# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

| | |
|---|---|
| **Complaint no.:** | **273 of 2025** |
| **Date of filing:** | **10.03.2025** |
| **First date of hearing:** | **26.05.2025** |
| **Date of decision:** | **08.10.2026** |

**Swati Bhatia W/o Puneet Bhatia,**
R/o, 145, Narsi Village, Sector- 32
Karnal, Haryana-132001

.....COMPLAINANT

Versus

**M/s Aegis Value Homes Ltd**
through its Authorised Signatory
Registered office at smart homes karnal (by Aegis),
Sector-32 A, Bhudakhera,
Karnal, Haryana

.....RESPONDENT

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

**Present:** - None for the complainant

Mr. NeerajGoel, Counsel for the respondent

## ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 10.03.2025 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 complainants, date of handing over of the possession, if any, have been detailed in the following table:

| S.No. | Particulars | Details |
|---|---|---|
| 1. | Name of the project | Smart Homes Karnal |
| 2. | Name of the promoter | M/s Aegis Value Homes Ltd |
| 3. | RERA registered/not registered | Registered |
| 4. | Unit no. | 804,8th floor, A3 |
| 5. | Unit area | 516.90 sq. ft. carpet Area and 87.40 sq.ft. balcony Area |
| 6. | Date of Apartment Buyer Agreement | 15.04.2021 |
| 7. | Due date of offer of possession | 15.04.2024 (as per para 41 of this order) |
| 8. | Possession clause in BBA | 8.1 |
| 9. | Total sale consideration | 17,54,540/- |
| 10. | Amount paid by complainant | ₹13,25,900/- (As per page no.59 and 62 of complaint book) |
| 11. | Offer of possession | 27.11.2024 |
| 12. | Occupation Certificate | 20.09.2024 |

## B. FACTS AS PER THE COMPLAINT:

3. That the Respondent in the year 2014 planned to develop a group housing scheme for residential flats in the name and style of **"Address by Aegis"** situated in Sector 32, Karnal, Haryana.

4. That the respondent in order to lure people to purchase residential flats in **"Address by Aegis"** put forward various advertisements in the market place with numerous promises such as possession within 1 year and no additional taxes, costs etc. Complainant was convinced by the fancy promotion done and decided to purchase a flat in such residential project. Complainant along with her sister-in-law Neha Bhatia booked 1 flat each. Complainant made three payments amounting to Rs. 5,62,950/- **(Receipt is annexed as ANNEXURE C-1)**. While Neha Bhatia also made three payments amounting to Rs. 5,62,950/- **(Receipts are annexed as ANNEXURE C-2)**. No builder buyer agreement was executed by the respondent with complainant or her sister-in-law despite multiple continuous requests of the Complainant.

5. Complainant approached the respondent with her concern over the execution of builder buyer agreement and completion of project upon which respondent gave an assurance that project will kick start soon

and that complainant does not have to pay further instalments until she sees the project picking up pace.

6. That the Complainant patiently waited for six years for the completion of the project and for possession but the construction of this project never even started. In 2021, upon getting furious over extreme delay of the project, complainant gave ultimate notice of legal proceedings to the respondent upon which the respondent came up with an alternative offer and informed the complainant that due to non-compliance of necessary laws, complainant is unable to start the construction of this project **"Address by Aegis, Sector 32, Karnal"** but they are working on a new, cheaper and even better project known as **"Aegis Smart Homes"**, which is situated in Sector 32A, Karnal. saying "Get a Smart home and Save upto Rs. 5 Lacs **(No EDC/IDC, No PLC, No Fire Fighting Charges, No Electricity Connection Charges, No Maintenance Charges, No Service Tax, No Tax Parking Charges, No Other Charges)"**.

7. Moreover the respondent had also advertised that flats in their projects would be fitted with Smart Automation system which could be operated using Voice & Gesture Commands such as lights control, fans control, geyser control, A.C control, WiFi, main gate security system, mood lightning control system, energy monitoring system,

temperature control, security camera, music control system, television control system, solar street lights and smart access system as provided in the brochure issued by the respondent.

