HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1935 of 2024**
Date of filing:	**23.12.2024**
First date of hearing:	**10.02.2025**
Date of decision:	**07.09.2026**

Dr. Rakesh Gupta

S/o Late Sh. Gopal

R/o Plot no. 75 and 76P,

Sector-21A, FaridBBAd, Haryana

……COMPLAINANT

Versus

Pivotal Infrastructure Pvt. Ltd.

Registered Office: 704-705 JMD Pacific Square,

Sector-15, Part-II, Gurugram, Haryana ……RESPONDENT

Present: - None for the complainant.

Adv. Karan Kaushal, counsel for the respondent through VC.

ORDER (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainant on 23.12.2024 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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 RERA, Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

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

S. No.	Particulars	Details
1.	Name and location of the project	"Royal Heritage, Sector-70, FaridBBAd
2.	RERA registered/not registered	Lapsed project Earlier registered vide registration no. 47 of 2018 dated 14.09.2018
3.	Unit No.	1204-A, 25th floor
4.	Super area	2525 sq. ft.

5.	Date of execution of Flat Buyer Agreement and allotment	22.02.2014
6.	Deemed date of possession	22.08.2017 (42 months from the date of execution of agreement)
7.	Total Sale price	₹1,12,24,200/-
8.	Amount paid by the complainant	₹1,19,42,006.15/- (as per application dated 16.07.2026)
9.	Occupation certificate	01.05.2024
10.	Valid offer of possession	08.04.2026

B. FACTS OF THE COMPLAINT

3. Case of the complainant is that the complainant purchased the flat from the respondent vide allotment letter dated 14.02.2014, for which he has paid more than 80% of the amount. A copy of the allotment letter along with payment receipts is annexed as Annexure C-1 (Colly.).

4. That, on behalf of the respondent, Mr. Naveen Kumar Agarwal and Mr. Om Prakash Agarwal, duly authorised by the respondent, entered into a Flat Buyer's Agreement with Mr. Rakesh Gupta in respect of Flat No. 1204-A, RIDHI/1, 25th Floor, Luxury Duplex, admeasuring 2525 sq. ft., situated in Sector 70, FaridBBAd (hereinafter also referred to as the "project") on 22.02.2014. A copy of the Flat Buyer's Agreement entered into between the complainant and the respondent is annexed as Annexure C-2.

5. That the total sale consideration agreed between the complainant and the respondent was ₹1,12,24,200/- and other charges of ₹7,76,257/-, which included IFMC, VAT, Service Tax, Handover Charges and EDC & IDC charges. The project was to be completed within 42 months from the date of the agreement, i.e. 22.02.2014. The complainant opted for the Construction Linked Plan for his flat booking, under which the complainant has paid an amount of ₹1,01,32,782/- (including TDS of ₹91,650/- which was also deposited) till date, and the balance amount is ₹22,36,325/-. Out of the said balance amount, EDC & IDC charges of ₹3,68,650/- are not payable as per the order of the Hon'ble Supreme Court, as the builder can charge only up to ₹182/- per sq. ft., whereas in the present case the builder has charged ₹328/- per sq. ft. Hence, after considering the order of the Hon'ble Supreme Court, the balance amount payable to the respondent is ₹18,67,675/- (₹22,36,325/- minus ₹3,68,650/-).

6. That the complainant had taken a loan of ₹85,00,000/- from HDFC Bank, for which the respondent issued a mortgage letter dated 25.02.2014 in favour of HDFC Bank and a Tripartite Agreement was also executed between the parties on 25.02.2014. The mortgage letter along with the Tripartite Agreement dated 25.02.2014 is annexed as Annexure C-3 (Colly.).

7. That despite having made more than 80% of the payment towards the flat in question, the respondent failed to deliver actual, physical and vacant possession of Flat No. 1204-A to the complainant. The complainant requested the site office of the respondent at FaridBBAd for handing over physical possession of the aforesaid flat. However, every time the officials of the respondent at FaridBBAd came up with one or the other excuse to delay handing over the physical possession of the flat. The complainant requested the respondent several times to hand over possession along with the keys, but the respondent failed to do so till date.

8. That as per the flat buyer agreement, the builder was required to hand over the flat in question to the complainant after obtaining the necessary approvals from the concerned authorities, including, but not limited to, NOC/Clearance from the Ministry of Environment & Forests. As per the agreement, the complainant was not allowed to transfer the benefit of the agreement unless the complainant had first cleared all payments falling due till that date.

9. That the respondent was required to complete the construction of the aforesaid flat within a period of 42 months from the date of the agreement, i.e. 22.02.2014, and thereafter the respondent was required to apply for the necessary approvals from the concerned authorities. However, the respondent was not able to complete the construction of the flats in compliance with the

agreement dated 22.02.2014 (Annexure C-2), what to talk of obtaining the necessary approvals.

