HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**951 of 2025**
Date of filing:	**30.06.2025**
First date of hearing:	**21.08.2025**
Date of decision:	**08.10.2026**

Rajesh Bhardwaj S/o Sh. Mannu Ram,

R/o, House no. 231, Ward no.10,

opposite Govt. Senior Secondary School (Neahr Kothi),

Tehsil Barwala, District Hisar, Haryana

.....COMPLAINANT

Versus

Aarcity Builders Pvt. Ltd.,

through its Managing Director/Director/Authorised Signatory

Aarcity Regency Park, Sector-11-A&17, Hisar .....RESPONDENT

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

Present: - Adv. Anurag Jain, Counsel for the complainant through VC

Adv. Nancy Kapoor, proxy counsel for Adv. Kamal Dhaiya counsel for the respondent

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 30.06.2025 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

Sno.	Particulars	Details
1.	Name of the project	Regency Park, Sector 11-A & 17, Hisar
2.	Name of the promoter	Aarcity Builders Pvt. Ltd.

3.	RERA registered/not registered	Registered
4.	Unit no.	101, Tower-A
5.	Unit area	1272 sq.ft. builtup area and 655.96 sq.ft terrace area
6.	Date of Apartment Buyer Agreement	16.07.2012
7.	Due date of offer of possession	16.10.2015
8.	Possession clause in BBA	18
9.	Total sale consideration	₹38,43,028 /-
10.	Amount paid by complainant	₹23,79,700/-
11.	Cancellation dated	18.06.2025

B. FACTS AS PER THE COMPLAINT:

3. That one Sh. Rajesh Mittal son of Sh. Hukum Chand Mittal had booked Apartment No. 0101, Tower-A, Regency Park, Sector 11-A & 17, Hisar, for his personal use in the project in question. The complainant being a first re-allottee, is aggrieved against the respondent for gross violation of the provisions of the Act, rules, Regulations and contractual obligation.

4. That as per flat buyer agreement, one company known as Hisar Real Estate Private Limited, which is a company incorporated under the provisions of the Companies Act, 2013 and was owner of 12.08 acres of land, situated in Sector 11-A & 17, District Hisar, was desirous of

developing the said land by constructing a Group Housing Complex after obtaining the requisite license from the office of Director General, Town and Country Planning, Haryana, and after getting the plan approved from the above said authority, was issued the requisite license.

5. That further as per Flat Buyer Agreement, said Hisar Real Estate Private Limited had entered into a collaboration agreement dated 23.05.2011 with respondent-developer company, for the purpose of developing the said land into Group Housing Complex. Furthermore, in terms of the said collaboration agreement executed between the respondent and Hisar Real Estate Private Limited, respondent has started the construction of the housing complex over the said land and the said housing complex has been named as Regency Park, Hisar (for brevity project in question).

6. That the applications were invited from the public for allotment of apartments in the project in question. The said invitation was made through Print as well as Electronic Media. Apart from the other conditions, interalia it was advertised, that the possession of the apartment will be delivered to the intending buyer within a period of three years from the date of execution of Flat Buyer Agreement.

7. That consequently, said Sh. Rajesh Mittal submitted an application for allotment of apartment in the said project. Along with an application, he has paid an amount of Rs. 3 lacs. Consequently, an offer for allotment of apartment No. 0101, Tower A measuring 1272 square feet in the said project was made. The copy of Flat buyer agreement-cum-Allotment letter is appended as Annexure C-1. It is apt to mention here that before the execution of Flat buyer agreement cum Allotment letter, erstwhile owner Sh. Rajesh Mittal had paid a sum of Rs. 9,46,390/- towards the sale consideration of the flat in question.

8. That the said flat was transferred in favour of the complainant, as he had paid the sale consideration to the erstwhile owner Sh. Rajesh Mittal. Name of the complainant was endorsed by the respondent in the note of endorsements as recorded in Flat buyer agreement cum Allotment letter (Annexure C-1). It is imperative to mention that the respondent had sought declaration duly signed by the complainant to the effect that he shall be bound by the .terms and conditions of the annexure C-1. The copy of said declaration dated 16.10.2012 is appended as Annexure C-2.

9. That in August 2012, demand of Rs. 3,12,356/- was raised and the same was paid.

10. That from time to time, various demands were raised and the complainant has been satisfying all those demands by paying the demanded amount. Till 22 October 2013, as per the demand letter furnished by the respondent, he has paid a sum of Rs. 19,17,974/- towards sale consideration and Rs. 4,45,200/- has been paid towards EDC and IDC.

11. That on 28.01.2017, communication was received from the office of respondent mentioning therein that the construction is in a halted stage and they shall be very soon restarting the same. Copy of the letter dated 28.01.2017 is appended as Annexure C-3.

12. That as per the Flat buyer agreement-cum-Allotment letter (annexure C-1) the possession of flat was to be handed over by July 2015, and construction was not inching forward, therefore the complainant, along with other allottees were facing grave hardship. Resultantly an association of Apartment owners was formed called as Regency Park Apartment Owners' Association and a complaint was filed by said Association, before this Authority in the year 2018 for seeking desired reliefs at that stage. It is pertinent to mention here that the complainant is also a member of this Association. By the intervention of the Hon'ble Authority, and constant persuasion, and with the element of direction to the respondent to restart the construction, it re-started,

leading to completion of first phase of construction in the project in question, which was for towers B, D and G. The occupation certificate, as per the information of the complainant was issued somewhere in June 2023. Thereafter, the process of issuing of offer of possession to the allottees of Tower B, D and G started and is still in progress.

13. That the tower A, in which the complainant was allotted Apartment, was in a second phase and the construction on the said tower started in December, 2024, which was stopped way back in October 2013. Roof Slab upto fifth floor was constructed at that time.

14. That on 01.03.2025, vide e-mail a demand letter was received from the respondent for making the payment on commencement of 9th Floor of roof slab. The complainant immediately went to the respondent and requested them to make a calculation after calculating of the interest which was accrued on the amount of Rs. 23,63,174/- which was paid by him. A copy of demand letter dated 01.03.2025 is appended as Annexure C-4. However, the respondent didn't pay any heed to his request.

15. That the complainant raised an issue with RWA. The RWA in turn wrote an e-mail on 07.03.2025 to reconcile of the accounts of the allottees, after calculating the accrued interest, to be reckoned in terms

of the provisions of RERA Act and Rules. A copy of e-mail dated 07.03.2025 is appended as Annexure C-5.

16. That the complainant has even sent an e-mail to RWA for making a request to RWA to take up the matter with respondent for colocation of interest in terms of RERA Act and Rules. The copy of mail dated 15.03.2025 is appended as Annexure C-6.