8. The Complainant then visited the office of the respondent where the employees of the respondent apprised the complainant that the aforesaid new flats are being developed under "Pardhan Mantri Awas Yojna". The said employees also proclaimed that Government of Haryana has given them a tender to build these flats and it is a government Project for which allotment has already been done but to compensate the inconvenience of complainant, they will be given a flat at a good price of Rs. 17 lacs only. To further convince the complainant to agree with alternative offer it was promised that this amount of Rs. 17 lacs is absolute and no other cess, GST, Tax, charges will be levied. It was also categorically promised that the construction is in full swing and possession will be given within 6 months. Complainant asked the respondent to consolidate the two payments made by complainant as well as by her sister-in-law and issue them one flat in name of complainant to which respondent agreed and also acknowledged such consolidated payment through Builder buyer agreement (**ANNEXURE C-3**). Complainant was also assured that no further payment need to be made until the possession letter is issued

and the amount already paid i.e Rs. 11,25,900/- by complainant for previous project shall be adjusted in this new allotment. Thereafter, the complainant applied for a residential flat in the Project Smart Homes Karnal by Aegis vide application no. **8950**. Thereafter the complainant was allotted Unit No. 804, 8th Floor, Tower A3 in the Project measuring 516.90 Sq. Feet.

9. That on 15.04.2021, the Respondent called complainant to get a Builder buyer agreement executed and got it signed and notarized. The total amount mentioned in such agreement was Rs. 17,54,540/- with 1% GST. Copy of Builder buyer agreement has been annexed as **ANNEXURE C-3**.

10. The complainant again patiently waited for the respondent to complete the project and deliver possession, however, one day Complainant saw in the local news that the Homebuyer of the respondent's project were agitating against the respondent for not giving the possession of their homes. On further enquiry, Complainant came to know that hundreds of Criminal & Civil litigations of serious nature were going on against the promoters of the Project pertaining to Fraud, Cheating, Dishonesty, Misrepresentation, Criminal Breach of Trust etc.

11. On Knowing the antecedents of the Promoters of the Respondents, the Complainant approached the respondent concerned about the Sluggish

& Delayed speed of Construction of the Project & seeing the Antecedents of the Promoters of the Builders that they have not delivered even a single project without delay and without controversies. But it was again assured that project will be completed within 6 more months and it is near its final completion.

12. That on 25.01.2023, Respondent issued a payment demand notice of amount Rs. 4,13,418/- to the complainant. Aggrieved by the delayed completion and unlawful notice by the respondent, complainant approached the respondent upon which it was agreed that complainant will pay Rs. 2 lacs and the respondent will give some electrical work to the husband of complainant who is into business of electrical works. It was further agreed that the bill amount for work done by husband of complainant shall be adjusted against the payment for the flat to the respondent. Consequently, the husband of complainant started supplying goods and services to respondent in good faith and hope.

13. That on 06.10.2023, Complainant made a payment of Rs. 2 lacs to respondent through cheque. Copy of bank statement reflecting the payment is annexed as **ANNEXURE C-4**. Subsequently, the husband of the complainant raised three bills against the respondent for the goods and services provided. These bills are – I. Rs. 2.5 lacs dated

20.12.2023, II. Rs. 1,47,500/- dated 27.08.2024, III. Rs. 59000/- dated 16.12.2024. Copies of these bills are annexed as **ANNEXURE C-5**.

14. On 27.11.2024, The respondent finally issued the Offer of possession letter after a delay of 10 year in total and around 4 years from date of buyer builder agreement for new project. However, vide such letter an illegal demand of **Rs. 10,30,232/-** was made. It includes inflated basic sale price as shown Rs. 18,14,712/- as against 17,54,540/- in Builder buyer agreement. Then it also adds illegal amount of Rs. 149990 as Tax which was against the promises made by the respondent throughout the whole time starting from giving alternative offer to complainant. Moreover, the Builder raised further Illegal Demand of Rs. 90,449/- on account of External Electricity Connectivity to Project Charge (23.79 Sq. Feet), Advance meter consumption charge, Security Deposit Charge, Meter Charge, Labour Cess. Moreover the builder has Illegally charged Exorbitant rate of interest on delayed payment to the Tune of 20 Percent and further added illegal amount of Rs. 3,00,980/- as interest. A copy of such possession offer letter has been annexed as **ANNEXURE C-6**.

15. On 13.12.2024, The respondent issued another payment reminder letter vide which a total amount of Rs. 9,86,719/- was shown as pending. It was also informed that as per addendum letter dated

04.05.2024, an amount of **Rs. 46,443/-** were added as Maintenance and security deposit interior which were illegal and against the offer and promises given by the respondent as well as contradictory to the brochure issued by the respondent. A copy of payment reminder letter has been annexed as **ANNEXURE C-7** and copy of brochure has been annexed as **ANNEXURE C-8**.