10. That on 17.09.2020, respondent sent an intimation of due instalment letter to the complainant requiring him to pay a balance amount of ₹26,78,565.74/- on 10.10.2020. In response thereto, the complainant requested the bank through email to disburse the remaining amount, for which the bank requested the complainant to provide the Occupancy Certificate or the RERA extension certificate so that the bank could consider disbursement of the loan amount. The intimation of due instalment letter dated 17.09.2020 along with the email dated 20.06.2023 sent by the bank is annexed as Annexure C-4 (Colly.).

11. That thereafter, on 02.12.2020, the complainant submitted a request letter to the respondent for providing him with the new extended RERA registration certificate, due to which the bank had not disbursed the balance loan amount taken by the complainant for the flat in question. The letter dated 02.12.2020 is annexed as Annexure C-5.

12. That thereafter, the respondent stopped responding to the emails and letters sent by the complainant and ignored him completely, due to which the complainant suffered financially as well as mentally.

13. That as per Clause 9.4 of the Flat Buyer's Agreement, if the builder failed to complete the construction of the said apartment and offer to hand over

possession of the said apartment within 42 months as per the Buyer's Agreement, i.e., up to 21.08.2017 from the date of execution of the agreement dated 22.02.2014, then the company was liable to pay compensation @ ₹7.5/- per sq. ft. per month to the buyer. In the present case, there is a delay of 80 months in giving actual possession on the part of the respondent and, therefore, the respondent is also liable to pay compensation for delay in possession amounting to ₹15,15,000/- to the complainant.

14. That the complainant, on 20.06.2023, also requested the respondent to provide the Occupancy Certificate and RERA extension certificate, but all such requests were in vain and nothing was provided by the respondent till date.

15. That on 01.05.2023 and 02.05.2023, after the complainant had written multiple emails and made calls to the respondent, the respondent sent an Offer of Possession letter as well as an email demanding an amount which was based upon inaccurate calculations. A copy of the same is annexed herewith as Annexure C-6.

16. That on 17.10.2021, the complainant had highlighted his concerns with regard to the aforesaid flat to the Director of the respondent company, who assured that the flat would be delivered soon, but everything was in vain.

17. That the conduct of the respondent is evident from the fact that it has (i) failed to hand over possession of Flat No. 1204-A, RIDHI/1, 25th Floor, Luxury

Duplex, admeasuring 2525 sq. ft., situated in Sector 70, FaridBBAd, to the complainant till date; and (ii) failed to pay compensation for delay in possession as per Clause 9.4 of the Buyer's Agreement dated 22.02.2014.

18. That in light of the above discussion, the complainant seeks legal and actual physical possession of Flat No. 1204-A, RIDHI/1, 25th Floor, Luxury Duplex, admeasuring 2525 sq. ft., situated in Sector 70, FaridBBAd, and execution of a conveyance deed in favour of the complainant after obtaining the necessary approvals from the statutory authorities, besides interest as provided for in Section 2(za) of the Real Estate (Regulation and Development) Act, 2016, on the payments received by the respondent from the respective dates of deposit.

19. That the cause of action is a continuing cause of action, wherein the respondent has failed to offer legal and valid possession of the flat to the complainant till date despite repeated requests.

20. That this Hon'ble Authority has jurisdiction to entertain and adjudicate the present complaint, as the complainant is a permanent resident of FaridBBAd and the project, i.e. Royal Heritage, wherein the flat of the complainant, namely Flat No. 1204-A, RIDHI/1, 25th Floor, Luxury Duplex, admeasuring 2525 sq. ft., is situated in Sector 70, FaridBBAd. Hence, the present complaint falls within the jurisdiction of this Regulatory Authority.

21. Further, Complainant has filed applications dated 23.07.2025, 23.12.2025, 06.03.2026 and 16.07.2026 in the registry in support of his pleadings. The Authority has duly taken these applications on record and considered the same for the proper and just adjudication of the matter.

