4-32 of complaint book)

11.	Offer of possession	13.11.2023,08.11.2024
12.	Occupation Certificate	20.09.2024
13.	Cancellation dated	11.04.2025

B. FACTS AS PER THE COMPLAINT:

3. That the respondent floated a scheme for the development of residential apartment to be constructed and developed on the land situated in the revenue estates of Karnal in the state of Haryana under the name and style of "AEGIS VALUE HOMES LTD.".

4. That the residential floor was offered for a total cost of Rs. 19,89,320.

5. The complainant was approached by the respondents in relation of booking of RESIDENTIL APARTMENT spaces in project AEGIS VALUE HOMES LTD/SMART HOMES, sector 32 A, Karnal.

6. That in furtherance of the same, further payment were duly made in favor of the respondents as under:

07.06.2017	:	Applied application no 7436 along with Cheque No. 000056 for Rs. 21000/- drawn on BOB.
08.07.2017		DD/Cheque No. 562377 for Rs. 169000/-

Copy of the receipts of dated 07.06.2017 & dated 08.07.2017 thereof are being annexed herewith as **Annexure C-1 – Colly.**

7. That in this way, a total of Rs. 18, 49,000/- has been paid against total payment and Rs 1, 40,000 is outstanding dues as of today.

8. That the allotment letter was given to the applicant was on dated 20.06.2017. The copy of the same is being annexed as **Annexure C-4.**

9. That the Floor Buyer's Agreement between the parties inter se was duly entered into on 14.08.2017. The copy of the same is being annexed herewith as **Annexure C-3.**

10. That the demand notices were given to the complainant on several dates. The copy of the same is being annexed herewith as **Annexure C-2.**

11. That further on dated 13.11.2023, offer of possession of the following unit has been given to complainant. The copy of the same is being annexed herewith as **Annexure C-5.**

12. That the respondent builder assured the complainant that the possession of the said flat would be delivered to the complainant with in 4 year from the date of approval building plan or grant of environment clearance whichever is later. However till today they failed to deliver the possession of the said above unit.

13. That the respondent builder while acting in an utterly unlawful arbitrary manner played fraud upon the complainant by taking money

from her and raising only minimal and using bad quality of material for interior and as well for construction over the project site.

14. That various telephonic discussions with the representatives of the respondents were done in the head office of the respondents. Wherein false assurances were made and the complainant was asked to keep patience.

15. That it is pertinent to mention here that promoter after receipt of entire consideration from allottes, not handed over the possession to the allottes and complainant have been living on rent since 20.03.2017.

16. That being highly aggrieved and frustrated by the entire circumstances and faced by the miserable attitude of the respondents, the complainant is left with no other option but to approach this authority through this complaint.

17. That in view of the above, the respondents have **committed breach of the provisions incorporated under several Sections of** Real Estate (Regulation & Development) Act 2016 of Haryana for which the complainant is entitled for possession of the unit and along with interest for harassment caused to the complainant.

18. That the appropriate court fee is being affixed on the complaint as per Rules.

19. That the complainant declares that the subject matter of the claim falls within the jurisdiction of the authority, the project of respondent being situated in the revenue estates of Karnal in the state of Haryana. Thus, this Hon'ble Authority has the jurisdiction to entertain and adjudicate upon the present complaint.

C. RELIEF SOUGHT

20. Complainant has sought following reliefs :

1. To direct the respondent to deliver the possession in good and complete condition with all fittings and interior as mentioned in terms and condition of the agreement in above mentioned unit as soon as possible without any delay.
2. To direct the respondent developer to waive off the extra outstanding dues asked in the demand notices as already they is delay in giving possession and without any justification they are asking for the extra outstanding dues with heavy interest which is totally violation of their own terms of agreement.
3. To direct the respondent to produce the actual certified report from government surveyor on quality of the material used in developing the unit and the material used inside the flat like kitchen area, washroom etc. to set-up the interior of the said unit.

4. To direct the respondents to pay a sum of Rs. 1,00,000/- on account of grievance and frustration caused to the complainant by the miserable attitude of the respondents and deficiency in service and for causing mental agony cause to complainant along with interest from the date of filing the present complaints till its realization.

5. The complaint may be allowed with costs and litigation expenses to the tune of Rs. 50,000/-;

6. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY ON BEHALF OF RESPONDENT FILED IN REGISTRY ON 17.09.2025

21. That, M/s Aegis Value Homes Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 55, 2nd Floor, Lane-2, Westend Marg, Saidullajab, Near Saket Metro Station, South Delhi, New Delhi-110030 and corporate office at Smart Homes, Sector-32A, Karnal-132001, Haryana, through its authorized signatory, respectfully submits this comprehensive reply to the complaint filed by Mr. Pawan Kumar S/o Mohan Lal.

22. That the present complaint is fundamentally misconceived, legally untenable, and based on willful suppression of material facts, persistent contractual defaults, and complete failure to discharge

statutory duties under the RERA Act, 2016. The complaint appears to be a calculated and mala fide attempt to avoid legitimate cancellation proceedings initiated due to the Complainant's continuous and willful breach of payment obligations under the Builder Buyer Agreement dated 14.08.2017.

23. 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 herein as **Annexure R-1/1.**

24. 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.**

25. 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.

26. That the Complainant Mr. Pawan Kumar S/o Mohan Lal, resident of H No 61, Gali No 0, W No 22, Kishan Poora, Panipat-132103, Haryana, made application vide Application No. 7436 dated 07.06.2017 for allotment of a residential apartment in the project "Smart Homes Karnal" located at Sector 32A, Karnal, Haryana under the affordable housing scheme promoted by the Government of Haryana.