16. Then on 24.01.2025, The complainant approached the respondent to remind them regarding deduction of amount of bills raised by husband of complainant for electrical work done in last 1 year and also requested respondent to reduce all illegal heads of amounts added in the possession offer letter and payment reminder letter. For the assurance of the complainant, the respondent asked the complainant to submit an affidavit regarding confirmation for adjustment of bills of husband of complainant against the pending amount for the flat. The copy of the affidavit is annexed as **ANNEXURE C-9**.

17. That to the surprise of the Complainant, The respondent got a illegal public notice published in newspaper dated 07.02.2025 declaring that flats of listed homebuyers shall be cancelled and resold if the remaining payment is not made within 15 days. It shows the remaining payment of complainant to be Rs. 9,10,008/- which is illegal. Moreover, this publication is a direct harassment of the

complainant and is an attempt to arm-twist the complainant to pay the illegal amount claimed. The copy of concerned newspaper notice is annexed as **ANNEXURE C-10.**

18. The respondent had promised the Flat at Rs. 17,54,540/- but has already taken Rs. 17,82,400 from the Complainant till now. Moreover the builder has Illegally charged Exorbitant rate of interest on delayed payment to the Tune of 20 Percent. Further the respondent had said that No other charges such as Internal Development Charges/ External Development Charges, PLC, Fire fighting Charges, Electrical Connection Charges, Maintenance Charges, Service Tax, Car Parking Charges.

19. Still further, the GST is also being demanded at a higher rate than the statute rate of interest which cannot be permitted. That as per settled law the developer could not have demanded more than 1 % with regard to the GST however in the present case the respodnent developer is asking for 8.97 % as GST which is wrong and illegal.

20. It is pertinent to mention here that the builder is now offering Possession of flat without proper approvals such as Occupation certificate & Completion Certificate & necessary approvals from HUDA, Fire Station Department, Traffic, Pollution Control.

**Moreover, the builder is also asking additional money by alleging that the size of the Flat has increased. It is pertinent to mention here that no information and consent was obtained by the respondent from the complainant with regard to the change in size of the flat and therefore the said demand is wrong and illegal and it is not binding upon the present complainant.**

21. That even till date, the Respondent has failed to get the necessary Statutory approvals like Completion certificate & Occupation Certificate from the Authorities as per the provisions of RERA. The relevant provision of the RERA for the kind perusal is reproduced herein under:

*(q) "completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;*
*(zf) "occupancy certificate" means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;*

22. It is pertinent to mentioned here that the Construction quality of the Flats is also of inferior quality and bereft of amenities promised by the builder. **Moreover the respondent has not provided Smart Automation system which could be operated using Voice &**

**Gesture Commands as was advertised by the respondent.** Moreover in the sample flat, the respondent fooled the homebuyer by using top class materials like Jaquar toilet sheet & Taps with Premium tiles, the quality of paint is also premium but in the project flat substandard & cheap toilet seats & Taps & Tiles are used.

23. That when the homebuyers of the project went on the project sites to get their genuine demands addressed, the respondent had called muscle men & Bouncers to threaten the innocent homebuyers. The Promoters & the Employees of the respondent also threatened the homebuyers with dire consequences if they raised their voice before media.

24. That despite lapse of about 10 years in total and about 4 years after getting Builder buyer agreement for the new flat executed, the respondent has failed to provide even the basic amenities as promised and as required by the Law on the said flat. It would not be out of point to state here that even after paying the entire amount, the Respondent has failed to provide the complete amenities to the Respondent which has inter alia caused huge loss to the Complainant. Further, the Respondent made the Complainant signed on various documents and blank pages and was told by the Respondent that the same was in lieu of the offer of possession offered to the Complainant.

Most importantly, none of the documents which were made signed by the Respondent to the Complainant were provided to the Complainant inspite of various requests.

25. That now the answering respondent has issued an offer of possession letter dated 27.11.2024 without giving any details with regard to the occupation certificate and completion certificate and the answering respondent has wrongly and illegally raised the demand amounting to Rs.10,30,232/- by imposing exorbitant penal interest and other charges which the present complainant is not liable to pay as the answering respondent has failed to comply with the statutory obligations and the the answering respondent has further failed to fulfill its promises.

26. That it was specifically mentioned in the advertisements by the respondent that no extra charges whatsoever shall ever be levied. Such advertisements were express promise and representation by the respondent upon which complainant made had acted. Thus, by way of concept of **promissory estoppel**, the respondent now cannot make unconscionable changes.