C. RELIEFS SOUGHT

22. Complainant has sought following reliefs:

    i. Direct the respondent to pay Interest on amount paid by the complainant to the respondent i.e. ₹1,01,32,782/- @ 18% for six years from 21.08.2017 to 18.12.2024 is ₹1,33,71,941/- (asking rate of interest is 18% only while their rate is 24% on delayed payments beyond 90 days)

    ii. Direct the respondent to deliver legal and actual physical possession of Flat No. 1204-A, RIDHI/1, 25th Floor, Luxury Duplex, 2525 Sq. Ft., Sector 70, FaridBBAd to the complainant and to execute a conveyance deed in the favour of the complainant immediately.

    iii. Direct the respondent to execute conveyance deed with the complainant immediately without demanding any extra amount as per their demand letter dated 02.05.2024 or interest from the complainant till the final outcome of the decision as delay in providing the RERA registration certificate is from respondent's side.

iv. Direct Respondent to compensate the complainant for delay in possession of the flat in questions as per Real Estate (Regulation & Development) Act 2016 alongwith interest on payment of any amount paid by the complainants to the Respondents.

v. Direct the Company not to claim of electricity consumption, legal & admin charges, as there is no provision in allotment letter. Hence declare the case cost of the charges as null & void.

vi. Or any other relief which this Hon'ble Authority deems fit in view of the present facts and circumstances.

D. <u>REPLY ON BEHALF OF RESPONDENT</u>

Respondent submitted a detailed reply on 23.05.2025 in the registry of the Authority pleading therein as under:

23. That by way of the instant complaint, the complainant has sought a direction to pay delayed possession charges @ 18% and a further direction to hand over the physical possession of Flat No. 1204-A, RIDHI/1, 25th Floor, Luxury Duplex, admeasuring 2525 sq. ft., situated at Sector-70, FaridBBAd (hereinafter referred to as the "premises"), and for consequent execution of the conveyance deed in favour of the complainant.

24. That the complainant approached the respondent for purchase of the premises, whereupon the respondent issued a letter of allotment dated 14.02.2014

(annexed and marked as Annexure C-1 with the complaint) in favour of the complainant. In pursuance of the letter of allotment, the complainant entered into a Builder Buyer's Agreement dated 22.02.2014 (hereinafter referred to as the "BBA", annexed and marked as Annexure C-2 with the complaint) with the answering-respondent for purchase of the premises for a total sale consideration of Rs. 1,12,24,200/- (exclusive of taxes, GST and other payable charges under any other statute).

25. That the complaint, as preferred by the complainant, is not maintainable before this Hon'ble Authority in its present form, inasmuch as the complainant has failed to approach this forum with clean hands, which is an essential precondition for invoking the equitable jurisdiction of this Hon'ble Authority. The complainant has deliberately suppressed material and relevant facts which bear directly upon the merits of the matter and which, had they been disclosed, would have materially altered the nature of the relief sought. It is a time-honoured and foundational principle of equity that "he who seeks equity must do equity" and "he who comes into equity must come with clean hands." The act of concealment, whether by commission or omission, not only vitiates the sanctity of the pleadings but also renders the claim liable to be dismissed at the threshold for lack of bona fides and candour. The suppression of

pertinent facts, whether inadvertent or calculated, undermines the credibility of the complainant's case and amounts to a grave abuse of the process of law.

26. That as per Clause 4.3 of the BBA, the complainant agreed to pay the balance amount as per the payment plan described in Annexure-IV of the BBA, as and when demanded by the answering-respondent and as per the other applicable provisions of the BBA.

27. That as per Clause 4.5 of the BBA, the complainant accepted and agreed that time is of the essence with respect to his obligations to make any and all payments under the BBA, including payment of any part of the Total Price, applicable charges, considerations, interest, deposits, penalties, stamp duty, registration fee and other charges stipulated under the BBA, as per the demand or notice of the answering-respondent or as per the agreed payment schedule.

28. That as per Clause 5.1.1 of the BBA, the sale/conveyance deed of the premises in favour of the complainant and handing over of possession were subject to completion of construction and handing over of possession and receipt from the complainant of the full sale consideration and/or other dues and charges, maintenance charges and miscellaneous expenses mentioned in the BBA.

29. That the very foundation of the complainant's right to maintain the present complaint is predicated upon the due and faithful discharge of his contractual obligations under the BBA. However, it stands as an admitted position that the complainant has failed to remit the full and final sale consideration, as stipulated under the BBA. In such circumstances, the complainant, having himself committed a material breach of the terms of the contract, cannot be permitted to invoke the jurisdiction of this Hon'ble Authority or seek redressal of alleged grievances arising therefrom. It is a well-settled principle of equity and jurisprudence that one who seeks equity must come with clean hands and must have fulfilled his own obligations before asserting any claim against another. The complainant's continued non-compliance with the essential terms of the BBA renders his cause of action misconceived and unsustainable. Therefore, in the absence of fulfilment of his own contractual liabilities, the complainant can claim no enforceable right in law, and as such, the present complaint deserves to be rejected in limine for want of locus and maintainability.

30. That furthermore, as per Clause 7.1(i) of the BBA, failure to make payments within the time stipulated in the schedule of payments and failure to pay the stamp duty, legal registration charges, incidental charges, increases including IFMS, charges/deposits for bulk supply of electrical energy, taxes and other

similar charges notified by the answering-respondent constitute an event of default.

