HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of Decision	**03.09.2026**

S.No.	Complaint nos.	Complainants
1.	929 of 2025	1. **Sh. Sanjay Kumar** S/o Ram Pratap; 2. **Mrs. Mamta** W/o Sanjay Kumar Both R/o House no. 252/7, Padav, Gujran, Hisar
2.	978 of 2025	1. **Sh. Rajan Dudeja** S/o Sh. Madan Lal; 2. **Mrs. Monika Dudeja** W/o Rajan Dudeja Both R/o House no.365, Sector-13, Hisar, Haryana-125004
3.	979 of 2025	1. **Sh. Rakesh Dudeja** S/o Sh. Madan Lal; 2. **Mrs. Sweety Dudeja** W/o Rakesh Dudeja Both R/o House no.365, Sector-13, Hisar, Haryana-125004
4.	982 of 2025	1. **Sh. Ashish Jindal** S/o Sh. Rajender Parsad; 2. **Sh. Ankur Jindal** S/o Sh. Rajender Parsad Both R/o House no. 761, Old Anaj Mandi, Tehsil Tosham, District Bhiwani- 127040.

VERSUS

Aarcity Builders Pvt. Ltd., registered office at 301, Krishna Apra Business Square, Netaji Shubash Place, Oritamoura, Delhi- 110034

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

Present: - Adv. Anurag Jain, Counsel for the complainants through VC(in all captioned complainants).

Adv. Kamal Dhaiya, Counsel for the respondent (in all captioned complainants).

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. This order shall dispose of above captioned four complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation &Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

2. These four complaints are taken up together as facts and grievances of all five captioned complaints are more or less identical and relate to the same project of the respondent, i.e., "Regency Park", situated at Sector 11A and

17, Tehsil an District Hisar, Haryana. The fulcrum of the issue involved in these cases pertains to failure on the part of respondent/promoters to deliver timely possession of unit in question. Therefore, **Complaint No. 929 of 2025 titled as "Sanjay Kumar & Anr. Versus Aarcity Builders Pvt. Ltd."** has been taken as lead case for disposal of these four captioned matters.

A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the project have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Regency Park
2.	Name of the promoter	Aarcity Builders Pvt. Ltd
3.	RERA registered/not registered	Registered

4. Further the details of sale consideration, the amounts paid by all the complainants and proposed date of handing over of the possession have been given in following table:

Sr no	Complaint no.	Unitno./ area	Builder buyer agreement	Deemed date of possession	Total sale consideration	Paid amount
1.	929/2025	0402, Tower-A, 1272 sq.ft.	30.10.2012	30.01.2016	₹27,70,360	9,57,920/-(as per demand letter annexed at page no.50 of

						complaint book)
2.	978/2025	0501, Tower-A, 1272 sq.ft.	02.11.2012	02.02.2016	₹26,55,880/--	16,28,434 /-(as per account ledger annexed at page no. 64 of complaint book)
3.	979/2025	0503, Tower-A, 1272 sq.ft.	02.11.2012	02.02.2016	₹26,55,880	19,36,050 /-(as per demand letter annexed at page no. 63 of complaint book)
4.	982/2025	902, Tower-A,1272 sq.ft.	17.10.2012	17.01.2016	₹34,43,248	21,36,688 /-(as per demand letter annexed at page no. 65 of complaint book)

B. FACTS AS PER THE COMPLAINT No. 929 of 2025:

5. That the complainants had booked an apartment no.0402, Tower-A, Regency Park, Sector 11-A & 17, Hisar, for their personal use in the project and is aggrieved against the respondent for gross violation of the provisions of the Act, rules, Regulations and contractual obligation.

6. 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.

7. 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. Further more 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).

8. 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.