27. That pursuant to the transparent draw of lots conducted on 07.07.2017 in the presence of officials of concerned Divisional Commissioner, Senior Town Planner, District Town Planner and Developer at Karnal, the Complainant was duly allotted Unit No. A5-602, Tower A5, Sixth Floor having carpet area of 538.70 sq.ft. and balcony area of 100.10 sq.ft. in the said project with total carpet area including balcony of 638.80 sq.ft.

28. That the Builder Buyer Agreement was duly executed on 14.08.2017 with total sale consideration of Rs. 19,89,320/- (Rupees Nineteen Lakh Eighty-Nine Thousand Three Hundred Twenty only), with full knowledge, understanding, and acceptance of all terms and conditions

by the Complainant after due deliberation and legal advice. The agreement was executed on non-judicial stamp paper of Rs. 100/- and was duly notarized. True copy of the Builder Buyer Agreement dated 14.08.2017 is annexed herein as **Annexure R-1/5.**

29. That as per the Builder Buyer Agreement, Clause 10 specifically provides for possession as follows:

"The Promoter shall hand over the possession of the said apartment to the Allottee after obtaining the occupancy certificate from the competent authority and on clearance of all dues by the Allottee including the cost of the apartment and all other charges, taxes, levies etc."

30. That as per the mutually agreed payment schedule under Annexure-D of the Builder Buyer Agreement, the Complainant was obligated to make payments as follows:

Stage of Payment	**Percentage/Amount**	**Due Amount**	**Due Date**
At time of application	5% of Total Price	Rs. 99,466/-	07.06.2017
At time of Draw	Rs. 2,00,000/-	Rs. 2,00,000/-	07.07.2017
Within 1 month from Draw	20% - Rs. 2,00,000/-	Rs. 1,97,864/-	07.08.2017
Within 6 months from Draw	12.5% of Total Price	Rs. 2,48,665/-	07.01.2018
Within 12 months from Draw	12.5% of Total Price	Rs. 2,48,665/-	07.07.2018
Within 18 months from Draw	12.5% of Total Price	Rs. 2,48,665/-	07.01.2019

Within 24 months from Draw	12.5% of Total Price	Rs. 2,48,665/-	07.07.2019
Within 30 months from Draw	12.5% of Total Price	Rs. 2,48,665/-	07.01.2021
Within 36 months from Draw	12.5% of Total Price	Rs. 2,48,665/-	07.07.2021

31. That the Complainant made regular payments initially up to July 2021 for the 30 months installment but systematically and willfully started defaulting from November 2021 onwards. The detailed payment analysis as per the official records and interest calculation sheet prepared as on 15.04.2025 reveals the following critical facts:

a. Total Amount Received from Complainant: Rs. 18,49,511/-

b. Outstanding Principal Amount (30 months installment balance): Rs. 519/-

c. Outstanding Principal Amount (36 months installment - completely unpaid): Rs. 2,48,665/-

d. Total Outstanding Principal: Rs. 2,49,184/-

e. Interest Accrued as per contractual rate of 15% p.a.: Rs. 4,83,161/-

f. Grand Total Outstanding: Rs. 7,32,345/-

g. Additional Statutory and Project Charges:

i. GST @ 7% on revised sale price: Rs. 1,33,904/-

ii. External electrical connectivity charges: Rs. 22,637/-

iii. Advance meter consumption (IFMS): Rs. 27,814/-

iv. Security deposit for interiors (refundable): Rs. 20,000/-

v. Meter installation charges: Rs. 6,490/-

vi. Labour cess: Rs. 16,823/-

32. That the last payment received from the Complainant was on 07.11.2021 for Rs. 79,630/-, and since then, despite multiple reminders and final notices spanning over 3.5 years, the Complainant has completely ignored all communications and has made absolutely no effort to clear his mounting outstanding dues or even respond to any reminder letters. True copies of the demand notices are annexed herein as **Annexure R-1/6.**

33. That the Respondent No. 1 has demonstrated extraordinary patience, accommodation and has sent numerous payment reminder letters and demand notices to the Complainant between 2023 to 2025, including but not limited to the following chronological sequence:

2023:

- 11.03.2023 (Payment Demand Notice - Outstanding Rs. 4,78,428/-)
- 13.05.2023 (Payment Demand Notice - Outstanding Rs. 4,81,984/-)
- 02.08.2023 (Payment Demand Notice - Outstanding Rs. 4,91,925/-)
- 13.11.2023 (Offer of Possession with outstanding Rs. 6,71,032/-)

2024:

- 09.05.2024 (Payment Reminder Letter - Outstanding Rs. 6,94,243/-)
- 11.05.2024 (Addendum to Offer of Possession)
- 16.12.2024 (Payment Reminder Letter - Outstanding Rs. 9,02,259/-)

2025:

- 28.01.2025 (Payment Reminder Letter - Outstanding Rs. 9,01,390/-)
- 15.02.2025 (Payment Reminder Letter - Outstanding Rs. 9,02,949/-)
- 06.03.2025 (Payment Reminder Letter - Outstanding Rs. 9,04,594/-)