17. That vide mail dated 11.04.2025, the demand was raised vide which demand letter dated 01.03.2025 was reasserted. The copy of mail and demand letter is appended as Annexure C-7.

18. That one letter dated 21.05.2025 was received from respondent to clear the demands as has been raised vide earlier demand letter dated 01.03.2025, 26.03.2025 and 11.04.2025. The copy of same is appended as Annexure C-8. However, the complainant went to the office of respondent and requested them to reconcile the account of the complainant, while adjusting the accrued interest to be calculated as per the provisions of RERA Act and Rules, on the amount which he has already paid. The complainant handed over a request at the site office of the respondent to their personnel. The copy of request letter dated 01.05.2025 is appended as Annexure C-9. However, the complainant has not received any response from the respondent.

19. That on 02.06.2025, a demand letter was received from the respondent for clearing their dues. In this demand letter fresh demand dated 29.05.2025 was also raised. The copy of e-mail dated 02.06.2025 is appended as Annexure C-10. As per the endorsement made on the demand notice received vide mail dated 02.06.2025, the dues were to paid within 15 days.

20. That vide mail dated 18.06.2025, communication was received whereby he was intimated that the flat allotted to him stands cancelled. The copy of cancellation notice dated as 18.06.2025 is appended as Annexure C-11.

21. That the complainant requested the respondent that the action of respondent of cancellation of allotment of Apartment is bad in law. The request submitted for providing account statement of interest calculation as per RERA Act was also submitted, but not responded. Further, he has requested that he may provided the account statement, so that the legitimate dues, if any, may be paid by the complainant. The copy of e-mail dated 20.06.2025 is appended as Annexure C-12. However, the respondent at the first instance, had assured the complainant to look into the matter, but has not acted upon. Therefore, the complainant has no other option but to approach this Hon'ble Authority for seeking redressal of their grievance.

22. That the cancellation letter dated 18.06.2025 issued by the respondent is illegal, unsustainable, untenable and is liable to be set aside inter alia on the following grounds: -

- That the complainant had paid a sum of Rs. 23,63,174/- till October 2013. Therefore, the respondent was duty bound to calculate the interest accrued on this payment for a period of almost 11 ½ years and thereafter, ought to have raised any demand, if found to be due. As per the calculation of the complainant, on this paid amount, interest @ 10.5% for a period of around 11 ½ years comes to around Rs. 28.50 lakhs. Though, the due amount as per the calculation is nearly a principle sum of Rs. 4,06,223/-. Hence, even after adjusting this amount, the complainant will have credit balance to his account. Hence, the cancellation is bad in law.
- That the account statement dated 29.05.2025 reflects that sum of Rs. 82,672/- has been charged towards interest on outstanding amount. However, no credit has been given to the complainant for the payments already paid and has remained with them for a period of almost 11 ½ years. Hence, the demand notice is illegal, arbitrary and unsustainable.
- That the perusal of account statement reveals that area of the allotted flat has been revised on 25.02.2025. However, the

respondent never issued any notice to the complainant about this revision and the fresh demand in consonance with the same. Therefore, in the absence of said intimation, demand of Rs. 1,57,799/- raised towards revised area is bad in law, on account of violation of principle of natural justice.

- As per clause 18 of the flat buyer agreement, the possession of the flat was to be offered within a period of 36 months to be reckoned from 30.10.2012. Therefore, by 30.10.2015, the offer of possession was to be issued. As is apparent from the records, the construction of the project was in a halted stage and for almost 10 years, it has not inched forward. Once the project was in a stand still stage, resultantly there was no rhyme or reason for the complainant to make any further payment. Hence, the cancellation is bad in law.
- The perusal of the cancellation letter shows that it has been cancelled in terms of the provisions of the RERA Act. As per the provisions of Section 13 of RERA Act, the promoter is duty bound to execute a flat buyer agreement, as prescribed under the statute. In the present case, the same has been appended as Annexure C-1. However, the perusal of flat buyer agreement as provided under Rule 8 and Annexure A appended thereto as provided in RERA Rules, would demonstrate that there is no prescribed clause which

entitles the respondent to cancel the allotment of the allotted unit. Once, the same is not there, therefore, the cancellation is illegal, null and void.

- That the reliance placed upon Clause 10 of the flat buyer agreement (Annexure C-1) is bad in law. It is pertinent to mention here that the parties are in unequal bargaining capacity. Prior to execution of Flat Buyer Agreement, complainant have parted away with a sum of Rs. 9,46,394/-, before the execution of flat buyer agreement, therefore at that point of time there was no option for him other than to sign over the dotted lines. Therefore, the act of forfeiting Rs. 3,43,141/- in the light of the fact, that almost ten years have gone by from the date when the possession of the flat was to be offered and even till the filing of the complaint, basic skeleton structure of Tower A has not completed, impugned act is blatant abuse of dominant situation in which the promoter is and consequently this rash, unjust, arbitrary action requires to be dealt with iron hands. Therefore, the forfeiture which has been carried out by respondent makes the cancellation order bad in law.
- Further the cancellation order would show that it only says that the amount to be paid to the complainant is only Rs. 20,20,033/- without giving any calculation details. As has been submitted

above, the calculations were asked for and the same have not been provided, therefore, impugned action being arbitrary in nature, suffers from the vices of malafide. It being so, the cancellation order is bad in law.

- That prescribed Annexure A agreement to sell as amended under the RERA Rules, provides that the promoter was duty bound to give the details of the construction stage wise to the allottees and schedule for carrying out the same. However, the promotor has been in defiance with the mandate of the statute and has never provided the complainant with the schedule of construction and has not adhered to any of the time line. Therefore, once the respondent itself is culpable in not only causing inordinate delay, but super extra ordinary delay in issuing of offer of possession, it cannot take benefit of it's own wrong by cancelling the allotment.
- That forfeiting Rs. 3,43,141/- amount of the complainant at the time of cancellation is bad in law, as the respondent has not shown as to what loss has occurred to the respondent on account of alleged delay caused by the complainant in making the payment. It is submitted that a sum of Rs. 23,63,174/- has remained with the respondent for a period of 12 years and once the interest as per the RERA Act and Rules is reckoned on this sum, around Rs. 14 lacs is

interest which has accrued on the paid amount. Therefore, once the respondent has used this money for a period of 12 years, and then to issue a cancellation order by forfeiting amount, is certainly arbitrary, illegal and is malevolent in nature, therefore, the cancellation is bad in law.