27. That the present complainant has already been made to pay excess amount to the respondent in terms of delayed payment and the same is also wrong and illegal. That the respondent is threatening the complainant to cancel the allotment even after taking the entire money

from the present complainant which is against the provisions of the RERA Act.

28. That the complainant humbly submits that the answering respondent has even failed to provide the occupation certificate and the completion certificate to the present complainant with regard to the flat of the present complainant. That the complainant is offering possession without taking occupation certificate and completion certificate which is itself wrong and illegal.

29. That the fact that the project could not be completed in the stipulated time was well within the knowledge of the Respondent. It would be most pertinent to state here that the Respondent has failed to deliver possession within the stipulated time as well as have utterly failed to provide the possession whilst providing all he basic amenities as advertised by the respondent. In the said circumstances, the action of the respondent is absolutely fraudulent and unwarranted which has rendered the respondent liable for the statutory compensation.

30. The copy of the Aadhar Card of the Complainant is annexed as **ANNEXURE C-11**

## C. RELIEF SOUGHT

31. Complainant has sought following reliefs :

1- That an interim injunction may be granted against the respondent from cancelling the flat of the complainant and its reselling in view of newspaper notice dated 07.02.2025, until this complaint is finally adjudicated.

2- That the respondent may kindly be directed to deliver actual physical possession of the flat without any delay.

3- That the respondent may kindly be directed to make the payment of delayed interest for not giving actual physical possession of the flat after taking statutory approvals and after completing the project as per the assurance given in the advertisement issued by the respondent.

4- That the respondent may kindly be directed to not to raise demand with regard to service tax, maintenance charges for 5 years, car parking charges, PLC, EDC/IDC, fire-fighting charges, electrical connection charges, Power Backup Charges as stated in the brochure issued by the answering respondent.

5- That the respondent may kindly be directed to provide smart phone automated smart home having amneties such as lights control, fans control, geyser control, A.C control, WiFi, main gate security system, mood lightning control system, energy monitoring system, temperature control, security camera, music control system, television

control system, solar street lights and smart access system as provided in the brochure issued by the respondent.

6- That the excess payment demanded vide offer possession letter, payment reminder letter and newspaper notice may kindly be set aside.

7- The Respondent may kindly be directed to give compensation to the Complainant to a tune of Rs. 20,00,000/- to the Complainant along with interest for the delay, causing mental agony, frustration and causing harassment.

8- The Respondent may kindly be directed not to raise any excess amount with regard to the Goods and Service Tax i.e. not beyond 1% as GST.

9- Any other relief or direction which this Hon'ble authority deems fit in facts and circumstances of the present case.

## D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

32. During oral arguments ld. counsel for complainant reiterated the submissions as mentioned in the complaint.

## E. ISSUE FOR ADJUDICATION

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

## F. OBSERVATIONS AND DECISION OF AUTHORITY

34. The Authority has carefully considered the rival contentions advanced by the parties and has perused the material available on record. In light of the factual matrix as delineated hereinabove and the submissions addressed by learned counsel for the complainant, it is observed that notice was issued to respondent on 12.03.2025 for appearance before Authority on 26.05.2025. Said notice was received back undelivered. However, on 26.05.2025, Mr.Neeraj Goel appeared for respondent and accepted notice on behalf of respondent and sought time to file reply. His request was accepted and was given opportunity to file reply within 4 weeks. Thereafter matter was listed for hearing on 09.10.2025. Mr. Neeraj Goel again sought time to file reply. Again his request was accepted and last opportunity was given to file reply. Thereafter file was taken up on 09.10.2025, wherein respondents counsel sought one last opportunity to file reply. Considering the personal difficulty of learned counsel for respondent, one last opportunity was given to respondent to file reply by 30.10.2025.

35. Authority observes that learned counsel for the respondent initially appeared before Authority on 26.05.2025. Thereafter matter was taken up for hearing thrice i.e. on 09.10.2025, 05.02.2026 and 05.03.2026. Meaning thereby after availing three opportunities i.e. ***approximately***

***284 days respectively from hearing dated 26.05.2025,*** when respondent appeared for the first time while accepting notice for respondent no.1, respondent has failed to file the reply till date.

36. The Real Estate (Regulation and Development) Act, 2016, is a beneficial legislation and is aimed at providing speedy and efficacious redressal to grievances of allottees and other stakeholders. In furtherance of this objective, the proceedings before the Authority have been made summary in nature. Such expeditious adjudication is achievable only if the parties involved, both the complainant and the respondents, submit their pleadings in a time-bound manner.