34. That the complaint is founded on false and fabricated allegations of delay in possession, when in fact Occupation Certificate dated 20.09.2024 has been duly granted by the Director, Town and Country Planning, Haryana for Towers A1, A2, A3, A4, A5, A6, A7 & B1 covering 877 dwelling units including the complainant's Unit A5-602 True copy of the said Occupation Certificate dated 20.09.2024 is annexed herein as **Annexure R-1/7.**

35. That the fundamental premise of the complaint that possession has not been offered to the Complainant is completely false, baseless and constitutes deliberate suppression of material facts. The Respondent No. 1 has already offered possession to the Complainant on two separate occasions with clear intimation of outstanding dues:

- **13.11.2023** - First Offer of Possession with outstanding amount of Rs. 6,71,032/-
- **08.11.2024** - Second Offer of Possession with outstanding amount of Rs. 8,94,376/-

True copies of the said offer of possessions dated 13.11.2023 and 08.10.2024 are annexed herein as **Annexure R-1/8.**

36. That the said Offer of Possession specifically mentioned:

"It gives us immense pleasure to present you this OFFER OF POSSESSION for the said apartment at your Project Smart Homes Karnal. We are pleased to inform you that the apartment is ready for possession and therefore we hereby offer you the possession of your allotted Unit No. 602, Floor Sixth, Tower A5 in Smart Homes, Sector 32A, Karnal, under the terms and conditions of the Agreement for Sale."

37. That subsequent to the valid offer of possession, continuous payment reminders were sent, and the final cancellation notice dated 11.04.2025 was issued giving the Complainant a last and final opportunity to clear outstanding dues of Rs. 9,07,712/- on or before 26.04.2025, failing which the booking/allotment would stand cancelled as per the terms and conditions set out in the Builder Buyer Agreement. True copy of the final cancellation notice is annexed herein as **Annexure R-1/9.**

38. That the Complainant has deliberately and with mala fide intention suppressed these material facts to create a false and misleading

narrative that possession has been delayed by the Respondent No. 1, when in stark reality the delay is solely attributable to the Complainant's persistent failure to clear her outstanding dues.

39. That as per Clause 10 of the Builder Buyer Agreement dated 10.01.2018 and the settled principles of law, possession can only be handed over after complete clearance of all outstanding dues including principal amount, interest, charges and other statutory dues, and the Complainant cannot claim delay compensation while herself being in willful default of her contractual payment obligations.

40. That the Hon'ble Supreme Court in the landmark judgment of Arunima Baruah v. Union of India [(2007) 6 SCC 120] has held:

"It is trite law that to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. Material fact would mean material for the purpose of determination of the lis. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands."

41. That the project faced legitimate and well-documented force majeure events which are specifically covered under Clause 14 of the Builder Buyer Agreement relating to Force Majeure conditions, including but not limited to:

S.n.	Start Date	Authority	Nature of ban/ Restriction	Duration

	and End date			
1.	11-11-2017 17-11-2017	National Green Tribunal	Construction ban-air pollution	7 days
2.	04-11-2019 09.12.2019	Supreme Court	Complete construction ban	36 days
3.	09-12-2019 14-02-2020	Supreme Court	Partial ban(day time allowed)	67 days
4.	24-03-2020 24-09-2020	Govt. of India	Covid-19	184 days
5.	01-04-	HRERA Panchkula	Second Wave	91 days

	2021- 30-06- 2021		Covid-19	
6.	14-11- 2021 21-11- 2021	Delhi Govt.	Construction ban- Pollution	8 days
7.	24-11- 2021 21-12- 2021	Supreme Court	Re-imposed construction ban	28days
8.	22-09- 2022 20.01.2 023	NCLT	NCLT	120 days
9.	26-10- 2022 02.01.2 023	CAQM	Smart Homes specific closure	68 days
10.	29-10-	CAQM	GRAP Stage III	17 days

	2022 14.11.2022		ban	
11.	04-12-2022 19.01.2023	CAQM	Construction ban-AQI	47 days
12.	16-11-2023 02.01.2024	CAQM	GRAP Stage III ban	48 days
13.	21.11.2023 20.09.2024	DTCP	Occupation certificate	305 days
13.	17-11-2024 27.12.2024	CAQM	GRAP Stage IV ban	41 days
Total				1067

42. That recognizing the genuine challenges faced by real estate projects during the pandemic, this Hon'ble Authority and various High Courts have granted extensions for project completion, and the same should be considered while evaluating the timeline for project completion. Clause 14 (Force Majeure) of the Agreement provides:

"Force Majeure means any event beyond the reasonable control of the Developer, including but not limited to Acts of God, Government orders, regulatory bans, epidemics, pandemics, and non-availability of materials, which delays performance."

43. That it is submitted that the rights and obligations of the parties are governed by the provisions of the Real Estate (Regulation and Development) Act, 2016, particularly Sections 18 and 19 thereof. For proper appreciation of the legal position, the relevant provisions are reproduced herein below:

SECTION 18 - RETURN OF AMOUNT AND COMPENSATION:

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

including compensation in the manner as provided under this Act:
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.
(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.
(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

SECTION 19 - RIGHTS AND DUTIES OF ALLOTTEES:

"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 this section, shall be liable to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the time of execution of conveyance deed, proportionate registration charges, stamp duty, and such other charges and taxes as may be prescribed:
Provided that where any promoter fails to comply with or contravenes any of the provisions of this Act or the rules or regulations made thereunder or the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.
(7) Every allottee shall be liable to pay interest for any delay in payment towards any amount or charges to be paid, as mentioned under the Act, agreement for sale, lease deed, hire purchase agreement or any other agreement, as the case may be, at such rate as may be prescribed under this Act:
Provided that 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.