- That impugned order has been passed in utter violation of principle of natural justice. No opportunity of hearing was given prior to passing cancelation order.
- That the submissions of the complainant are fortified by the ratio of law laid down by the Hon'ble Apex Court in case titled as Indian Oil Corporation Limited Vs. Nelofer Siddique and others reported in 2016(1) RCR (Civil) 896, wherein it has been held as under: -

"D. Contract Act, 1872 Section 7 Contract between two unequals - Contract between Indian Oil Corporation Ltd. (IOCL) and respondent with regard to allotment of Indane Gas Agency - It is not a contract between two equals - Respondents are far weaker in economic strength and has no bargaining power with IOCL."

The present controversy is squarely covered by the ratio of law laid down by the Hon'ble Apex Court.

23. That even the complainant is ready to pay the balance sale consideration, subject to the condition that since the delivery of the possession of the flat has been inordinately delayed by the span of 10 years and till today, the offer of possession has not been issued,

therefore, is entitled for receipt of interest on delayed possession in terms of the RERA Act and Rules and after reconciling the accounts as per law. Any amount which the complainant is liable to be pay, they shall pay the same.

24. That the complainant has paid a sum of Rs. 23,63,174/- to the respondent. Further as on today, they are not liable to pay a sum of Rs. 1,50,000/- towards car parking charges and Rs. 25,000/- towards club membership as the construction of club has not commenced, coupled with the fact that after deducting Rs. 1,75,000/- from total sale consideration, it comes to Rs. 36,68,028/-. Around 70% of this amount in terms of the flat buyer agreement stands paid up. Now once interest on the delayed possession as per provisions of the RERA Act is credited into the account of the complainant, then it would be hardly any amount which they would be liable to pay to the respondent towards the sale consideration. Therefore, in such an eventuality, action of respondent of cancelling the allotment is bad in law.

25. That in terms of the flat buyer agreement (Annexure C-1), as per Clause 18, the respondent was bound to give possession of the apartment within a period of 36 months from the date of execution of agreement. Since the execution of agreement has taken place in July, 2012, therefore, it was bound to handover the possession of the same

by July 2012 [July 2015]. However, a period of almost more than 10 years have gone by after the lapse of stipulated period of three years and the respondent has not offered the possession to the complainant and in the near future, there are no chances of issuance of offer of possession, as even the basic Skelton structure of the Tower A has not been completed. This inordinate delay in completing the project is in violation of Flat Buyer Agreement. The complainant, thus, wants to have the possession of the flat, alongwith interest on the delayed possession as has been prescribed under Section 18(1) of the RERA Act read with Rule 15 of the RERA Rules.

26. That though the flat buyer agreement was executed between the parties on 18.06.2012, before the notification of the present Act but the clause 58 of the said agreement provides as under: -

It Is agreed by and between the parties that a Real Estate (Regulation of Development) Act, 2016 is likely to be in force. If due to that act there is any change in the structure of agreement in terms including but not restricted to amendments to super area, carpet area, built up area, etc., all the recommendations which need to be incorporated shall be so incorporated in agreement/ or a revised agreement and the allotee(s) shall have no objection to the same as long as the transaction to the Apartment/Villa applied for and other terms and conditions

remain the same. It may involve the restricting/or rewriting of the agreement with the proportionally increased price on carpet area basis or built-up area basis or revision of method, terms of price payable for the Apartment/Villa and other terms and conditions contains herein shall remain unchanged."

27. Thus, any clause of an agreement which is inconsistent with the provisions of the Act and the rules of RERA shall be redundant to that extent and will be null and void. Furthermore, the perusal of the terms of this clause 58 categorically reflects that the parties are conscious of the fact that enforcement of Real Estate Regulatory Act is in offering, and therefore, the provisions of those acts and rules would be part and parcel of the said agreement and the said agreement would stand revised/amended to the extent the clauses of the said agreement are contrary to the said act and the rules.

28. That it is apt to mention here that after October 2013, first demand letter was received in March, 2025 i.e., almost after 12 years. The proposition in hand is covered by the doctrine of RES IPSA LOQUITUR. The circumstances portray that since the construction of the project was at a halted stage, therefore, no demand was raised. Thus, the action of the respondent is bad in law.

29. That since the complainant have faced lot of agony and harassment at the hands of promoter, therefore, respondent is liable to pay penalty

C. RELIEF SOUGHT

30. Complainant sought following reliefs :

i. To set aside the cancellation letter dated 18.06.2025 (Annexure C-11) by virtue of which the allotment of flat No. 0101, Tower A, Regency Park Project, Hisar has been cancelled and to restore the said allotment and consequently to deliver possession of the said apartment, after obtaining the occupancy certificate from the competent authority for Tower A.

ii. direct the respondent to pay interest at the rate of 10.5%, which is prescribed under Rule 15 of RERA Rules i.e. @ highest marginal cost of landing rate prescribed by State Bank of India plus 2%, for every month of delay, till the physical delivery of the possession of flat in question, to the complainant on the amount paid towards the sale consideration of the flat.

iii. To impose penalty upon the respondent for causing harassment and agony as envisaged under the Act and Rules, from the respondent.

iv. Respondent at this stage be restrained from recovering Rs. 1,50,000/- towards covered car parking charges and Rs.

25,000/- towards club membership charges, as the construction of the said car parking and building has not yet commenced.

v. Any other relief which this Hon'ble Authority deems fit, be granted in favour of the complainant and against the respondents.

D. REPLY FILED BY RESPONDENT ON 10.11.2025:

31. That present reply to the complaint is filed by **Jai Kisan Verma**, who is authorized by Respondent vide Board Resolution dated **26.08.2025** and is fully conversant with the facts and circumstances of the case on basis of knowledge derived from the available records maintained by Respondents, in the normal course of its business/functioning, and is duly authorized and competent to file the present reply. The copy of the Board Resolution is annexed herewith as **Annexure R-1**.

32. That M/s Aarcity Builders Pvt Ltd is a Private company incorporated under the Companies Act, 1956. Thus, the reply filed through its authorized signatory may be read and taken on record.

33. At the outset, it is respectfully submitted that the complaint filed by the Complainant is not maintainable and is liable to be dismissed at the very threshold. The complaint has been filed with an ulterior motive to harass and exert undue pressure on the Respondent to concede to the unreasonable and unjustifiable demands of the

Complainant. The Complainant is guilty of suppressio veri and suggestio falsi, in as much as the complaint contains deliberate misrepresentations and suppression of material facts that are within the Complainant's knowledge. The disclosure of these facts would have shown that no cause of action exists against the Respondent. Furthermore, this Hon'ble Authority lacks jurisdiction to adjudicate the present complaint. Hence, the complaint deserves to be dismissed.