9. That consequently, the complainants 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.A-0402 measuring 1272 square feet in the said project was made. The copy of letter of giving offer of allotment of apartment is appended as Annexure C-1

10. That vide letter dated 27.09.2012, a demand of Rs.2,22,600/- was made. The copy of demand letter dated 27.09.2012 is appended as Annexure C-2

11. That consequently, a flat buyer agreement cum Allotment Letter was executed between the parties on 30.10.2012. Copy of flat buyer agreement cum allotment letter is attached as Annexure C-3

12. That on 04.10.2013, demand letter was received. A perusal of which would demonstrate the total amount which stands paid by them was Rs.9,57,920/-. The copy of demand letter dated 04.10.2013 is appended as Annexure C-4

13. That on 28.02.2017, a letter was received that they are in the process of re-starting the construction of the project. The copy of letter dated 28.02.2017 is appended as Annexure C-5

14. That on 09.09.2024, the complainants have received a demand letter from respondent thereby made demand for the payment. A copy of demand letter dated 09.09.2024 is appended as Annexure C-6

15. That another letter was received on 07.11.2024 with respect to the demand of the payment. The copy of letter dated 07.11.2024 is appended as Annexure C-7 It is pertinent to mention here that till this period, to the knowledge of the complainants the occupation certificate for BDG towers was received by the respondent, whereas the construction of tower A was in a halted stage.

16. That on 24.03.2025, cancellation letter was received from the respondent asserting therein that the allotment of unit No.0402 allotted in Regency Park, Hisar stands cancelled. The copy of cancellation letter is appended as Annexure C-8

17. That thereafter, the complainant made numerous visits to the office of the respondent and thereby requested them to withdraw the cancelation letter. Further requested them that since in terms of the flat buyer agreement, the possession was to be offered in 2015 and the project was not progressing since year 2013, therefore, there was a reason for not making the payment. However, he also offered that he shall be making all the payments along with overdue interest in terms of the provisions of RERA Act and Rules and, therefore, the cancellation letter be withdrawn. Written request dated

15.05.2025 was also submitted at the project office of respondent at Hisar. The copy of letter dated 15.05.2025 is appended as Annexure C-9 However, the respondent at the first hand, had assured the complainants to look into the matter and after adopting delay tactics, have in the last week of May, 2025 have refused to consider the request of the complainants. Therefore, the complainants have no other option but to approach this Hon'ble Authority for seeking redressal of their grievance. That the cancellation letter dated 24.03.2025 issued by the respondent is illegal, unsustainable, untenable and is liable to be set aside inter alia on the following grounds: -

a) The complainants have never received any alleged demand letters dated 19.01.2016, 21.01.2016 & 22.08.2024, so no reliance upon the same can be placed. Letter dated 28.02.2017 (Annexure C-5) is not a demand letter, but is a letter, which had informed the complainants that the respondent is going to re-start the construction. Consequently, no strength can be drawn by the respondent upon the said alleged/documents, to buttress their claim regarding raising of demand.

b) 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 complainants to make any further payment. Hence, the reliance being placed upon the said demand letters dated 04.10.2013, 09.09.2024 & 07.11.2024 has no legal sanctity and cannot be used as a weapon in the armoury of the respondent to allege and assert that since on demand raised in notices was not made good, therefore, the allotment stands cancelled.

c) 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. In the present case, the same has been appended as Annexure C-3. 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.

d) That the reliance placed upon Clause 10 of the flat buyer agreement (Annexure C-3) 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, complainants have parted away with a sum of Rs.4,10,528/-, before the execution of flat buyer agreement, therefore at that point of time there was no option for them other than to sign over the dotted lines. Therefore, the act of forfeiting Rs. 2,17,146/- 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.

e) Further the cancellation order would show that it only says that the amount to be paid to the complainants is only Rs.7,40,774/- 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.

f) 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 promoter has been in defiance with the mandate of the statute and has never provided the complainants 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.

g) That forfeiting Rs. 2,17,146/-amount of the complainants 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 complainants in making the payment. It is submitted that a sum of Rs.9,57,000/- has remained with the respondent for a period of 10 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 10 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.

h) 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.

i) That the complainant had paid a sum of Rs.9,57,920/- 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 @ 11.5% for a period of around 11 ½ years comes to around Rs.12.66 lakhs. Though, the due amount as per the calculation is nearly a principle sum of Rs.10,65,824/- (though interest of Rs.4,04,385/- is also bad in law) remains outstanding. Hence, even after adjusting this amount, the complainant will have credit balance of Rs.2 Lakhs to his account. Hence, the cancellation is bad in law.

j) That the account statement dated 07.11.2024 reflects that out of due sum of Rs.6,84,224.04/-, sum of Rs.4,04,385/- is towards interest charged 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.

k) That the submissions of the complainants 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.