31. That furthermore, under Clause 7.3 of the BBA, the complainant specifically agreed that timely payment of the instalments and other charges was the essence of the BBA, failing which the answering-respondent would be entitled to cancel the allotment and the complainant would forfeit the entire amount of the Earnest Money, etc.

32. That furthermore, under Clause 8.1 of the BBA, handing over of possession of the premises within 42 months of execution of the BBA was subject to timely payment by the complainant of all his obligations under the BBA.

33. It is most respectfully submitted that a bare and harmonious reading of the aforementioned Clauses of the BBA leaves no room for doubt that timely payment of instalments constitutes the very essence and foundation of the BBA. The BBA, in its express terms, underscores the fundamental importance of strict adherence to the agreed payment schedule, treating such adherence as a condition precedent to the continuance of reciprocal obligations. In this backdrop, the admitted and uncontroverted default on the part of the complainant, in failing to honour the stipulated payment milestones, strikes at the root of the contractual relationship. Having himself disregarded the core covenant of timely performance, the complainant cannot now be permitted to

invoke the machinery of this Hon'ble Authority in pursuit of reliefs that presuppose compliance with obligations he has failed to discharge.

34. It is a trite proposition of law that a party in breach cannot be heard to complain of the consequences of his own default. The invocation of jurisdiction by a defaulting party, who stands disentitled by virtue of his own conduct, is not only legally untenable but also offends the equitable principles that underpin the administration of justice. In such a situation, the present complaint is nothing more than an impermissible attempt to secure advantage despite contractual non-performance, and is liable to be dismissed as wholly devoid of merit and maintainability.

35. That it is an admitted position on behalf of the complainant, in the facts and circumstances of the instant case, that he has failed to make timely instalments which he was obligated under the BBA to pay. The answering-respondent sent multiple reminders and requests to the complainant for payment of the due amount under the BBA. However, despite such reminders and requests, the complainant persisted in his default. Vide intimation letter dated 17.09.2020 (annexed and marked as Annexure C-4 with the complaint), the answering-respondent intimated the complainant regarding payment of the due amount for the premises, which he was obligated to pay under the BBA,

amounting to ₹26,78,565.74/-. However, despite such intimation, the complainant persisted in his default.

36. That the conduct of the complainant, marked by inordinate delay, disregard for contractual obligations and a conspicuous want of diligence, unequivocally points to the conclusion that any delay, if at all occasioned in handing over possession, stands solely and entirely attributable to the complainant's own lethargy and non-compliance. The complainant, having failed to discharge his reciprocal obligations under the BBA with reasonable promptitude, cannot now shift the burden of his own default upon the respondent. Such apathetic and indifferent conduct strikes at the very root of good faith and contractual discipline and renders untenable any grievance premised on alleged delay. It is a settled principle of equity and jurisprudence that one who seeks equity must do equity, and that no party can take advantage of his own default. Therefore, the answering-respondent cannot, in law or equity, be saddled with consequences arising from the complainant's own failure to adhere to the essence of the bargain.

37. That the bona fide and earnest intention of the respondent to hand over possession of the subject premises to the complainant stands manifest from the issuance of the Offer of Possession Letter dated 01.05.2023 (annexed as Annexure C-6 to the complaint), wherein the complainant was formally

invited to take possession in accordance with the terms of the BBA. In furtherance thereof, an Intimation Letter dated 02.05.2023 (annexed as Annexure C-6 to the complaint) explicitly called upon the complainant to discharge his outstanding liability to the tune of ₹41,90,612.18/- arising under the contractual covenants of the BBA. Again, an Intimation Letter dated 01.08.2024 (annexed as Annexure C-6 to the complaint) was sent by the answering-respondent, explicitly calling upon the complainant to discharge his outstanding liability to the tune of ₹44,36,548.79/-. However, notwithstanding the above, the complainant, in disregard of his contractual obligations and despite repeated requests, reminders and lawful intimations, abstained from acting upon the said offer, thereby perpetuating his own default. The inaction and non-compliance on the part of the complainant negate any alleged grievance and underscore the answering-respondent's consistent good faith and readiness to perform its part of the bargain. Such conduct on the part of the complainant disentitles him to invoke the equitable jurisdiction of this Hon'ble Authority, having failed to exhibit diligence or reciprocity as required under the agreement.