34. That the Complainant has not approached this Hon'ble Authority with clean hands. The Complainant has deliberately suppressed vital and material facts, and on this ground alone, the complaint is liable to be rejected.

35. That on 16/07/2012, one Sh. Rajesh Mittal S/o Sh. H.C. Mittal was allotted Flat/Unit No. 0101, Tower A in the project named "Regency Park", situated in District Hisar, Haryana, being developed by the Respondent Promoter, under certain terms and conditions. A copy of the Allotment Letter-cum-Builder Buyer Agreement (BBA) has been filed by the Complainant as Annexure C1. In this annexure C1 on page no. 46 it is clearly agreed that in the case of endorsement the Respondent will not pay any penalty to anybody.

36. That it is pertinent to mention that the Complainant, while availing the facility of endorsement, executed a specific declaration dated

16/10/2012 (Annexure C2 at page 51 of the complaint), undertaking to abide by the terms and conditions of the original BBA. Hence, legally and technically, the Complainant was not entitled to any delay penalty.

37. That the true and correct facts are that the Complainant, after duly verifying the project details and understanding the terms of allotment, voluntarily applied for endorsement & being the allottee of the Flat / Apartment No. A-0101 in Tower A, admeasuring 1272 sq. ft.

38. That the Complainant has wilfully failed to fulfil their financial obligations under the Builder Buyer Agreement (BBA) and the Construction-Linked Payment Plan. The total sale consideration for Apartment No. A-0101, Tower A, was ₹38,43,028/- (exclusive of statutory charges such as Stamp Duty, Registration Fees, Service Tax, and other applicable government levies). The Complainant made part payments amounting to ₹18,30,378/- towards the principal amount to the Respondent, with ₹63,910/- towards service tax, along with ₹4,45,200/- towards EDC/IDC (Total = Rs. 23,39,488/-). Thereafter the Complainant failed and neglected to make further payments as per the agreed milestones.

39. That the instalment due on 25.02.2025 (on commencement of the 9th floor slab) and 29.09.2025 (on commencement of the top floor slab) was due and Respondent has sent several demand, reminder and

follow-ups, despite repeated reminders and notices dated 01/03/2025, 26/03/2025, 11/04/2025, 21/05/2025 & 02/06/2025, the Complainant did not make the payments against the due instalments. Copies of the said demand letters and reminders are annexed herewith as Annexure R-2 (Colly).

40. The Complainant's conduct constitutes a clear violation of **Section 19(6)** of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act"), which mandates every allottee to make payments in accordance with the terms of the agreement for sale. The provision reads as follows:

"Section 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."

41. That the persistent default by the Complainant constitutes a breach of contract as well as a violation of the statutory obligations under Section 19(6) of the RERA Act. Furthermore, under **Section 19(7)** of the RERA Act, any delay in payment attracts interest liability on the overdue amount. The provision reads:

"Section 19(7): The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)."

42. That as per Clause 10 of the Builder Buyer Agreement, the timely payment of instalments was expressly declared to be the essence of the contract. The said clause also empowered the developer to cancel the allotment in case of persistent default, and to forfeit 20% of the basic sale price as earnest money. Clause 10 reads as under:

"Timely payment of installment(s) is the essence of the terms of this Allotment Letter. If payment of installment(s) is not received within the stipulated period given in the opted payment plan and/or in the event of breach of any of the terms and conditions of this Allotment Letter or those of the Registration form by the Allottee(s), the Allotment can be cancelled at the sole discretion of the Developer Company and 20% of the Basic Sale Price of Residential Unit, which constitutes the earnest money, shall stand forfeited. The balance amount, if any, will be refunded without interest after receipt of original documents and completion of necessary formalities..."

43. That the Agreement further provides that in exceptional circumstances, the Developer may at its sole discretion condone delay in payments by charging interest @ 18% p.a. on delayed payments, subject to its discretion. However, in the instant case, despite the Respondent-Promoter's leniency and issuance of multiple reminders and demand notices, the Complainants have remained in continuous default since Dec 2012 and no payments have been made towards the outstanding instalments.

44. That the right of the Promoter to cancel the allotment in cases of continued default is also recognized under the *Sample Model Draft of the Agreement for Sale* issued by the Haryana Government and the Haryana Real Estate Regulatory Authority. The relevant provisions are reproduced below:

> • **Clause 9.3:** *"The Allottee shall be considered under a condition of Default in case he fails to make payments for two (2) consecutive demands made by the Promoter as per the Payment Plan, despite notices in this regard."*
> • **Clause 9.4:** *"If such default continues for more than three (3) consecutive months after notice, the Promoter may cancel the allotment and terminate the Agreement after deducting booking amount and interest liabilities. The Promoter shall give thirty (30) days' prior written notice to the Allottee before such termination."*

45. That in the present case, the Complainants/Allottees have failed to make payments against multiple consecutive demands raised by the Respondent-Promoter, despite the issuance of numerous written notices and reminders. This continuous non-payment for a long period constitutes a persistent and unrectified default, both under the Builder Buyer Agreement and under the provisions of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act"), along with the applicable Rules and Regulations framed thereunder.

46. That in view of the above and considering the Complainants prolonged default since 2013, failure to respond to repeated notices and reminders, non-payment of more than 40% of the total sale

consideration and breach of both contractual and statutory obligations, the Respondent was left with no option but to initiate the process of cancellation of the unit in accordance with:

- The terms of the Builder Buyer Agreement;
- Section 11(5) of the RERA Act; and
- The Model Agreement issued under the Haryana RERA Rules.

47. **That Section 11(5) of the RERA Act provides as under:** *"The promoter may cancel the allotment only in terms of the agreement for sale."*

48. That in the present case, the Agreement itself provides a clear mechanism for cancellation in the event of default, authorizing the Promoter to forfeit 20% of the Basic Sale Price as earnest money and to recover interest and other statutory dues. Accordingly, the Respondent-Promoter is fully entitled in law and under contract to:

- Cancel the allotment/booking of the Complainant's unit;
- Forfeit 20% of the Basic Sale Price as earnest money;
- Deduct applicable taxes, interest, and administrative/restoration charges; and
- Terminate the Builder Buyer Agreement.

49. That despite repeated opportunities and multiple written communications, the Complainants failed to clear their long-pending dues or provide any valid justification for non-payment.

Consequently, exercising its contractual and statutory rights, the Respondent-Promoter proceeded to cancel the allotment of Unit No. A – 0101, Tower A, in the project titled "*Regency Park*" located at Sector 11A & 17, Hisar, Haryana. A *Final Cancellation Letter dated 18.06.2025* was duly issued and served upon the Complainants. A true copy of the *Final Cancellation Letter dated 24.03.2025* is annexed herewith as **AnnexureR-3**.