In light of the respondent's repeated non-compliance despite availing numerous opportunities and keeping in consideration the summary procedure, the Authority deems it appropriate **to strike off the respondent defence and proceed to decide the present complaint as per record available on the file.**

37. As per record on file, the complainant was allotted Unit No. 804, situated on the 8th Floor of Tower A3, admeasuring 516.90 sq. ft. carpet Area and 87.40 sq.ft. balcony Area pursuant to builder buyer agreement dated 15.04.2021, upon payment of ₹11,25,900/-. The said allotment pertains to the respondent's group housing project namely "Smart Homes Karnal", located at Sector-32A, Karnal, Haryana.

38. Out of total sale consideration of ₹17,54,540/-, against which an amount of ₹13,25,900/- is stated to have been paid by the complainant to the respondent. In order to substantiate the payments so made, the complainant has annexed payment sheet along with the bank account statement annexed at pages 59 and 62 of the complaint book. Respondent out of total paid amount of ₹ 13,25,900/-, has accepted an amount of ₹13,25,899/- in the final Statement of Account accompanied with the Offer of Possession dated 27.11.2024 (placed at page no. 70 of the complaint file). Accordingly, proof of total paid amount of ₹13,25,900/- stands substantiated. The respondent has also not controverted the above stated payments received till date. Further as per clause 8.1 of the builder buyer agreement dated 15.04.2021, timeline for handing over of possession has not been specified by the respondent/promoter. Said clause of the agreement is reproduced below for ready references:

*"8.1 Schedule for possession of the said Apartment - The Developer agrees and understands that timely delivery of possession of the said Apartment to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(t) of Rules, 2017, is the essence of the Agreement.*
*The Developer assures to hand over possession of the said Apartment as per agreed terms and conditions unless there is delay due to "force majeure", Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. If, the completion of the Project is delayed due to*

*the above conditions, then the Allottée agrees that the Developer shall be entitled to the extension of time for delivery of possession of the said Apartment.*
*The Allottee agrees and confirms that, in the event it becomes impossible for the Developer to implement the project due to Force Majeure and above mentioned conditions, then this allotment shall stand terminated and the Developer shall refund to the Allottee, the entire amount received by the Developer from the allottee within six Months without any interest or compensation. The Developer shall intimate the allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he/ she shall not have any rights, claims etc. against the Developer and that the Developer shall be released and discharged from all its obligations and liabilities under this Agreement."*

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

*mechanically, would frustrate the legislative objective or produce results that are unreasonable or unjust.*

Properly applied, the mischief rule ensures that statutory provisions are interpreted so as to give effect to the legislative intent and to prevent the re-emergence of the very mischief the law was enacted to eliminate. The clause—*" The Developer assures to hand over possession of the said Apartment as per agreed terms and conditions unless there is delay due to "force majeure", Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project."*—raises a recurring question under the Real Estate (Regulation and Development) Act, 2016: ***Whether such language permits the promoter to indefinitely postpone its obligation, or whether courts and authorities may construe the given language strictly?***

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

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

(ii) the mischief that the statute intended to remedy

(iii) the legislative solution, and

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

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

When the possession clause uses the words **"agreed terms and conditions"**, the *literal reading suggests a mere obligation of effort rather than a mandatory timeline*. However, applying the mischief rule, such an interpretation would defeat the very purpose of RERA, which is to eliminate the opacity and uncertainty that characterised the pre-RERA regime. If the clause were construed to mean that the promoter has no strict obligation to deliver **within a specific period of time** but only to *try*, the mischief i.e indefinite

postponement would re-enter through the back door. Courts have therefore consistently held that promoters cannot dilute statutory rights through contractual drafting. The Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan* (2019) 5 SCC 725 emphasised that one-sided clauses crafted by builders cannot bind the allottee when they defeat consumer protection; similar reasoning appears in *IREO Grace Realtech Pvt. Ltd. v. Abhishek Khanna* (2021) 3 SCC 241, where the Hon'ble Court held that contractual terms must be read in light of the legislative objective of protecting homebuyers.