(10) Every allottee shall take physical possession of the apartment, plot or building, as the case may be, within two months of the occupancy certificate being issued for the said apartment, plot or building, as the case may be."

44. That the grounds for dismissal of complaint are as follows:

A. COMPLAINANT'S PERSISTENT WILLFUL DEFAULT AND BREACH OF STATUTORY DUTIES

i. That the fundamental premise of the complaint is legally untenable and contrary to the express provisions of Section 19 of the RERA Act, 2016, as the Complainant seeks relief while being in continuous, persistent and willful breach of his own statutory duties and contractual obligations. The Complainant cannot seek specific performance (possession) or any other relief under Section 18 while being in material default of payment terms agreed under the Builder Buyer Agreement and prescribed under Section 19 of the RERA Act.

ii. That Section 19(6) of the RERA Act, 2016 specifically mandates that:

"Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under this section, shall be liable to make necessary payments in the manner and within the time as specified in the said agreement for sale..."

iii. That Section 19(7) further provides for the consequences of default by allottee:

"Every allottee shall be liable to pay interest for any delay in payment towards any amount or charges to be paid, as mentioned under the

Act, agreement for sale... at such rate as may be prescribed under this Act..."

iv. That Section 19(10) mandates the duty of allottee to take possession:

"Every allottee shall take physical possession of the apartment, plot or building, as the case may be, within two months of the occupancy certificate being issued for the said apartment, plot or building, as the case may be."

That the Complainant has completely and willfully failed to discharge his fundamental statutory duties as an allottee under Section 19 of the RERA Act, 2016, and therefore cannot claim any relief under the provisions of the Act while being in breach of his own obligations.

B. CONTRACTUAL PROVISIONS AND LEGAL CONSEQUENCES OF DEFAULT

i. That as per Clause 2.6 of the Builder Buyer Agreement dated 14.08.2017, which specifically provides for the consequences of default by the allottee:

"In the event of any delay in making timely payment of installments on the part of the Allottee, the Allottee shall be liable to pay an interest on the amount due which shall be calculated @ 15% per annum from the due date applicable for the delayed period... If the Allottee still defaults in making payment of the amount due along with interest within the period of said 15 (fifteen) days, the Developer may publish the name of the Allottee in a regional Hindi newspaper in Haryana as a defaulter requiring the payment of the amount due within 15 (fifteen) days from the date of the publication of such notice. Upon the failure of the Allottee to clear the entire due amount within this additional period of 15 (fifteen) days, the allotment of the Said Apartment shall

stand cancelled, at the sole discretion of the Developer, without the need for the Developer to do or undertake any more steps."

ii. That Clause 2.4 of the Agreement further provides for the consequences of withdrawal or cancellation:

"In the event of withdrawal of allotment by the Allottee or cancellation/termination of the same for any reason whatsoever, the Allottee agrees that: (a) The earnest money shall stand forfeited in the event of withdrawal of allotment by the Allottee and/or cancellation/termination of allotment... (c) Any interest and/or penalties paid by the Allottee(s) to the Developer, for any delay/default in payment of any installment/dues as required to be paid by him under the Agreement shall stand forfeited in favour of the Developer."

iii. That the Respondent No. 1 has strictly followed the due process laid down in the Agreement and has given the Complainant multiple opportunities spanning over 3.5 years to regularize his account, sent over 11 demand notices, offered possession on 13.11.2023, and issued three final cancellation notices, but the Complainant has willfully chosen to remain in continuous default.

C. VALID OFFER OF POSSESSION AND LEGAL CONSEQUENCES UNDER RERA

i. That possession was validly offered on 13.11.2023 and 08.11.2024, with clear intimation of outstanding dues. Thereafter, as held in *Pioneer Urban Land & Infra. Ltd. v. Union of India (2019) 8 SCC 416*, para 28, promoter's liability ceases on non-acceptance of

possession. Further, in *M/s Mehul Engg. Ltd. v. Mahindra Life Spaces Developers Ltd. (2024) 10 SCC 72*, para 15, the Supreme Court reaffirmed that once possession is offered, the allottee's failure to take possession absolves the promoter of any delay compensation liability.

ii. That once a valid and proper Offer of Possession is made by the promoter in accordance with the agreement and applicable law, the liability for any subsequent delay shifts entirely to the allottee if they fail to take possession within the stipulated time after clearing all dues as mandated under Section 19(10) of the RERA Act.

iii. That the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. & Anr. vs. Union of India & Ors. (2019) 8 SCC 416* has categorically held at Para 28:

"When possession is offered by the promoter to the allottee and the allottee fails or refuses to take possession, then the promoter stands absolved from the liability to pay interest or compensation for any delay thereafter."

iv. That the Hon'ble Supreme Court in the said landmark judgment further observed:

"The RERA protects the interests of the individual investor in real estate projects by ensuring that homebuyers are not left in the lurch, and get either compensation or delivery of their homes. Thus, if there is a failure to reach a critical mass for initiation of CIRP, it may indicate that in such cases another remedy may be more suitable."

That in the present case, since valid OFP has been given on 13.11.2023 with specific mention of outstanding dues of Rs. 6,71,032/-, any subsequent delay in taking possession is entirely attributable to the Complainant's own willful payment defaults and not to any action or inaction of the Respondent No. 1.