18. That even the complainants are 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 complainants are liable to be pay, they shall pay the same.

19. That the complainants have paid a sum of Rs.9,57,920/- 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.25,95,360/-. Around 40% 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 complainants, 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.

20. That in terms of the flat buyer agreement (Annexure C-3), 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 October, 2012, therefore, it was bound to handover the possession of the same by October 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 complainants 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.

21. That though the flat buyer agreement was executed between the parties on 26.09.2013, before the notification of the present Act but the clause 58 of the said agreement provides as under: -

> *"58. It Is agreed by and between the parties that a Real Estate (Regulation of Development) Act, 20__ 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*

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area basis or revision of method, terms of price payable for the Apartment/Villa and other terms and conditions contains herein shall remain unchanged."

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.

22. That it is apt to mention here that after October 2013, first demand letter was received in September, 2024 i.e., almost after 11 years. The proposition in hand is covered by the doctrine of RES IPSA LOQUITOR. The circumstances portray that since the construction of the project was at a halted stage, therefore, no demand was raised. Even in September 2024, no construction has commenced so as to entitle the respondent to raise any demand. Thus, the action of the respondent is bad in law.

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

<u>DETAILS OF THE AMOUNT ALREADY PAID BY THE COMPLAINANT TO THE RESPONDENT:</u>

Amount paid	Date of payment	Description	Mode of payment	Proof of payment	Page no. of the paper book at

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(Rs.)			**Cash/Cheque/ DD**		**which proof is attached**
3,00,000	03.08.2012	Registration Amount	Cheque	Reflected in demand letter dt 07.11.2024 (Ann C-7)	Annexure C-7 Page – 50
2,66,485	31.08.2012	Within 45 days of registration	Cheque	Reflected in demand letter dt 07.11.2024 (Ann C-7)	Annexure C-7 Page – 50
49,309	31.08.2012	At the time of allotment. (Within 90 days of registration)	Cheque	Reflected in demand letter dt 07.11.2024 (Ann C-7)	Annexure C-7 Page – 50
1,88,828	05.12.2012	On commencement of construction	Cheque	Reflected in demand letter dt 07.11.2024 (Ann C-7)	Annexure C-7 Page – 50
16,437	05.12.2012	On commencement of construction	Cheque	Reflected in demand letter dt 07.11.2024 (Ann C-7)	Annexure C-7 Page – 50
1,36,861	25.03.2013	On commencement of 1st floor roof slab	Cheque	Reflected in demand letter dt 07.11.2024 (Ann C-7)	Annexure C-7 Page – 50
9,57,920 Total Paid					

24. Further, Complainants have filed rejoinder dated 19.12.2025, in the registry in support of their pleadings. The Authority has duly taken rejoinder on record and considered the same for the proper and just adjudication of the matter.

C. <u>RELIEF SOUGHT</u>

25. Complainants sought following reliefs :

i. To set aside the cancellation letter dated 24.03.2025 (Annexure C-8) by virtue of which the allotment of flat No.0402, 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 11.5%, 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. <u>REPLY FILED BY RESPONDENT ON 03.11.2025:</u>

26. 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**.

27. 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.

28. 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.

29. 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.

30. 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 the allotment of Apartment No. A – 0402 in Tower A. Thereafter, the Complainant executed a Flat Buyer's Agreement (FBA) on 31.10.2012, thereby agreeing to abide by all its terms and conditions. All demands raised by the Respondent were strictly in accordance with the agreed terms and the corresponding Construction-Linked Payment Plan. However, despite repeated reminders the Complainant wilfully defaulted in making payments as per the agreed schedule.