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

40. In the present case, builder buyer agreement was executed between the parties on 15.04.2021. However, the agreement does not stipulate any specific time frame for handing over possession. Authority observes that in absence of clause with respect to handing over of possession in the builder buyer agreement, it cannot rightly ascertain

as to when the possession of said apartment was due to be given to the complainants. It has been observed that period of 3 years is reasonable time for development of a project and handing over of possession as held by **Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.**

41. The Authority is therefore entitled to read the clause as imposing a **definite possession period of three years**, with the promoter's "terms and conditions," language having no effect in diluting statutory consequences. The mischief rule thus becomes entirely appropriate: by interpreting the clause in a manner that enforces certainty rather than permissive delay, the decision suppresses the mischief RERA sought to eliminate. Applying the statutory position above and the ratios of the Hon'ble Apex Court the *deemed date of possession is **15.04.2024.***

42. It is further pertinent to mention that multiple complaints have been instituted before this Authority against the same respondent in respect of its project namely "Smart Homes Karnal". In those matters, the respondent has filed written replies categorically stating that the project stands completed and that an Occupation Certificate has been obtained vide Memo No. ZP-1112/JD(SP)/2024/30123-29 dated

20.09.2024. A copy of the said Occupation Certificate has also been independently downloaded from the official website of the Directorate of Town and Country Planning, Haryana. Upon perusal of the said Occupation Certificate, it is evident that the same has been granted in respect of Towers A1, A2, A3, A4, A5, A6, A7 and B1 situated in the Affordable Group Housing Colony admeasuring 5.6534 acres, developed under License No. 02 of 2016 dated 05.03.2016, in the revenue estate of Village Budhakhera, Sector 32-A, District Karnal. The contents of the Occupation Certificate thus substantiate the respondent's assertion regarding completion of the aforesaid towers forming part of the project. ***It is an undisputed fact on record that the Occupation Certificate in respect of the project was obtained on 20.09.2024.***

43. The facts enumerated in the preceding paragraphs clearly establish that the respondent has failed to discharge its contractual and statutory obligation to hand over possession of the subject apartment by the deemed date of possession i.e. **15.04.2024**. Further, the record indicates that the Occupation Certificate (OC) was obtained on **20.09.2024**. Following this, the respondent issued a formal offer of possession to the complainant on **27.11.2024**, which was issued after receipt of occupation certificate dated on 20.09.2024. Same is annexed

at page no. 66-72 of the complaint. 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.

Further, record reveals that respondent has raised various demands along with valid offer of possession dated 27.11.2024 under different heads such as illegal Demand of Rs. 21,522/- on account of External Electricity Connectivity to Project Charge (23.79 Sq. Feet); Advance meter consumption charge of Rs. 26,443/- ; Security Deposit Charge of Rs. 20,000/-; Meter Charge of Rs. 6490/-; Labour Cess charges of Rs. 15,994/-. Moreover, the builder has illegally charged exorbitant amount of Rs. 3,00,980/-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 27.11.2024, 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 ₹ 90,449/- and amount of ₹ 3,00,980/- 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, Respondent cannot charge delayed interest from the complainants. With regard to delayed payment interest, since project of the respondent is itself delayed, Respondent cannot also charge delayed interest from the complainants.

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

In view of above, it is established that the offer of possession in question made after obtaining an OC, 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 offer of possession dated 27.11.2024 was not legally valid.***

44. In view of the above, Authority is of the considered view that complainant is well within her rights to claim delay interest from the respondent for the amount paid by her and thus deems fit to allow interest for delay in handing over of possession from the deemed date of possession i.e. 16.05.2022 upto the date on which fresh offer of possession will be given to the complainant in accordance with the directions issued in this order. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

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

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

*"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]*

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

45. 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 %.

46. 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% in all captioned cases and said amounts works out as per detail given in the table below:

| Sr. No. | Principal Amount | Deemed date of possession( 15.04.2024) or date of payment whichever | Interest Accrued till 08.10.2026 |
|---|---|---|---|

| | | | |
|---|---|---|---|
| | | is later | |
| 1. | ₹13,25,900/- | 15.04.2024 | **₹3,55,835/-** |
| Monthly interest | **₹ 12,162/-** | | |

47. The complainant is seeking compensation of ₹20,00,000/- for mental harassment, torture, agony, pain suffering and humiliations. 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.

48. Further, with regard to the relief sought by the complainant mentioned at para C-31 (4,5,8) 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

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

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

(ii) Respondent is directed to pay upfront delay interest as stated in para 46 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 complainants up to the date of actual handing over of the possession after obtaining occupation certificate.

(iii) Complainants 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.

.....
**CHANDER SHEKHAR**
**[MEMBER]**

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

.....
**NADIM AKHTAR**
**[MEMBER]**

.....
**PARNEET S SACHDEV**
**[CHAIRMAN]**