50. Through the said cancellation letter, the Complainants were formally informed that their allotment stood cancelled due to their prolonged and continuing defaults, and that the refundable amount, after permissible deductions in accordance with the BBA and applicable laws (including cancellation charges and statutory taxes), had been computed at ₹20,20,023/- Annexure R-4.

51. That it is pertinent to mention that the Respondent, acting in good faith and in strict adherence to its contractual obligations, enclosed a copy of the Demand Draft for the refundable amount along with the cancellation letter. The Complainants were clearly advised to collect the original Demand Draft from the Respondent's site office in Hisar upon submission of the requisite documents, including the original Allotment Letter, executed Flat Buyer Agreement and other related papers. The Complainants were specifically requested to complete the

formalities and collect the refund at the earliest. However, despite receipt of the cancellation letter and refund intimation, the Complainants have neither responded nor taken any steps to collect the refund, demonstrating continued non-cooperation and indifference.

52. That despite receipt of the final cancellation letter dated 18.06.2025, the Complainants/Allottees neither approached the Respondent-Promoter to submit the required documents nor took any action to collect the refundable amount of ₹20,20,023/-. Under the agreed Construction-Linked Payment Plan, the Complainants were legally obligated to make timely payments of instalments toward the total sale consideration. The payment plan was structured to ensure a steady flow of funds for the systematic execution and timely completion of the project. The failure of allottees like the Complainants to adhere to their payment obligations directly disrupts project cash flow, delays construction and adversely impacts other allottees who have made timely payments. Such defaults not only prejudice the Respondent-Promoter's ability to deliver the project within stipulated timelines but also cause undue hardship to compliant allottees.

53. That thereafter, when no response was received from the Complainant, the Respondent, in compliance with law and contractual terms, refunded an amount of Rs. 20,20,033/- by way of online transfer on

26/06/2025. But surprisingly, instead of accepting the said refund, the Complainant on the very next day i.e. 27/06/2025, reversed the said amount back into the account of the Respondent. This crucial fact has been deliberately suppressed in the present complaint filed before the Hon'ble HRERA, which was physically filed after 27/06/2025. Online payment details are attached as Annexure R-5.

54. That it is a settled principle of law that no party can be permitted to take advantage of its own wrong. In the present case, the Complainants, having defaulted on the majority of their payment obligations and having thereby contributed to the delay in project completion, cannot now claim any right, lien or interest over the said unit. Their conduct is inequitable, contrary to public policy and inconsistent with the objectives of the RERA Act, which seeks to ensure transparency, timely delivery and protection of homebuyers' rights. Accordingly, the Complainants, having failed to discharge their contractual and statutory obligations, have forfeited all rights, title and interest in the said unit.

55. That furthermore following the valid cancellation of the Complainants' allotment, the Respondent-Promoter has lawfully re-allotted Unit No. A – 0101, Tower A, to a subsequent allottees, *Mrs. Divya Chaudhary & others,* after completing all requisite formalities

and in accordance with the provisions of the RERA Act and the Builder Buyer Agreement. A true copy of account ledger of new buyer is annexed herewith as Annexure R-6.

56. That the Complainants/Allottees have neither chosen to withdraw formally from the project nor complied with the payment obligations under the Builder Buyer Agreement, despite repeated demand notices and reminders. Their continued inaction and non-payment clearly amount to breach of contract and violation of the agreed payment terms.

57. That in view of the foregoing facts and in accordance with Section 11(5) of the Real Estate (Regulation and Development) Act, 2016, the Respondent-Promoter was fully justified in cancelling the allotment of the said unit, since such cancellation was carried out strictly as per the terms of the Builder Buyer Agreement and only after providing due notice and sufficient opportunity to the Complainants. The statutory text of Section 11(5) is reproduced below for the kind consideration of this Hon'ble Authority:

"Section 11(5) – The promoter may cancel the allotment only in terms of the agreement for sale: Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, is unilateral, and without any sufficient cause."

58. That in the present case, the cancellation has been carried out strictly in accordance with the terms of the Builder Buyer Agreement and only after providing repeated notices and sufficient cause arising from prolonged payment defaults. Therefore, the Complainants have no valid or legal ground to allege that the cancellation was unilateral, arbitrary or unlawful under the RERA Act.

59. That the Project in question suffered significant delays primarily due to non-payment of dues by the Complainant–Allottees and several other defaulting allottees. The persistent failure of such allottees to make timely payments disrupted the financial stability of the project, adversely affecting the overall construction schedule and delaying the development process for other bona fide allottees as well.

60. That the possession and construction of the project were further delayed not only due to the aforesaid financial defaults but also owing to several other factors beyond the control of the Respondent–Promoter. These included, inter alia, the unavailability of raw materials and labour, shortage of skilled manpower, delays in obtaining approvals and clearances from various government departments, restrictions and prohibitory orders imposed by statutory authorities, as well as regulatory constraints on withdrawal and

utilization of project funds. Collectively, these circumstances substantially impacted the pace of construction and project execution.

61. That in addition to the above, the entire world, including the Respondent–Promoter, was affected by the unprecedented global emergency caused by the **COVID-19 pandemic**. The pandemic resulted in prolonged lockdowns, supply chain disruptions and large-scale suspension of construction activities, which further exacerbated project delays.

62. That it is an admitted position that the construction of the unit in question, along with the concerned block, was delayed due to the cumulative effect of the aforementioned reasons, all of which were entirely beyond the control of the Respondent–Promoter. These circumstances squarely fall within the ambit of *force majeure* events as contemplated under the Builder Buyer Agreement.

63. That Clause 18 of the Builder Buyer Agreement (BBA) expressly provides that the Respondent would endeavour to offer possession of the allotted unit within **39 months** from the date of execution of the Agreement, subject to:

- The timely payment of instalments by the Allottee(s); and
- The occurrence of any force majeure events.

64. The Respondent's obligation to deliver possession was therefore conditional upon the financial compliance of the allottees, including the present Complainants. Due to persistent and widespread payment defaults by the Complainants and other similarly placed allottees, the Respondent suffered a severe financial crunch, which directly and adversely affected the pace and completion of the project.

65. That **Clause 18** of the BBA further defines *force majeure* to include, among other things:

- Delays in approvals or sanctions from statutory authorities;
- Disputes with landowners or stakeholders;
- Natural calamities, adverse weather conditions, or unforeseen environmental challenges;
- Labour unrest, government-imposed restrictions, or administrative prohibitions;
- Economic downturns, market instability, or financial crises; and
- Any other events or circumstances beyond the reasonable control of the Developer.