38. That in light of the complainant's continued inaction, as well as his persistent default in discharging the outstanding financial obligations under the BBA, the answering-respondent was left with no recourse but to issue a final

intimation dated 13.01.2025. Through the said communication, the complainant was accorded a last and final opportunity to liquidate the arrears due and payable, failing which the answering-respondent expressly reserved its right to initiate cancellation of the BBA. Despite the indulgence thus granted and the unequivocal tenor of the aforementioned notice, the complainant remained indifferent and failed to remedy his default. Thereafter, by way of yet another reminder dated 14.04.2025, respondent once again called upon the complainant to fulfil his contractual obligations and remit the outstanding dues. However, this too elicited no response, thereby compelling the conclusion that the complainant's persistent dereliction is deliberate and devoid of just cause. The repeated and ignored communications are reflective not of any deficiency on the part of the answering-respondent, but of the complainant's own apathy and indifference, which militates against the invocation of any equitable or discretionary relief before this Hon'ble Authority. Copies of the Intimation Letters dated 13.01.2025 and 14.04.2025 are annexed and marked herewith as Annexure R-1 & R-2, respectively.

39. That, rather than honouring the solemn obligations cast upon him under the BBA, the complainant has deliberately opted to initiate the present complaint, not in pursuit of any legitimate grievance, but manifestly with the intent to harass and arm-twist the respondent. The unmistakable tenor of the complaint,

viewed in the backdrop of the complainant's persistent and unexplained default, clearly reveals that the institution of the proceedings is actuated by an ulterior and vexatious motive, namely, to evade the lawful liability of payment and to exert unwarranted pressure upon the answering-respondent so as to deter it from asserting its rightful contractual entitlements. Such conduct on the part of the complainant, which amounts to an abuse of the process of law, is glaringly evident from the sequence of events as delineated hereinabove. It is a settled canon of jurisprudence that a party approaching a judicial forum must do so with clean hands and in good faith. Where the intent behind litigation is demonstrably malicious or coercive, the same deserves to be nipped in the bud. In the present case, the mala fides underlying the initiation of the complaint stand writ large, and as such, the complaint, being nothing more than a strategic device to frustrate lawful claims and obligations, is liable to be dismissed at the very threshold.

40. Further, respondent has filed applications dated 06.11.2025, 24.07.2026 and 28.07.2026 in the registry in support of their pleadings. The Authority has duly taken these applications on record and considered the same for the proper and just adjudication of the matter.

E. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENT

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

F. ISSUE FOR ADJUDICATION

42. Whether the complainant is entitled for reliefs sought by him or not?

G. OBSERVATIONS AND DECISION OF AUTHORITY

The Authority has gone through the rival contentions advanced by the parties, the pleadings available on record, the documents placed on record, the written submissions filed by the Complainant and the submissions advanced by the parties during the course of hearing. In light of the background of the matter as captured in the preceding paragraphs of this order, the Authority observes and records its findings as under:

43. It is an admitted position between the parties that the complainant was allotted Unit No. RIDHI/1-1204A, situated on the 25th Floor, admeasuring 2525 sq. ft., in the project of the respondent namely "Royal Heritage", Sector-70, Faridabad, Haryana, vide allotment letter dated 14.02.2014. Pursuant thereto, an Apartment Buyer Agreement (hereinafter referred to as the "BBA") was

executed between the parties on 22.02.2014. It is further borne out from the pleadings and the material placed on record that the complainant has made payment of ₹1,19,42,006.15/- towards the subject unit. The said amount is even higher than the sale consideration of ₹1,12,24,200/- mentioned in the BBA. Thus, the allotment of the subject unit, execution of the BBA and substantial payment made by the complainant towards the subject unit are not in dispute.

44. The respondent has resisted the claim of the complainant primarily on the ground that the complainant failed to discharge his payment obligations under the agreement. According to the respondent, timely payment constituted the essence of the agreement and in terms of the relevant clauses of the agreement, the obligation to hand over possession and execute the conveyance deed was subject to payment of the outstanding dues by the complainant. The respondent has accordingly contended that any delay in handing over possession cannot be attributed to it, as the complainant himself remained in default in making the requisite payments. The respondent has relied upon the various demands/intimations issued to the complainant from time to time, including the intimation dated 17.09.2020 whereby an amount of ₹26,78,565.74/- was allegedly demanded from the complainant.

45. In order to determine the rival claims, the first question which arises for consideration is the date by which the respondent was contractually required to hand over possession of the subject unit. Clause 8.1 of the agreement provides for handing over of possession within a period of 42 months from the date of execution of the agreement or from the date of start of construction of the said building, whichever is later. In absence of any date of start of construction of the said building, Authority deems appropriate to calculate 42 months from date of execution of the agreement. The agreement having been executed on 22.02.2014, the period of 42 months expired on **22.08.2017**. Accordingly, 22.08.2017 constitutes the contractual/deemed date of possession, subject to any legally permissible extension of the said period. However, respondent, by way of its application dated 28.07.2026, has sought exclusion of a period of 479 days from the period of delay by invoking the force majeure clause contained in the agreement. It has been pleaded that construction activities at the project were prohibited from time to time pursuant to orders/directions issued by the Hon'ble Supreme Court, the Hon'ble National Green Tribunal, Pollution Control Authorities, Commission for Air Quality Management and other statutory authorities on account of air pollution. The respondent has further relied upon the extensions granted on account of the COVID-19 pandemic. The respondent has also relied upon the