D. PRINCIPLES OF CONTRACT LAW AND DOCTRINE OF MUTUALITY

i. That as per the fundamental and well-established principles of contract law enshrined in the Indian Contract Act, 1872, particularly Section 73 thereof, the doctrine of mutuality requires that both parties must perform their respective obligations under the contract. The Complainant cannot seek enforcement of the contract in his favor while being in material and persistent breach of his own obligations.

ii. That Section 73 of the Indian Contract Act, 1872 provides: *"Compensation for loss or damage caused by breach of contract. — When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach."*

iii. That the Hon'ble Supreme Court in *Kailash Nath Associates vs. Delhi Development Authority (2015) 4 SCC 136* has categorically held at Para 43.2:

"It is a fundamental principle of the law of contract that a party cannot claim performance from the other party when he himself has not performed his part of the contract. Damage or loss caused is a sine qua non for the applicability of Section 74. Only where damage or loss is caused by such breach, compensation is payable for breach of contract under Section 74 like Section 73 and 75 of Contract Act, 1872."

iv. That the Hon'ble Supreme Court in the said judgment further held at Para 44:

"Reasonable compensation will be fixed on the basis of evidence led by parties and taking into consideration all relevant factors and taking care to see that compensation awarded is not disproportionate to the loss suffered."

That applying the aforesaid legal principles to the present case, the Complainant being in willful and continuous default of his payment obligations for over 3.5 years cannot claim any relief or compensation under any provision of law.

E. CLEAN HANDS DOCTRINE AND JUDICIAL PRECEDENTS

i. That the Complainant has approached this Hon'ble Authority with completely unclean hands having willfully defaulted on his payment obligations for over 3.5 years despite multiple opportunities,

reminders, and final notices. The equitable doctrine of clean hands completely bars the Complainant from seeking any relief whatsoever.

ii. Moreover, the complainant's invocation of RERA's protection while willfully defaulting on statutory duties epitomizes the doctrine of 'unclean hands', warranting dismissal with exemplary costs as per Rule 32 of the Haryana RERA Regulations.

iii. That the Hon'ble Supreme Court in *Dalip Singh v. State of U.P. (2010) 2 SCC 114* has unequivocally held at Para 32:

"Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with 'unclean hands' and are not entitled to be heard on the merits of their case. The post-independence period has seen drastic changes as litigants do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings."

iv. That the Hon'ble Supreme Court further observed at Para 33: *"We are constrained to note that in the recent past, there has been an alarming increase in the number of litigants who resort to dishonest practices with the intention of polluting the stream of justice. The waters of justice should not be allowed to be polluted by unscrupulous litigants by making false averments."*

v. That the Hon'ble Supreme Court in *Kishore Samrite v. State of U.P. & Others (2013) 2 SCC 398* has further held: *"The party not approaching the court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief specifically under Art. 136 of the Constitution."*

vi. That applying the aforesaid authoritative pronouncements to the present case, the Complainant having approached this Authority while being in willful default and having suppressed material facts regarding his payment defaults, is completely disentitled from claiming any relief.

F. FORCE MAJEURE AND PROJECT COMPLETION TIMELINE

i. That the project completion was affected by various legitimate force majeure events which are specifically provided for under Clause 14 of the Builder Buyer Agreement dated 14.08.2017. The said clause provides:

"Force Majeure means any event or combination of events or circumstances beyond the reasonable control of the Developer which cannot (a) by the exercise of reasonable diligence or (b) despite the adoption of reasonable precaution and/or alternative measures, be prevented, or caused to be prevented, and which adversely affects the Developer's ability to perform including but not limited to the following: a. Act of God i.e. fire, draught, flood, earthquake, epidemics, natural disasters; b. Explosions or accidents, air crashes, act of terrorism; c. Strikes or lock outs, industrial disputes; d. Non availability or increase in cost of cement, steel or other construction/ raw material...; e. War, invasion, act of foreign enemies, hostilities of war riots, bandh, act of terrorism or civil commotion; f. Any legislation, order or rule or regulation made or issued by the Government or any other authority or if any Competent Authority(ies) refuses, delays, withholds denies the grant of necessary approvals/ certificates for the Project/ Building..."

ii. That the project faced unprecedented and well-documented force majeure events including:

a) COVID-19 Pandemic (March 2020 - June 2020): Nationwide lockdown imposed by Government of India under Disaster Management Act, 2005 - 68 days

b) Construction Bans by Supreme Court and NGT: Multiple periods of construction bans due to air pollution concerns - Over 100 days

c) GRAP Implementation by CAQM: Graded Response Action Plan Stage III/IV implementation banning construction activities - Multiple periods

iii. That recognizing the impact of COVID-19 on real estate projects, this Hon'ble Authority and various State RERA Authorities have granted extensions, and the Ministry of Housing and Urban Affairs has issued advisory dated 13.05.2020 treating COVID-19 as force majeure event under RERA.

G. NO DELAY BY PROMOTER - POSSESSION DULY OFFERED

i. That there has been no unreasonable or unjustified delay on the part of the Respondent No. 1 in offering possession. The project completion timeline was reasonable considering:

a) Original possession due date: 24.10.2021 (4 years from environment clearance dated 24.10.2017)

b) Force majeure events: Over 555 days of documented delays

c) Adjusted timeline: Approximately July 2022 considering force majeure

d) Actual offer of possession: 13.11.2023

ii. That the Respondent No. 1 offered possession to the Complainant on 13.11.2023, which is reasonable considering the unprecedented challenges faced during the project execution period including the COVID-19 pandemic and multiple construction bans imposed by various authorities.