66. That in the present case, the project titled "**Regency Park**" was directly and materially impacted by multiple *force majeure* conditions, including but not limited to:

•Prolonged litigation and disputes with landowners, resulting in delays in approvals and interruptions in site operations;

• A nationwide slowdown in the real estate sector during the relevant period, which affected liquidity and financing;

• The outbreak of the COVID-19 pandemic, leading to lockdowns, manpower shortages, supply chain disruptions, and logistical challenges; and

• Persistent defaults by several allottees, including the present Complainants, which caused severe financial strain and delayed project progress.

67. That despite these severe and unforeseen challenges, the Respondent–Promoter made consistent, genuine and proactive efforts to resume and complete the project. The Respondent arranged alternative financing, availed loans, infused personal funds and mobilized third-party resources to maintain the continuity of construction and to honor commitments made to sincere and compliant allottees. These actions were undertaken not merely out of contractual obligation but as a measure of good faith and responsibility toward the allottees and the overall success of the project.

68. That the Respondent has at all times acted in utmost good faith and with sincere intent to comply with both the spirit and mandate of the

Real Estate (Regulation and Development) Act, 2016 ("RERA Act"). In order to overcome the challenges and delays encountered in the execution of the project in question, the Respondent proactively formulated and submitted a comprehensive Resolution Plan. The primary objective of this plan was to ensure the timely and financially sustainable completion of the project, while safeguarding the legitimate interests of all allottees and maintaining full transparency before this Hon'ble Authority.

69. That the said Resolution Plan was initially submitted and duly recorded in the Order dated 29.01.2025, passed in *Suo-Moto Complaint No. PKL/717/2024*, instituted by the Hon'ble Authority for the purpose of monitoring the project's progress. Pursuant to the directions issued therein, the Respondent subsequently re-submitted the updated Resolution Plan on 03.04.2025 under Dak Receipt No. 42229, reaffirming its continued cooperation and transparency before this Hon'ble Authority.

70. That following the approval and monitoring of the Resolution Plan, the Respondent has successfully implemented its provisions and achieved substantial on-ground progress, much ahead of projected timelines. The key milestones accomplished include:

- Completion and handover of all 35 villas by 24.10.2018;

• Completion of construction and issuance of Occupation Certificates for Towers B, D, and G, comprising a total of 212 flats, all of which have been handed over to the respective allottees;

• Delivery of 212 out of 319 sold flats, with the remaining 107 flats at advanced stages of completion; and

• Ongoing construction of the remaining six towers, being executed strictly in accordance with the approved architectural and development plans.

• The Resolution Plan also specifically earmarks Tower A as the designated block for accommodating 106 buyers relocated from other towers (notably Towers C1, C2, and E). The completion of Tower A, targeted for December 2025, is central to the successful resolution of the project and to the effective redressal of the grievances of affected allottees.

71. The financial framework outlined in the Resolution Plan provides for the following:

- **Estimated construction outflow for Tower A:** ₹8.56 crore;
- **Expected inflow from Tower A allottees:** ₹12.90 crore;
- **Additional inflow from relocated buyers:** ₹4.80 crore;
- **Total anticipated inflow:** ₹17.70 crore;

- **Estimated surplus of** ₹9.14 crore, earmarked exclusively for meeting liabilities towards penalties, interest, compensation, and other settlement obligations of eligible allottees.

72. That notwithstanding these bona fide and transparent efforts, the Respondent has continued to face financial constraints, directly attributable to the persistent non-payment and defaults by several allottees, including the present Complainants. Despite repeated reminders and sufficient opportunities, the Complainants have failed to discharge their financial obligations under the Builder Buyer Agreement. Their continued non-compliance has disrupted the project's cash flow, impeded the execution of the Resolution Plan and consequently delayed overall project progress. Such conduct has not only prejudiced the Respondent's operational capacity but has also adversely impacted the interests of other allottees who have made timely payments and are awaiting possession of their respective units.

73. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainant. It is reiterated at the risk of repetition, and without prejudice to the aforesaid submissions, that in any event, the complaint, as filed, is not maintainable in the present form, before this Hon'ble Authority.

74. Further, respondent has filed three applications dated 13.08.2026, 18.06.2026 and 05.10.2026 in the registry in support of its pleadings. The Authority has duly taken said applications on record and considered the same for the proper and just adjudication of the matter.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

75. During oral arguments ld. counsel for complainant as well as respondent reiterated the submissions as mentioned in the complaint, rejoinder, reply and applications dated 18.06.2026, 13.08.2026 and 05.10.2026.

F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

76. The Authority has carefully considered the rival contentions of the parties, perused the pleadings, and examined the documents on record. Upon consideration of the background of the case and the arguments advanced by both sides, the Authority observes as under:

Initially, Sh. Rajesh Mittal, S/o Sh. Hukum Chand Mittal, booked Apartment No. 0101, Tower-A, in the real estate project titled *"Regency Park"*, located in Sector 11-A & 17, Hisar, being developed by the promoter, M/s Aarcity Builders Pvt. Ltd. Subsequently, a Flat

Buyer Agreement was executed between the original allottee and the respondent promoter on 16.07.2012. As evidenced by the Endorsement Form (Annexure at Page 46 of the complaint), the allotment of the subject unit was duly transferred in favour of the present complainant, Sh. Rajesh Bhardwaj, S/o Sh. Mannu Ram, on 01.10.2012.

77. Against the total sale consideration of ₹38,43,028/-, the complainant claims to have paid an aggregate sum of ₹23,79,700/-. To substantiate this claim, reliance has been placed on the respondent's final demand letter dated 29.05.2025 (Annexure, Page 65 of the Complaint), which explicitly reflects payments received to the tune of ₹23,79,700/-. In Paragraph 8 (Page 3) of its written reply, the respondent promoter has admitted the receipt of ₹23,39,488/-, under the following heads:

a. **Principal Component:** ₹18,30,378/-

b. **EDC/IDC Charges:** ₹4,45,200/-

c. **Service Tax:** ₹63,910/-

Documentary proof verifying the payment of ₹23,79,700/- has been submitted by the complainant and remains unrefuted by the respondent, the Authority accepts and records the total paid amount as **₹23,79,700/-.**

78. The Authority further notes that while the final demand letter dated 29.05.2025 specifies due dates rather than actual dates of receipt, the payment timeline is derived as follows in the absence of any specific factual dispute from the respondent:

- Amount of **₹23,39,488/-** stands paid by **October 2013** (in terms of the schedule annexed to the Final Demand Letter dated 29.05.2025);
- Amount of **₹23,686/-** was paid on **25.02.2025**; and
- Amount of **₹16,526/-** was paid on **29.05.2025**.

H. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT:

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

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

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

charges, maintenance charges, ground rent, and other charges, if any."

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

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

While the respondent contends that the complainant was contractually bound to make payments in accordance with the Construction-Linked Plan (CLP) (Annexure, Page 45 of the Complaint), the record reveals that the complainant maintained regular payments spanning from 2011 through 29.05.2025 (culminating in a final tranche payment of ₹16,526/-, as detailed at Pages 22–24 and 65 of the Complaint).

Notably, as per the respondent's own demand letter dated 29.05.2025, payments are reflected as having been made up to October 2013, with no subsequent demands recorded for nearly twelve years until February 2025. The sole communication placed on record for this intervening period is an intimation letter dated 28.02.2017, wherein the respondent admitted that construction work on the subject tower had been temporarily halted, while assuring early resumption.

The complainant's assertion that further payments were withheld due to the complete abandonment of on-site development stands substantiated. This sequence of events directly refutes the

respondent's submission that demands were raised in alignment with actual physical progress under the CLP. Furthermore, after an inactive hiatus of nearly twelve years, the respondent issued flurry demands on 01.03.2025, 26.03.2025, 11.04.2025, 21.05.2025, and 02.06.2025, without demonstrating any commensurate progress on-site.

In its written reply, the respondent admits that the estimated completion date was pushed to December 2025 pursuant to a Resolution Plan submitted in *Suo-Motu Complaint No. 717 of 2024*, and concedes that no Occupation Certificate (OC) has been obtained to date. Consequently, as against the stipulated possession date of October 2016 in terms of Clause 18 of the Flat Buyer Agreement, the project remains delayed by nearly a decade, constituting a clear breach of statutory and contractual obligations.

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 his 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 possession or refund with interest.

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

To deal with above stated objection, it is important to first ascertain the deemed date of possession in the present case. As per clause 18 of flat buyer agreement dated, " *The Developer Company shall endeavor to give possession of the Unit to the Allottee(s) within a period of 36 months from the date of execution of Allotment Letter with a further grace period of 90 (ninety) days subject to force-majeure circumstances such as act of God, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, non-availability of scarcity of steel and/or cement and/or other general building materials and/or water supply and/or electric power or general shortage of energy labour equipment facilities material or supplies, failure of transportation, strike, lock outs, action of labour union, any dispute with any contractor/ construction agency appointed by the Developer Company, change of law, or any notice, order, rule or notification issued by any Courts/Tribunals and/or Authorities, delay in the grant of part/full completion (occupancy)*

certificate by the Government and/or any other public or competent authority or intervention of Statutory Authorities, or any other reason(s) beyond the control of the Developer Company and subject to receipt of complete dues and other charges as per installment plan opted by the Allottee(s). The Allottee(s) shall not be entitled to any compensation on the grounds of delay in possession due to reasons beyond the control of the Developer Company. The Developer Company on completion of the development/construction shall issue final call notice (offer of possession) to the Allottee (s), who shall within 30 days thereof, remit all dues and take possession of Unit after registration of sale deed. The date mentioned on the final call notice shall be deemed to be the date of offer of possession."

As per above mentioned clause, deemed date of possession comes to ***16.10.2015***.

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. 12-14 of reply and clause 18 of the builder buyer agreement citing various reasons such as natural calamities, government orders, court orders contributing **in delay in completion of project**. The onus squarely lies with the respondent to explain how mere writing four paras in

pleading explains the nature of force majure faced by respondent (except Covid). Further onus also lies upon the respondent to explain which 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. However, no detailed explanation with regard to the same has been filed by respondent.

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

cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care. Typically, such clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance."

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

intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated.

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

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

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

Further, regarding the plea of *force majeure* on account of COVID-19, the Haryana Real Estate Regulatory Authority (HARERA), through advisory decisions taken in its 93rd meeting (18.05.2020) and subsequent meeting (02.08.2021), recognized a total *force majeure* period of nine months—comprising six months from 25.03.2020 to 24.09.2020 for the first wave, and three months from 01.04.2021 to 30.06.2021 for the second wave.

However, in the present case, the deemed date of possession under Clause 18 was October 2015, which long predates the onset of the pandemic. Consequently, the Respondent cannot invoke *force majeure* events that occurred years after the contractual due date to excuse a pre-existing default.

79. Regarding the reminder notices and the subsequent cancellation issued by the respondent, the Authority observes that the reminder letters dated 01.03.2025 and 26.03.2025 contained no express clause or written warning indicating that non-payment would result in cancellation of the allotment. Instead, the sole remedy stipulated in those communications was the levy of penal interest. Conversely, vide email dated 07.03.2025, the complainant requested the respondent to adjust delay interest before issuing further demands and sought an updated, adjusted statement of account, unequivocally reaffirming his intent to seek delivery of possession. A similar request was reiterated vide email dated 15.03.2025 addressed to the project's allottee association. The respondent failed to place on record any proof of replying to these communications, but instead issued demand letters dated 11.04.2025, 21.05.2025, and 02.06.2025.

Although the respondent granted a further 7-day opportunity to clear alleged pending dues (as per the letter at Page 61 of the Complaint), it abruptly issued a cancellation letter dated 18.06.2025. Rather than providing a reconciled statement of account despite repeated requests, the respondent arbitrarily shifted from levying penal interest to the extreme measure of outright cancellation and forfeiture without prior reply to the complainant's legitimate queries.

80. The purported cancellation letter dated 18.06.2025 is legally void *ab initio*. The respondent has failed to obtain an Occupation Certificate (OC) or Part Completion Certificate for the project to date. Under established legal jurisprudence under the Real Estate (Regulation and Development) Act, 2016 (RERA), a promoter who is in fundamental default of its primary statutory obligation namely, delivering a project backed by a valid Occupation/Completion Certificate cannot exercise an equitable right to cancel an allotment or forfeit allottee funds. A builder cannot penalize an allottee for withholding payments when the project itself remains stalled and lacks the mandatory statutory approvals required for handing over lawful possession.

81. The respondent's preliminary objection that the complainant suppressed material facts is devoid of merit. There exists a genuine legal dispute regarding the validity of the unilateral cancellation issued in 2025. A promoter cannot accuse an allottee of having "unclean hands" when the promoter itself has illegally retained a substantial sum of ₹23,79,700/- paid largely by 2013 for over 12 years without fulfilling its basic contractual commitment of completing construction and delivering physical possession.