judgment dated 24.12.2025 passed by the Hon'ble Punjab & Haryana High Court in RERA-APPL-92-2025 titled *M/s Signature Global (India) Limited v. Praveen Kumar Gupta* and connected matters, to contend that the period during which construction was prohibited on account of orders of Courts/statutory authorities is liable to be treated as a force majeure period.

46. The Authority has considered the aforesaid submissions. There can be no dispute with the general proposition that where the agreement between the parties contains a force majeure clause, an event which is beyond the reasonable control of the promoter and which actually prevents the promoter from performing its contractual obligations may, subject to the terms of the agreement and applicable law, constitute a force majeure event.

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 apart 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 fulfill 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 present case, the mere existence of an order imposing restrictions upon construction activities in the NCR region cannot, by itself, establish that construction of the particular project in question was actually prohibited or materially affected by each of the orders relied upon by the respondent. The respondent seeks exclusion of as many as 479 days from the period of delay. Therefore, the respondent was required to establish a clear and specific nexus between the orders relied upon and the construction of the project in question. The respondent was required to demonstrate that the particular orders were applicable to the present project, that construction activities at the said project were actually stopped or prohibited pursuant thereto, the precise period for which such prohibition operated and the consequential effect thereof upon the progress of construction and delivery of possession of the subject unit. However, the material placed on record by the respondent does not satisfactorily establish the aforesaid factual aspects. The respondent has relied upon various orders passed from time to time and has furnished a cumulative calculation of the alleged period of prohibition, but has failed to demonstrate from the record as to how and to what extent each of the orders relied upon actually affected the construction of the present project. There is no cogent material placed on record demonstrating the actual cessation of construction at the subject project pursuant to each of the orders relied upon. A general prohibition applicable to construction activities in a particular area cannot automatically result in exclusion of the corresponding period in respect of every project situated therein without establishing its actual applicability and effect upon the particular project. The respondent, being the party seeking benefit of the force majeure clause, was required to substantiate its claim by credible and project-specific evidence. Mere production of orders, without establishing their applicability to the project and the actual effect thereof upon construction, cannot be sufficient to discharge such burden. It is further relevant to note that the contractual date for handing over possession in the present case was 22.08.2017. The respondent has relied upon several orders subsequent to the said date, including orders of the years 2018, 2019, 2020, 2021 and 2022. Once the contractual period expired on 22.08.2017, the delay had already commenced. Subsequent events cannot, in the absence of a legally established extension of the contractual possession period, retrospectively wipe out the delay which had already accrued. The same principle applies to the extensions relied upon by the respondent on account of the COVID-19 pandemic. The extension of 180 days granted in the year 2020 and the further extension of 90 days granted in the year 2021 occurred much after the expiry of the contractual possession period. Such subsequent extensions cannot retrospectively extend the contractual date of possession which had already expired on 22.08.2017. Even with respect to the events preceding 22.08.2017, the respondent has failed to establish by cogent and credible evidence that the construction of the present project was actually prohibited during the precise period claimed by it. The respondent has stated that the cumulative period of prohibition was 155 days and has thereafter sought extension of 159 days. The said discrepancy in itself also casts doubt upon the calculation furnished by the respondent. In these circumstances, the Authority is unable to accept the respondent's claim for exclusion of 479 days on account of force majeure. The respondent has failed to establish by credible, cogent and project-specific evidence that the orders relied upon actually prevented or materially affected construction of the present project for the period claimed. Accordingly, the benefit of force majeure cannot be granted merely on the basis of the general orders relied upon by the respondent. Accordingly, the application dated 28.07.2026 filed by the respondent seeking exclusion of **479 days on account of force majeure is rejected**.