H. PROMOTER'S STATUTORY RIGHTS UNDER AFFORDABLE HOUSING POLICY

i. That under the Affordable Housing Policy 2013 of Government of Haryana and the express terms of the Builder Buyer Agreement, the promoter has absolute and unqualified right to cancel allotment in case of persistent payment defaults by the allottee beyond the stipulated grace period.

ii. That Clause 2.6 of the Agreement specifically empowers the Developer to cancel the allotment upon failure of the allottee to clear dues within 15 days of final notice, and the Respondent No. 1 has

followed complete due process by sending multiple reminders and final notices before initiating the cancellation process.

iii. That the present complaint is clearly a calculated and mala fide attempt to frustrate the legitimate and lawful cancellation process and should not be entertained by this Hon'ble Authority as it would encourage defaulting allottees to avoid their payment obligations through frivolous complaints.

I. BURDEN OF PROOF AND EVIDENTIAL VALUE

i. That the burden of proof lies on the Complainant to establish his claims with credible and admissible evidence, which he has completely failed to discharge. On the contrary, the Respondent No. 1 has placed on record complete documentary evidence including:

a) Builder Buyer Agreement with payment schedule

b) Complete payment receipts and account ledger

c) Interest calculation sheet as per contractual terms

d) Chronological demand notices and reminders

e) Valid Offer of Possession letters

f) Final cancellation notices

ii. That the Complainant has not been able to produce any credible evidence to support any claim of delay, deficiency in service, or breach on the part of the Respondent No. 1, and has instead

approached this Authority while being in willful breach of his own contractual and statutory obligations.

45. **COUNTER-CLAIMS AND DAMAGES**

That the Respondent No. 1 reserves its right to raise counter-claims against the Complainant for:

a) Outstanding principal: Rs. 2,49,184/-

b) Interest @ 15% p.a.: Rs. 4,83,161/-

c) Additional statutory/project charges: Rs. 2,27,668/-

d) Damages for filing frivolous complaint and causing harassment

e) Exemplary costs for abuse of process.

Particulars	**Amount (Rs.)**
Total sale consideration	19,89,320/-
Amount received from allottee	18,49,511/-
Cancellation charges @ 5% of BSP	99,466/-
Fixed administrative charges	25,000/-
Interest on delayed payments	4,83,161/-
Net refundable	**12,41,884/-**

46. That the refund calculation comes out to be following: *(Clause 2.4 of the Agreement; Affordable Housing Policy 2013)*

47. That the Complainant having willfully defaulted on his payment obligations is liable to pay interest at contractual rate of 15% per annum from the respective due dates till actual payment as provided under Clause 2.6 of the Builder Buyer Agreement and Section 19(7) of the RERA Act.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

48. During oral arguments ld. counsel for complainant as well as respondent reiterated their submissions as mentioned in their respective complaint and reply.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

50. 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 14.08.2017 for unit bearing no. 602, Tower A-5, admeasuring 638.80 sq. ft. The Complainant asserts a total payment of ₹18,49,000/- toward the agreed sale consideration of ₹19,89,320/-. Pursuant to the application filed on 17.09.2025, the Complainant submitted formal receipts issued by the Respondent (Pages 4–28), establishing payments totalling to ₹15,99,511/-. The Complainant further annexed online banking printouts (Pages 29, 30, and 32 of application dated 17.09.2025) reflecting the following transfers:

- ₹65,000/- dated 30.09.2019 via IMPS (Page 29);
- ₹35,000/- dated 03.10.2019 via NEFT (Page 30);
- ₹1,50,000/- dated 29.11.2018 under the account name *Shri. Krishna International* (Page 32).

The Authority finds that these three transaction printouts differ from the standard receipts provided at Pages 4–28. They fail to establish either that the funds originated from the Complainant or that they were remitted to and received by the respondent. In its reply (Page 5, Para 11), the respondent explicitly admits to receiving a total amount of ₹18,49,511/-. The respondent's admission is substantiated by its own offer of possession letters dated 13.11.2023 and 08.11.2024

(Annexure R1/8), both of which formally acknowledge receipt of ₹18,49,511/-.

Notwithstanding the respondent's admission of receiving ₹18,49,511/, the Complainant limits the claim to ₹18,49,000/-. As this figure stands unrefuted by the respondent, the Authority hereby formally records and accepts the total paid quantum as **₹18,49,000/-**. Further, subtracting the verified receipted amount (₹15,99,511/-) from the total accepted payment (₹18,49,000/-) leaves an unaccounted balance of **₹2,49,489/-**. The Complainant failed to produce standard payment receipts or valid bank transfer proof for this differential sum of ₹2,49,489/-, and the offer of possession letter dated 13.11.2023 omits specific transaction dates for this amount. In the absence of primary documentary proof from the Complainant, the Authority directs that the differential balance of ₹2,49,489/- shall be deemed credited to the respondent's account as of **13.11.2023**, the date of the respondent's first formal written acknowledgment.