31. 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 – 0402, Tower A, was Rs. 27,70,360/- (exclusive of statutory charges such as Stamp Duty, Registration Fees, Service Tax, and other applicable government levies). The Complainant made part payments amounting to Rs. 9,23,942/- towards the principal, Rs. 33,978/- towards service tax and Rs. 4,45,200/- [Handwritten note in original: nothing paid] towards non-refundable EDC/IDC between August 2012 and March 2013. Thereafter the Complainant failed and neglected to make further payments as per the agreed milestones. The instalment due on 05.12.2012 (upon commencement of construction), instalment due on 25.03.2013 (upon

commencement of 1st floor slab), due on 22.10.2013 (upon commencement of 5th floor slab) was demanded by the respondent but the Complainant did not comply. The Complainant also defaulted on subsequent instalments despite repeated reminders and notices dated 08.03.2013, 27.05.2013, 24.09.2013, 19.01.2016, 23.08.2024, 09.09.2024 and 07.11.2024. Copies of the said demand letters and reminders are annexed herewith as **Annexure R-2 (Colly)**.

32. That due to the default of the Complainant and several other allottees in making timely payments the Respondent faced severe financial constraints which adversely affected the pace of project completion. Consequently, a Meeting of Members (MOM) was convened on 21.03.2017 and the allottees, including the Complainant, were duly informed of the decisions taken therein. It was communicated that the Respondent would arrange project financing within 60 days to expedite construction activities and would offer fit-out possession by September 2018.

33. 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."*

34. 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)."*

35. Accordingly, the Complainant were liable to pay the overdue amounts along with applicable interest as per law and the terms of the BBA.

36. 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……"

37. 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.

38. 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."*

39. 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 period exceeding twelve (12) years 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.

40. 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 80% 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.

41. **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."*

42. 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

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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.

43. 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 – 0402, Tower A, in the project titled "*Regency Park*" located at Sector 11A & 17, Hisar, Haryana. A *Final Cancellation Letter dated 24.03.2025* 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**. 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 ₹7,40,774/-.

44. 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.

45. That despite receipt of the final cancellation letter dated 24.03.2025, the Complainants/Allottees neither approached the Respondent-Promoter to submit the required documents nor took any action to collect the refundable amount of ₹7,40,774/-. 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.

46. 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.

47. That furthermore following the valid cancellation of the Complainants' allotment, the Respondent-Promoter has lawfully re-allotted Unit No. A – 0402, Tower A, to a subsequent allottees, *Suman Bala & Puran Chand*, after completing all requisite formalities and in accordance with the provisions of the RERA Act and the Builder Buyer Agreement.

48. 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.

49. 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."*

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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,

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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. Copies of the Resolution Plan, the Order dated 29.01.2025, and the Dak Receipt no. 42229 are annexed herewith and collectively marked as **Annexures R-4, R-5, and R-6**.

62. 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.

63. 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.

64. 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-

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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.

65. 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.

66. Further, respondent has filed an application dated 13.08.2026, in the registry in support of its pleadings. The Authority has duly taken said application on record and considered the same for the proper and just adjudication of the matter.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

During oral arguments ld. counsel for complainants as well as respondents reiterated the submissions as mentioned in the complaint, rejoinder, reply and application dated 13.08.2026.

F. ISSUE FOR ADJUDICATION

Whether the complainants are entitled to the reliefs sought or not?

G. OBSERVATIONS AND DECISION OF AUTHORITY

67. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainants booked a flat in the real estate project; "Regency Park, being developed by the promoter namely; "Aarcity Builders Pvt. Ltd.". Thereafter, flat buyer agreement was executed between the parties on 30.10.2012 for unit bearing no. 0402-Tower A admeasuring 1272 sq.ft.

68. Out of the total sale consideration of ₹27,70,360/-, the Complainants have paid an aggregate amount of ₹9,57,920/-. This payment is substantiated by the Respondent's own final reminder letter dated 07.11.2024 (annexed at Pages 49-50 of the Complaint), the contents and receipt of which stand uncontroverted by the Respondent.

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 Complainants were bound to make payments per the Construction-Linked Plan (CLP) (annexed at Page 40 of the Complaint), the records demonstrate that the Complainants paid regularly from 2012 until 25.03.2013 (last payment was of ₹1,36,861/- in the final tranche, as detailed at Pages 17–18). Payments were halted only after the respondent abandoned on-site construction.