82. Following the unilateral cancellation on 18.06.2025, the respondent advised the complainant to collect a refundable balance of

₹20,20,033/- via demand draft. When the complainant did not accept the cancellation, the respondent unilaterally transferred the said amount via online mode on 26.06.2025. The complainant promptly returned the funds to the respondent's account on the very next day (27.06.2025).

83. In the interim, the complainant had already generated Performa-B online on 25.06.2025, culminating in the formal institution of the present complaint in the registry on 30.06.2025. This conduct unequivocally demonstrates that from 07.03.2025 up to the filing of this complaint, the complainant sought only the relief of legal possession. The respondent, after utilizing the complainant's funds for nearly 16 years, arbitrarily cancelled the allotment on the pretext of non-payment of demands that were themselves not in conformity with the agreed Construction-Linked Plan (CLP). The sequence of actions by the respondent is entirely inconsistent with the defense pleaded.

84. The respondent cannot contend that construction was delayed due to non-payment by the complainant, as the promoter was already in fundamental breach of contract long before the payment disputes arose. Under the terms of the Flat Buyer Agreement, the respondent was contractually obligated to offer possession latest by 16.10.2015. Having failed to make a valid legal offer of possession within the

stipulated timeframe, the respondent committed the first material breach, disentitling it from attributing subsequent project delays to the allottee.

85. The respondent's claim of an absolute entitlement to forfeit up to 20% of the total consideration amount is legally unsustainable under the RERA framework. Forfeiture clauses are enforceable only when an allottee defaults or seeks to withdraw from a project that is progressing in a timely manner and where the developer is ready to fulfill its obligations. Because the respondent has failed to obtain an Occupation Certificate or Part Completion Certificate for over 13 years, the project suffers from a fundamental failure. A promoter in perennial default cannot invoke forfeiture clauses to retain an allottee's hard-earned money. The complainant did not abandon his contractual obligations; rather, payment was legitimately withheld against a stalled project burdened with wrongful, unilateral financial penalties.

86. In the present case, the deemed date for delivery of possession expired on 16.10.2015. The respondent promoter has failed to fulfill its contractual obligations within the stipulated timeline and has proffered no cogent justification for the inordinate delay. The undisputed fact remains that physical possession has not been offered

to date, as the project remains under construction. An unexcused delay exceeding ten years beyond the promised possession date is excessive, unreasonable, and constitutes a clear deficiency in service as well as a statutory default under the Act.

87. The complainant has unequivocally expressed his intent to seek delivery of physical possession of the booked unit rather than a refund of the invested funds, his claim for possession along with delay interest at the prescribed rate for the period of delay is fully justified and is hereby allowed.

In light of the findings recorded above, the Authority hereby quashes and sets aside the cancellation notice dated 18.06.2025 issued by the respondent promoter, holding the same to be ***illegal, arbitrary, and void ab initio.***

88. The respondent's contention in Paragraph 25 (Page 10) of its written reply, wherein it claimed that the subject unit was lawfully re-allotted to third parties, namely Mrs. Divya Chaudhry & others, the Authority holds and directs as under:

i. The underlying cancellation letter dated 18.06.2025, on the basis of which the re-allotment was purportedly effected, stands quashed by this Authority.

ii. The respondent has merely raised an unsubstantiated, bald assertion regarding the alleged third-party creation of rights. Beyond placing on record a Flat Buyer Agreement dated 30.06.2025 executed in favour of a subsequent buyer, the respondent has failed to produce any registered Conveyance Deed establishing legal title or transfer. Consequently, any right, title, or interest purportedly created in favour of Mrs. Divya Chaudhry & others is declared ***illegal, null, void, and is hereby set aside.***

At this stage, it is relevant to note that the legal position regarding the creation of title is well-settled by the Hon'ble Supreme Court in "***Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana (2012 1 SCC 656)*** and reaffirmed in ***Indian Overseas Bank v. M.A.S Subramanian (2025)***, *a Builder-Buyer Agreement or contract for sale does not transfer title or create any interest in immovable property under Section 54 of the Transfer of Property Act, 1882. Clear legal title can only pass upon the execution and registration of a Conveyance/Sale Deed. In the absence of a registered Conveyance Deed on record, the Respondent's assertion that legal title has been created in favor of third parties is wholly untenable in law."*

89. 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. 16.10.2015 upto the date on which legal 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".

90. 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. 08.10.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

91. 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(16.10.2015) or date of payment whichever is later	Interest Accrued till 08.10.2026
1.	₹23,39,488/-	16.10.2015	**₹27,76,543/-**
2.	₹23,686/-	25.02.2025	**₹4142/-**
3.	₹16526/-	29.05.2025	**₹2435/-**
Total	23,79,700		**₹27,83,120/-**
Monthly interest	**₹21,828/-**		

Accordingly, the respondent is liable to pay the upfront delay interest and monthly interest as mentioned above in the table to the complainant towards delay already caused in handing over the possession up to the date of actual handing over of the possession after

obtaining occupation certificate. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to them.

92. Ld. counsel for complainants has neither argued nor pressed upon the reliefs claimed in para 28 clause iii of this order.

93. Another issue requiring adjudication pertains to the covered car parking charges of ₹1,50,000/- and club membership charges of ₹25,000/-.

The Complainant contends that he is not liable to pay these charges as the construction of the respective facilities has not been completed to date. The Respondent has failed to rebut this contention. As per Page 44 of the Complaint book, reflecting the details of consideration under the Builder-Buyer Agreement executed between the parties. Complainants are stipulated to pay ₹1,50,000/- towards car parking and ₹25,000/- towards club membership. However, pursuant to Clauses 26 and 36 of the said Agreement, these charges are payable only at the time of handing over possession.

Given that physical possession of the unit has not been handed over to the Complainant to date, the Authority is of the considered view that the respondent is not entitled to demand these charges until the car parking and club facilities are fully operational at the site.

Nevertheless, the Complainant will remain obligated to clear these payments upon the offer of valid and lawful possession.

I. DIRECTIONS OF THE AUTHORITY

94. 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 offer possession to the complainant along with statement of account including therein the delay interest calculated in this order.

(ii) Respondent is directed to pay upfront delay interest as stated in para 91 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 if any to the respondent at the time of possession offered to them.

(iv) Respondent is not entitled to raise charges of car parking and club membership unless the facilities are operational at site, the relevant car parking is duly handed over and the club membership is given.

(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.

.....
CHANDER SHEKHAR
[MEMBER]

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

.....
NADIM AKHTAR
[MEMBER]

.....
PARNEET S SACHDEV
[CHAIRMAN]