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 as per plan opted by the complainant, he was bound to pay as per Timely payment plan. Learned counsel for complainant on the other hand argued that till 2021, almost 85 % of the payment stands paid by the complainant. It is the respondent who did not developed the project on time and still raised numerous illegal demands and without making any development on the project site. Taking note that no development

over construction has been made by respondent, complainant lost faith in respondent and had stopped making further payments. On perusal of buyer agreement, it is clear that complainant had opted for a Timely Payment Plan (TPP). Further, as per pleading mentioned at page no. 6 of complaint book and receipts annexed on page no. 4-29 of application dated 17.09.2025, it is clear that complainant had made payments from year 2017- 2021 and last payment of ₹86,000/- was paid on 07.11.2021 to respondent, which was after expiry of deemed date of possession, i.e., **14.08.2021**. This shows the intention of the complainant that he was ready to pay even after delay caused on part of respondent.

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 3.1 of builder buyer agreement also got expired.

Further, it is important to note that the clauses pertaining to builder buyer agreement stated above and Section 19 of the RERD

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

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

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

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

In view of the above facts the respondent's claim that the 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. As per clause 2, 3.1 of flat buyer agreement dated, "*.....the developer will endeavour to offer possession of the said apartment to the allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later.*"

This clause invites the Authority to consider a question of considerable interpretative significance. Before examining its substantive effect upon the rights of the parties, it is apposite to recall

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

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

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

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

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

(ii) the mischief that the statute intended to remedy

(iii) the legislative solution, and

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

Before RERA, Indian real-estate contracts routinely contained ambiguous possession clauses couched in phrases like "best endeavour," "subject to approvals," or "tentatively by," which enabled promoters to defer delivery for years without consequence. The mischief the legislature sought to address was precisely this asymmetry: homebuyers were advancing substantial sums yet had little control or remedy against such delays. RERA's architecture—Sections 11 and 18 and the mandatory model agreement—places **time-bound delivery** at the heart of the regulatory framework. Section 11(4)(a) requires the promoter to "responsibly discharge" all

obligations as per the terms of the agreement for sale; and Section 18 obligates the promoter to provide interest etc to the allottee for delay. When the possession clause uses the words **"will endeavour"**, the *literal reading suggests a mere obligation of effort rather than a mandatory timeline*. However, applying the mischief rule, such an interpretation would defeat the very purpose of RERA, which is to eliminate the opacity and uncertainty that characterised the pre-RERA regime. If the clause were construed to mean that the promoter has no strict obligation to deliver within four years but only to *try*, the mischief i.e indefinite postponement would re-enter through the back door. Courts have therefore consistently held that promoters cannot dilute statutory rights through contractual drafting. The Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan* (2019) 5 SCC 725 emphasised that one-sided clauses crafted by builders cannot bind the allottee when they defeat consumer protection; similar reasoning appears in *IREO Grace Realtech Pvt. Ltd. v. Abhishek Khanna* (2021) 3 SCC 241, where the Hon'ble Court held that contractual terms must be read in light of the legislative objective of protecting homebuyers.

Under this reasoning, the phrase "whichever is later" provides a determinable anchor point, and the addition of "will endeavour"

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

Applying the statutory position above and the ratios of the Hon'ble Apex Court the ***deemed date of possession is 14.08.2021.***

Further, with regard to objections raised by the respondent **regarding force majeure conditions**. Respondent for explaining the delay in construction, had claimed *force majeure* at page no.10-13 of reply citing various natural calamities, government orders, court orders contributing to delay of **1067 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 1067 days. However, no detailed explanation with regard to the same has been filed by respondent.

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

clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance."

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

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

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

- *Burden of proof rests with the party relying on the defense of force majeure for its inability to perform the obligation.*

In the present case, respondent have 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. Therefore, the Authority holds that the only *force majeure* condition accepted in this case is Covid, i.e. 9 months as claimed by the respondent at page no. 10-13 of reply. Accordingly, new, deemed date will be taken as ***14.05.2022 (14.08.2021 + 9 months days).***

51. It is an undisputed fact on record that the Occupation Certificate in respect of the project was obtained on 20.09.2024. The complainant has admitted that the respondent had issued two offers of possession dated 13.11.2023 and 08.11.2024. However, he contended that both the offers were not valid since both were accompanied with illegal demands and without occupation certificate. **Now, before deciding the demands on merits it is important to decide whether the offers of possession are valid or not?**

52. The first offer of possession issued by respondent was on 13.11.2023, which admittedly preceded the grant of the Occupation Certificate by the competent authority. It is well settled that an offer of possession made prior to obtaining a valid Occupation Certificate cannot be regarded as a lawful or valid offer in the eyes of law. **Accordingly, the Offer of Possession dated 13.11.2023, having been issued in the absence of the requisite Occupation Certificate, is held to be premature and bad in law.**

53. On the contrary, the second offer of possession dated 08.11.2024 was issued after receipt of occupation certificate dated on 20.09.2024. Same is annexed at page no. 118 of the reply. This seems to be a valid offer of possession as far as the OC is concerned. However, further facts need to be seen to discover the true nature of this offer.

54. Further, record reveals that respondent has raised various demands along with valid offer of possession dated 08.11.2024 under different heads such as illegal Demand of Rs. 22,637/- on account of External Electricity Connectivity to Project Charge (23.79 Sq. Feet); Advance meter consumption charge of Rs. 27,814/- ; Security Deposit Charge of Rs. 20,000/-; Meter Charge of Rs. 6490/-; Labour Cess charges of Rs. 16,823/-. Moreover, the builder has

illegally charged exorbitant amount of Rs. 4,69,479/-as delay interest.