The Respondent issued demand letters in October 2013 and January 2016, but subsequently admitted in an intimation letter dated 28.02.2017 that tower construction had been halted. This sequence refutes the respondent's claim that demands aligned with actual CLP milestones. Furthermore, after a seven-year hiatus, the respondent issued fresh demands on 22.08.2024, 09.09.2024, and 07.11.2024 without achieving the corresponding physical progress.

The Respondent's own reply confirms that construction was pushed to December 2025 pursuant to a resolution plan submitted in Suo-Motu Complaint No. 717 of 2024, and no Occupation Certificate has been obtained. Consequently, the project is delayed by nearly a decade, well past the agreed possession date of January 2016 (Clause 18 of builder buyer agreement).

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 complainants cannot be expected to perform or continue performance of their 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 complainants were fully justified in withholding further payments in view of the respondent's default.

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

In view of the above facts the respondent's claim that the complainants are 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 ***30.01.2016.***

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

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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 January 2016, 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.

69. Furthermore, with regard to reminders and cancellation letter sent by the respondent, it is observed that the reminder letters issued by the respondent between 04.10.2013 and 09.09.2024 contain no specific clause or written warning indicating that failure to pay would result in the cancellation of the unit. Instead, the express remedy specified by the respondent within those communications was the levying of penal interest on delayed amounts. Consequently, the respondent cannot retroactively substitute a penalty of interest with an absolute cancellation and forfeiture of property without providing prior, unambiguous notice of intent to cancel. The purported Cancellation Letter dated 24.03.2025 is legally void and invalid because the respondent has failed to obtain a Part Completion Certificate or an Occupation Certificate for the project till date. Under established RERA jurisprudence, a developer who is in fundamental default of its primary

statutory obligation i.e. delivering a project with a valid Occupation Certificate/Completion Certificate cannot exercise an equitable right to cancel an allotment or forfeit buyer funds. The builder cannot penalize an allottee for stopping payments when the project itself has stalled and lacks the mandatory government sanctions required to hand over legal possession. Further, respondent objection that complainant has suppressed material facts holds no merits. Rather, there is a legitimate legal dispute over the validity of a hidden, unilateral cancellation issued in the year 2025. A developer cannot accuse an allottee of having "unclean hands" when the developer has illegally retained ₹9,57,920 for over 13 years without fulfilling the basic contractual promise of building completion and delivery of possession. It is also observed that the respondent cancelled the allotment on 24.03.2025, however, no refund was ever made to the complainants. Instead, the respondent company itself sent multiple demand letters/reminders from the years 2013 to 2024. This conduct is contradictory to the defence pleaded by the respondent company.

70. The respondent cannot claim that construction was delayed by the complainant's non-payment, as the respondent was already in fundamental breach of contract long before the payment disputes arose. Under the express terms of the builder buyer agreement, the respondent was contractually obligated to offer possession latest by 30.01.2016. Having failed to issue a

legal offer of possession to date within the stipulated timeframe, the respondent committed the first material breach, disentitling them from shifting the blame for the subsequent project delay onto the consumer/ allottee. The respondent's claim of an absolute entitlement to forfeit up to 20% of the total consideration amount is legally untenable under the RE(RD) Act, 2016. Forfeiture clauses are only enforceable when a buyer backs out of a project that is progressing on time or where the developer is ready to fulfil their obligations. Because the respondent has failed to obtain a Part Completion Certificate or an Occupation Certificate for over 13 years, the project is a total failure. A promoter in absolute, perennial default cannot invoke forfeiture clauses to pocket a consumer's hard-earned money. The complainants did not "abandon" their obligations, rather they stopped making payments into a stalled project that unilaterally added wrongful penalties without consent.

71. In the present case, the deemed date of possession expired on 30.01.2016. The Respondent has failed to fulfill its contractual obligations within this stipulated timeline and has offered no cogent justification for the delay. The undisputed fact remains that physical possession has not been offered to date, as the project continues to be 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 failure to comply with statutory duties under the Act.

72. Since the Complainants have unequivocally expressed their intention to take possession of the booked unit rather than seek a refund, their claim for possession along with prescribed delay interest for the period of inordinate delay is fully justified and allowed.