47. The next question which requires consideration is the date on which the respondent actually offered possession of the subject unit. From the pleadings of both parties, it emerges that the respondent initially issued an Offer of Possession dated **01.05.2023**. Significantly, the complainant himself has referred to the said offer in his complaint and has stated that the respondent had made an offer of possession on the said date. However, the respondent has itself stated in its subsequent pleadings that the Occupation Certificate in respect of the project was obtained only on **01.05.2024**. Thus, the offer dated 01.05.2023 admittedly preceded the grant of the Occupation Certificate. In these circumstances, the offer dated 01.05.2023 cannot be treated as a valid and complete offer of lawful possession. An offer of possession preceding the grant of the requisite Occupation Certificate cannot, merely by virtue of issuance of the offer letter, be treated as an offer pursuant to which lawful possession could have been handed over. Accordingly, the offer dated 01.05.2023 cannot be accepted as the date of valid offer of possession. Thereafter, the respondent, in its application dated 06.11.2025, stated that an offer of possession was made to the complainant on **01.05.2024**, i.e. on the very date on which the Occupation Certificate was obtained. However,

although the respondent has placed on record a copy of the Occupation Certificate, it has not placed on record the corresponding Offer of Possession allegedly issued on 01.05.2024. In the absence of the alleged offer of possession dated 01.05.2024, the Authority is unable to ascertain the precise terms and conditions of such offer, including whether the subject unit was actually offered for physical possession and whether all the requisite formalities for handing over lawful possession had been completed. Therefore, merely on the basis of the statement made by the respondent in its application dated 06.11.2025, the alleged offer dated 01.05.2024 cannot be treated as the established date of valid offer of possession. Subsequently, the complainant, in his application dated 16.07.2026, has himself admitted that an offer of possession was again made to him on 08.04.2026. Though a copy of the said offer has not been annexed with the said application, the factum of issuance of the offer on 08.04.2026 has been specifically admitted by the complainant. Since the Occupation Certificate had already been obtained on 01.05.2024 and the complainant himself has admitted that a further offer of possession was made on 08.04.2026, the said date constitutes the relevant date for considering the respondent's subsequent offer of possession. Therefore, Authority deems appropriate to consider that the valid offer of possession was made to the complainant on **08.04.2026.**

48. The record further reveals that during the pendency of the present proceedings, the respondent purportedly cancelled the allotment of the subject unit. The complainant, in his application dated 23.07.2025, pleaded that his unit had been cancelled on 25.06.2025 and annexed a cancellation notice dated 25.06.2025 with the said application. Per contra, the respondent, in its application dated 06.11.2025, stated that the subject unit had been cancelled on 12.06.2025. However, the respondent did not annex any documentary proof of the alleged cancellation dated 12.06.2025 along with the said application. The complainant, in his rejoinder dated 23.12.2025, again asserted that the unit had been cancelled and relied upon the cancellation notice as Annexure C-10. During the course of hearing on 12.01.2026, the respondent again stated that the unit had been cancelled on 12.06.2025. The Authority, after considering the matter, recorded that the unit of the complainant had been cancelled by the respondent vide cancellation notice dated 12.06.2025, i.e. during the pendency of the present complaint. The Authority was of the considered view that the respondent could not have cancelled the allotment during the subsistence of the proceedings before this Authority and accordingly set aside the cancellation notice dated 12.06.2025. The aforesaid order dated 12.01.2026 has attained significance for determination of the present dispute. Once the cancellation notice dated

12.06.2025 stood set aside by this Authority, the respondent cannot rely upon the said cancellation to contend that the allotment in favour of the complainant stood terminated or that the contractual relationship between the parties came to an end. Consequently, the allotment of the subject unit in favour of the complainant continues to subsist, and the respondent cannot derive any benefit from the cancellation which has already been set aside by this Authority. The rights and obligations of the parties are, therefore, required to be determined with reference to the subsisting agreement and the subsequent events on record.

49. In view of above observations given in the preceding paragraphs of this order, Authority summarizes its observations in the matter as under:

   i. Apartment buyer agreement that finally crystalized the terms of agreement was executed between both the parties on 22.02.2014. As per clause 8.1 of the agreement and the observations as recorded in para 45 of this order, possession of the unit should have been delivered by 22.08.2014. It is an admitted fact that construction of the project had been delayed beyond the time period stipulated in the buyer's agreement and delivery of possession of the unit has also been delayed by the respondent. Authority observes that vide application dated 06.11.2025 filed by the respondent, occupancy certificate has been received by the respondent from the competent department on 01.05.2024. Copy of occupancy certificate dated 01.05.2024 has been annexed by the respondent as Annexure A of application dated 06.11.2025. Subsequently, after receipt of occupancy certificate, respondent made a valid offer of possession accompanied by the Occupancy certificate on 08.04.2026. When the respondent had already made a valid offer of possession on 08.04.2026, the complainant was legally obligated to accept this offer, as it was made following the issuance of the occupancy certificate and was free from any legal hindrances. By not responding to this offer, the complainants effectively neglected their duty to accept possession at the appropriate time. This delay in responding to the initial valid offer raises questions about why the complainants did not accept the offer when it was first made. As the offer made on 08.04.2026 was compliant with all legal requirements and the project was free of any disputes, the complainant should have promptly accepted it rather than waiting. In light of such circumstances, Authority is of the view that that the offer of possession made by the respondent on 08.04.2026 is legally valid as offer was made after the occupation certificate had been issued for the project in question. Consequently, the complainant was expected to accept the offer of possession at that time.

ii. However, the fact remains the same that complainant are insisting on possession of booked unit only and do not want to exist from the project. Further, respondents have made a considerate delay in offering a legal and valid offer of possession to the complainant. Therefore, complainants have sought delay interest w.e.f. 22.08.2017 i.e., after expiry of 42 months from execution of the apartment buyer agreement.