Above stated demands are being adjudicated upon merits as below:

i. As per final statement of accounts annexed with offer of possession dated 08.11.2024, respondent had levied 5 charges upon complainant i.e., External Electricity Connectivity to Project Charges; Advance meter consumption charges; Security Deposit Interior; Meter Charge; Labour Cess, delayed payment interest. For all these services, respondent had cited amount of ₹ 93,764/- and amount of ₹ 4,69,479/- on account delayed payment interest upon the complainant. On perusal of builder buyer agreement, it is observed that no clause of said agreement imposes the above stated 5 charges upon complainant. With regard to delayed payment interest, since project of the respondent is itself delayed as already explained in para G.i Of this order. Respondent cannot charge delayed interest from the complainant.

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

55. The facts enumerated in the preceding paragraphs establish that even though the second offer of possession in question was made after obtaining an OC, it was conditional upon the payment of illegal demands of money. An "offer of possession" does not become legally valid merely because it encloses a valid Occupancy Certificate (OC), if the offer is coupled with demands that are not contractually/statutorily due. In **Utpal Trehan v. DLF Home Developers Ltd., Civil Appeal No. 4690 of 2022** (Supreme Court, judgment dated 11 July 2022), the builder relied on its "offer for possession" letter to argue that delay-compensation should stop from that date. The Supreme Court rejected that argument because the possession was offered only upon payment per a statement of account that contained illegal demands.

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

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

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

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

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

56. Regarding the Cancellation Letter Dated 11.04.2025: The Authority examined the cancellation letter dated 11.04.2025 issued by the respondent (annexed at page 127 of the reply), which claimed that an outstanding amount of ₹9,07,712/- (inclusive of interest) was due from the complainant. Upon review, the Authority finds following rationale to set aside and quash the said cancellation letter:

1. Dependency on a Quashed Offer of Possession: The respondent issued the cancellation letter on the grounds that the complainant failed to respond to the offer of possession dated 08.11.2024. However, as established in the preceding paragraphs of this order, that specific offer of possession has already been quashed by this

Authority due to the illegal demands embedded within it. Consequently, any subsequent cancellation based on a non-existent or invalid offer cannot hold ground.

2. Doctrine of lis pendens: it is matter of fact that the complainant instituted the present complaint before this Authority on **21.03.2024**, seeking adjudication regarding the subject unit. During the pendency of these proceedings, the respondent issued a cancellation letter dated **11.04.2025** in respect of the unit under dispute. Respondent's action of issuing a unilateral cancellation during the active pendency of adjudication directly violates the doctrine of *lis pendens*. Once the subject matter is brought before this Authority, the respondent is barred from taking coercive, unilateral actions or altering the status quo at their own whims and fancies. Accordingly, the cancellation letter dated **11.04.2025** issued by the Respondent is held to be non-est in the eyes of the law.

3. Violation of Principles of Natural Justice and Equity: A perusal of the letter dated 11.04.2025 reveals it operated effectively as a demand notice, directing the complainant to clear the outstanding sum of ₹9,07,712/- on or before 26.04.2025 under the threat of allotment cancellation. Despite the lapse of this deadline, the respondent has failed to refund the deposited amounts to the complainant. Now, the

respondent cannot simultaneously cancel an allotment and retain the allottee's hard-earned money. This conduct is entirely untenable under the law and directly violates the principles of natural justice.

In light of the aforementioned grounds, the Authority hereby **quashes and sets aside** the cancellation notice dated 11.04.2025 issued by the respondent.

57. In view of the above, Authority is of the considered view that complainant is well within his rights to claim delay interest from the respondent for the amount paid by them and thus deems fit to allow interest for delay in handing over of possession from the deemed date of possession i.e. 14.05.2022 upto the date on which fresh offer of possession will be given to the complainant in accordance with the directions issued in this order. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Such interest shall be calculated at the rate prescribed in Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

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

58. Consequently, as per website of the State Bank of India, i.e., https://sbi.co.in, the Highest Marginal Cost of Lending Rate (in short MCLR) as on date, i.e. 20.08.2026 is 8.80 %. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80 %.

59. Authority has calculated the interest on total paid amount from the deemed date of possession or date of payment whichever is later till

the date of this order, i.e,08.10.2026 at the rate of 10.80% and said amounts works out as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession (14.05.2022) or date of payment whichever is later	Interest Accrued till 03.09.2026
1.	₹15,99,511	14.05.2022	**₹7,61,507/-**
2.	₹ 2,49,489	13.11.2023	**₹78,325/-**
Total	₹18,49,000		**₹8,39,832/-**
Monthly interest	**₹16,960/-**		

60. The complainant is seeking compensation of ₹1,50,000/- for mental harassment, torture, agony, pain suffering , humiliations and litigation cost. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. &Ors."* (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. Therefore, the complainant is free to approach the

Adjudicating Officer for seeking the relief of litigation expenses/ compensation.

61. Further, with regard to the relief sought by the complainant mentioned at para C-20 (3) of this order, the complainant has not clarified how the above stated relief could be granted under Section 31 of the RERD Act, 2016. Moreover, complainant has not pressed upon said relief during the hearing. Therefore, this relief is not being adjudicated upon.

I. DIRECTIONS OF THE AUTHORITY

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

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

(ii) Respondent is directed to pay upfront delay interest as stated in para 59 of this order to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount paid the monthly interest shall be

payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.

(iii) Complainant will remain liable to pay balance consideration amount to the respondents at the time of possession offered to them.

(iv) However, respondent will not demand any amount that is beyond the scope of the BBA.

(v) 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.

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]

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET S SACHDEV
[CHAIRMAN]