73. In light of the aforementioned grounds, the Authority hereby **quashes and sets aside** the cancellation notice dated 24.03.2025 issued by the respondent.

74. Lastly, the Respondent has contended in Paragraph 20 (Page 10) of its reply that the unit in question was lawfully re-allotted to third parties, namely "Suman Bala and Puran Chand". Regarding this contention, the Authority observes and directs as follows:

i. The Respondent cancelled the Complainants' allotment vide letter dated 24.03.2025, which has already been quashed by this Authority in the preceding paragraphs.

ii. The Respondent has merely made an unsubstantiated, single-line assertion regarding the re-allotment. The Respondent failed to place on record any documentary evidence i.e such as an allotment letter, Builder-Buyer Agreement, payment receipts, or a registered Conveyance Deed proving valid title to substantiate this claim. In the absence of such material proof, this contention cannot be entertained under the RERA Act, 2016.

iii. Similarly, in Complaint No. 982 of 2025, the Respondent merely annexed a copy of a Builder-Buyer Agreement in favor of a subsequent allottee without producing an executed Conveyance Deed to establish legal title. Consequently, any right or interest purportedly created in favor of Dhiraj Aggarwal is declared illegal and is hereby quashed.

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."*

75. In view of the above, Authority is of the considered view that complainants are 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. 30.01.2016 upto the date on which legal offer of possession will be given to the complainants 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".

76. Consequently, as per website of the State Bank of India, i.e., https://sbi.co.in, the Highest Marginal Cost of Lending Rate (in short MCLR) as on date, i.e. 05.03.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

77. 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, 03.09.2026 at the rate of 10.80% in all captioned cases and said amounts works out as per detail given in the table below:

i. **In complaint no. 929 of 2025:**

Sr. No.	Principal Amount	Deemed date of possession(30.01.2016) or date of payment whichever is later	Interest Accrued till 03.09.2026
1.	₹9,57,920/-	30.01.2016	**₹10,96,910 /-**
Monthly interest	**₹8503/-**		

ii. **In complaint no. 978 of 2025:** The Complainants stated that they had paid an aggregate sum of ₹16,28,434/- against the total agreed sale consideration of ₹26,55,880/-. To substantiate this contention, reliance is placed upon the respondent's final demand letter dated 30.05.2025 (Annexure, Page 64 of the Complaint), which explicitly corroborates the receipt of ₹16,28,434/-. Inasmuch as the Respondent has neither disputed nor controverted this figure, the Authority formally accepts and records the total paid quantum as **₹16,28,434/-** Upon perusal of the record, specifically Page 4, Paragraph 6 of the respondent's written reply, the respondent has admitted to receiving of ₹ 15,99,611/- between August 2012 and October 2013, categorized as follows:

- **Principal Component:** ₹11,18,088/-
- **Service Tax:** ₹36,323/-
- **EDC/IDC Charges:** ₹4,45,200/-

Consequently, an amount of **₹15,99,611/-** stands established as paid prior to the committed date of possession, i.e., 02.02.20 16.

While the overall paid quantum is admitted, the final demand letter dated 30.05.2025 omits specific transaction dates for the remaining balance of ₹28,823/- (₹1628434/- less ₹15,99,611/-). In the absence of physical payment receipts or documentary proof of transfer produced by the Complainants for this differential amount, the Authority directs that the balance sum of ₹28,823/- shall be deemed credited as on **30.05.2025**, being the date of formal written acknowledgment by the Respondent.

Sr. No.	Principal Amount	Deemed date of possession(02.02.2016) or date of payment whichever is later	Interest Accrued till 03.09.2026
1.	₹1599611	02.02.2016	**₹18,30,288/-**
2.	₹ 28,823	30.05.2025	**₹3940/-**
Total	₹16,28,434		**₹18,34,228 /-**
Monthly interest	**₹14455/-**		

iii. **In complaint no. 979 of 2025:** The Complainants have paid an aggregate sum of ₹19,36,050/- against the total agreed sale consideration of ₹26,55,880/-. To substantiate this contention, reliance is placed upon the respondent's final demand letter dated 30.05.2025 (Annexure, Pages 62–64 of the Complaint), which explicitly corroborates the receipt of ₹19,36,050/-. Inasmuch as the Respondent has neither disputed nor controverted this figure, the Authority formally accepts and records the total paid quantum as **₹19,36,050/-**. Upon perusal of the record, specifically Page 4, Paragraph 6 of the respondent's written reply, the respondent has admitted to receiving ₹15,99,614/- between August 2012 and October 2013, categorized as follows:

- **Principal Component:** ₹11,18,091/-
- **Service Tax:** ₹36,323/-
- **EDC/IDC Charges:** ₹4,45,200/-

Consequently, an amount of **₹15,99,614/-** stands established as paid prior to the committed date of possession, i.e., 02.02.2016.

While the overall paid quantum is admitted, the final demand letter dated 30.05.2025 omits specific transaction dates for the remaining balance of ₹3,36,436/- (₹19,36,050/- less ₹15,99,614/-). In the absence of physical payment receipts or documentary proof of transfer produced by the Complainants for this differential amount, the Authority directs that the balance sum of **₹3,36,436/-** shall be deemed credited as on **30.05.2025**, being the date of formal written acknowledgment by the Respondent.

Sr. No.	Principal Amount	Deemed date of possession(02.02.2016) or date of payment whichever is later	Interest Accrued till 03.09.2026
1.	₹16,35,934	02.02.2016	**₹18,71,849/-**
2.	₹ 3,00,116	30.05.2025	**₹41,026/-**

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Total	₹19,36,050		**₹ 19,12,875/-**
Monthly interest	**₹17,186/-**		

iv. In complaint no. 982 of 2025: The Complainants stated that they had paid an aggregate sum of ₹21,36,688/- against the total agreed sale consideration of ₹34,43,248/-. To substantiate this contention, reliance is placed upon the respondent's final demand letter dated 30.05.2025 (Annexure, Page 65 of the Complaint), which explicitly corroborates the receipt of ₹21,53,214/-. However, complainants have claimed to pay an amount of ₹21,36,688/- only. Inasmuch as the Respondent has neither disputed nor controverted this figure, the Authority formally accepts and records the total paid quantum as **₹21,36,688/-** Upon perusal of the record, specifically Page 4, Paragraph 6 of the respondent's written reply, the respondent has admitted to receiving of ₹ 18,13,002/- between August 2012 and October 2013, categorized as follows:

- **Principal Component:** ₹13,25,442/-
- **Service Tax:** ₹42,360/-
- **EDC/IDC Charges:** ₹4,45,200/-

Consequently, an amount of **₹18,13,002/-** stands established as paid prior to the committed date of possession, i.e., 17.01.20 16.

While the overall paid quantum is admitted, the final demand letter dated 30.05.2025 omits specific transaction dates for the remaining balance of ₹3,23,686/- (₹21,36,688/- less ₹18,13,002/-). In the absence of physical payment receipts or documentary proof of transfer produced by the Complainants for this differential amount, the Authority directs that the balance sum of ₹3,23,686/- shall be deemed credited as on **30.05.2025**, being the date of formal written acknowledgment by the Respondent.

Sr. No.	Principal Amount	Deemed date of possession(17.01.2016) or date of payment whichever is later	Interest Accrued till 03.09.2026
1.	₹18,13,002	02.02.2016	**₹20,83,035/-**
2.	₹ 3,23,686	30.05.2025	**₹44,248/-**
Total	₹21,36,688		**₹21,27,283/-**
Monthly interest	**₹18967/-**		

Accordingly, the respondent is liable to pay the upfront delay interest and monthly interest as mentioned above in respective tables to the complainants 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 complainants will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to them.

78. Ld. counsel for complainants has neither argued nor pressed upon the reliefs claimed in para 25 clause iii. of this order.

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

The Complainants contend that they are 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 42 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 Complainants 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 Complainants shall remain obligated to clear these payments upon the offer of valid and lawful possession.

I. DIRECTIONS OF THE AUTHORITY

80. 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 respective complainants 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 77 of this order to the complainants 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 if any to the respondents 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.

(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]