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

> *"18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-*
> ....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".*

iv. Complainant however is interested in getting the possession of the booked unit. They do not wish to withdraw from the project. In such circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the apartment the allottee can also demand, interest accrued on account of delayed possession.

v. Hence, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date, i.e., 22.08.2017 till the date on which a legally valid offer is made to them after obtaining occupation certificate, i.e., 08.04.2026. 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;*

iv. 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. 07.09.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.80%.

v. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

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

Authority has got calculated the interest on total paid amount from due date of possession, i.e., 22.08.2014 till the date of legally valid offer of possession is made i.e. 08.04.2026 which works out to **₹1,04,56,935/-**.

Sr. No.	**Principal Amount In ₹**	**Deemed date of possession or date of payment whichever is later**	**Interest Accrued till 07.09.2026 In ₹**
1.	33,69,610/-	22.08.2014(deemed date of possession)	42,35,406/-
2.	25,38,943/-	30.05.2015	29,80,204/-
3.	16,76,176/-	27.01.2016	18,47,467/-
4.	7,59,924	25.06.2016	8,03,854/-

5.	16,96,481/-	30.05.2024	3,40,839/-
6.	19,00,872/-	21.01.2025	2,49,165/-
TOTAL-	**1,19,42,006**		**1,04,56,935/-**

50. The respondent has also filed an application dated 24.07.2026, annexing the statement of account of the complainant to demonstrate the alleged delay attributable to the complainant in taking possession, along with the maintenance account.

51. Upon perusal of the said application, the Authority observes that although the respondent has furnished a tabulated statement showing interest allegedly accrued on account of delayed payments, the respondent has neither specified the rate at which such interest has been calculated nor provided the consolidated amount of interest so accrued. Accordingly, the Authority deems it inappropriate to rely upon the said calculation. However, the Authority further observes that in terms of the Act and Rules framed thereunder, interest on delayed payments is to be calculated at the prescribed rate linked to the State Bank of India's MCLR plus 2%. The MCLR as of 07.09.2026 stands at 10.80%, and accordingly, the applicable interest rate for delayed payments should be 10.80% (8.80% + 2.00%). Therefore, the respondent is directed to

calculate the interest for delayed payments strictly as per the applicable MCLR-based rate of 10.80% and prepare a revised table showing updated interest amounts payable by the complainants. The respondent shall furnish a copy of the said revised calculation to the complainant for his reference and necessary response.

52. As regards maintenance charges, the Authority deems it appropriate to rely upon Clause 10.1 of the Builder Buyer Agreement dated 22.02.2014, which provides that maintenance charges shall become payable by the allottee from the date of notice of possession. Since a valid offer of possession was made to the complainant on 08.04.2026, maintenance charges for the period prior to 08.04.2026 are not payable by the Complainant. In addition, as per terms of Clause 1.1 of the Builder Buyer Agreement, the complainant is liable to pay the maintenance and other charges as and when validly demanded in accordance with the terms of the Agreement. Accordingly, the complainant shall be liable to pay maintenance charges from the date of valid offer of possession, i.e. 08.04.2026.

53. Further, with regard to the reliefs sought by the complainant mentioned in Para 22 (iv and v) of this order, the complainant has neither pressed upon nor argued during the hearing. Therefore, the Authority deems it appropriate not to adjudicate on these reliefs.

F. DIRECTIONS OF THE AUTHORITY

54. Hence, the Authority hereby 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:

1. Complainants are directed to accept the offer of possession issued by the respondent on 08.04.2026 and take physical possession of the booked units from the respondent.
2. Respondent is directed to pay upfront delay interest of **₹1,04,56,935/-** to the complainant towards delay already caused in handing over the possession within 90 days from the date of uploading of the order.
3. Respondent is directed to get conveyance deed of flat of the complainants executed within 90 days of actual handover of possession of flat.
4. The respondent shall issue fresh statement of account to the complainant(s) incorporating therein the principles laid down in this order within 30 days of uploading of this order.

5. 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.

6. The respondent shall not charge anything from the complainant which is not a part of agreement to sell.

Disposed of. File be consigned to record room after uploading of the order on the website of the Authority.

....
NADIM AKHTAR
[MEMBER]