

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
 GURUGRAM**

Order pronounced on:

28.05.2024

NAME OF THE BUILDER		M/s Green Heights Private Limited
PROJECT NAME:		APPEARANCE
1	CR/1392/2022	Neeraj Mahajan Vs. Green Height Projects Private Limited Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)
2	CR/4323/2021	Pooja Mahajan Vs. Green Height Projects Private Limited Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)
3	CR/4378/2021	Madhu Kansal Vs. Green Height Projects Private Limited Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)
4	CR/1256/2022	Manmohan Arora Vs. Green Height Projects Private Limited Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)
5	CR/2211/2022	Rajesh Kapoor Vs. Green Height Projects Private Limited Advocate Sh. Garvit Gupta (Complainant) Advocate Sh. Somesh Arora (Respondent)
6	CR/2224/2022	Mahender Singh And Geeta Singh Vs. Green Height Projects Private Limited Advocate Sh. Vipul Vijay Lamba (Complainant) Advocate Sh. Somesh Arora (Respondent)
7	CR/2223/2023	Abhijeet Singh Vs. Green Height Project Private Limited Advocate Sh. Vipul Vijay Lamba (Complainant) Advocate Sh. Somesh Arora (Respondent)

8	CR/1494/2023	Usha Saggi Vs. Baani Real Estate	Advocate Sh. Sushil Yadav (Complainant) Advocate Sh. Somesh Arora (Respondent)
9	CR/1493/2023	Piyush Saggi Vs. Baani Real Estate	Advocate Sh. Sushil Yadav (Complainant) Advocate Sh. Somesh Arora (Respondent)

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member
Member

ORDER

1. This order shall dispose of all the 9 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'Bani Centre Point' being developed by the same respondent-promoter i.e., M/s Green Heights Pvt. Ltd. The terms and conditions of the builder buyer's agreements that had been executed between the parties inter se are also almost similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely

possession of the units in question, seeking refund of the deposited amount by the complainant along with prescribed rate of interest.

3. The details of the complaints, reply status, unit no., date of agreement, plans, due date of possession, offer of possession and relief sought are given in the table below:

Sr. No	Complaint No./Title/ Date of filing	Unit no. & Area admeasuring	Date of allotment letter	Date of execution of builder buyer's agreement	Due of possession	Offer of possession	Relief Sought
1	CR/1392/2022 Neeraj Mahajan Vs. Green Height Projects Private Limited D.O.F:-01.04.2022 Reply:29.07.2022	GF-108 401 sq. ft. (Page 14 of reply)	01.12.2014 (page 39 of reply)	01.03.2017 (page 03 of reply)	12.03.2018	OC - Not obtained TC - Rs. 39,98,215/- (Page 31 of complaint) AP - Rs. 39,24,037/- (Page 31 of complaint)	1. Refund with interest. 1. Litigation cost
2	CR/4323/2021 Pooja Mahajan Vs. Green Height Projects Private Limited D.O.F:-08.11.2021 Reply: 02.03.2022	GF-105 (Page 15 of complaint) 401 sq. ft. (Page 15 of complaint)	01.12.2014 (Page 15 of complaint)	Not executed	12.03.2018 (taken from the similar complaint of same project)	OC - Not obtained TC - Rs. 49,24,480/- (Page 24 of complaint) AP - Rs. 3,11,902/- (Page 24 of complaint)	1. Refund 2. Not to create third party right 3. Not to cancel allotment 2. Litigation Cost
3	CR/4378/2021	GF-110	01.12.2014	Not executed	12.03.2018		1. Refund 2. Not to raise fresh demand

	Madhu Kansal Vs. Green Height Projects Private Limited D.O.F:08.11.2021 Reply: 02.03.2022	(Page 15 of complaint) 401 sq. ft. (Page 15 of complaint)	(Page 15 of complaint)		(taken from the similar complaint of same project)	OC - Not obtained TC - Rs. 49,24,480/- (Page 25 of complaint) AP - Rs. 3,11,902/- (Page 25 of complaint)	3. Not to create third party right 4. Not to cancel allotment 5. Litigation Cost
4	CR/1256/2022 Manmohan Arora Vs. Green Height Projects Private Limited D.O.F:06.04.2022 Reply:29.07.2022	GF-112 401 sq. ft. (Page 14 of reply)	NA	31.03.2017 (page 09 of reply)	12.03.201 8	OC - Not obtained TC - Rs. 37,68,105/- (Page 27 of complaint) AP - Rs. 33,07,011/- (Page 27 of complaint)	1. Refund with interest. 2. Litigation Cost
5	CR/2211/2022 Rajesh Kapoor Vs. Green Height Projects Private Limited D.O.F:24.05.2022 Reply:22.07.2022	GF-014 416 sq. ft. (Page 42 of complaint)	01.12.2014 (page 28 of complaint)	26.04.2017 (page 37 of complaint)	12.03.201 8	OC - Not obtained TC - Rs. 38,83,732/- (Page 29 of complaint) AP - Rs. 6,47,138/- (Page 27 of complaint)	1. Refund with interest. 2. DPC 3. Not to cancel allotment 4. Not to create third party right 5. Litigation Cost

6	CR/2224/2022 Mahender Singh And Geeta Singh Vs. Green Height Projects Private Limited D.O.F.08.06.2022 Reply: 05.07.2022	LG-071A (Page 12 of reply) 479 sq. ft. (Page 12 of reply)	NA	01.03.2017 (page 7 of reply)	12.03.2018	OC - Not obtained TC - Rs. 38,32,000/- (Page 06 of complaint) AP - Rs. 17,32,833/- (Page 06 of complaint)	1. Refund with interest. 2. Respondent to pay pendent lite interest as well as future interest to the complainants 3. Declare that the buyer's agreement arbitrary 4. Respondent may kindly be directed to not penalize the complainants with interest on any payment after 30.09.2017 5. Respondent may kindly be penalized for collecting unlawful amounts from the complainants e.g. amount collected towards VAT etc 6. Litigation Cost
7	CR/2223/2022 Abhijeet Singh Vs green height project private limited D.O.F.08.06.2022 Reply:05.07.2022	LG- 071 478 sq. ft. (Page 12 of complaint)	NA	01.03.2017 (page 7 of reply)	12.03.2018	OC - Not obtained TC - Rs. 38,32,000/- (Page 6 of complaint) AP - Rs. 18,34,718/- (page 7 of complaint)	1. Refund with interest. 2. Declare buyer agreement unfair and unilateral 3. Respondent may kindly be penalized for collecting unlawful amounts from the complainants e.g. amount collected towards VAT etc 4. Litigation Cost
8	CR/1493/2023 Piyush Saggi	LG-007 (page 17 of complaint)	NA	15.07.2017 (page 14 of complaint)	12.03.2018	OC - Not obtained	1. Refund with interest.

	Vs. Baani Real Estate D.O.F.:31.03.2023 Reply:25.08.2023	479 sq. ft. (Page 17 of complaint)				TC - Rs. 38,32,000/- (Page 19 of reply) AP - Rs. 12,24,649/- (as alleged by complaint)	
9	CR/1494/2023 Usha Saggi Vs. Baani Real Estate D.O.F.:31.03.2023 Reply:25.08.2023	FC-12 NA 547 sq. ft. (Page 17 of complaint)	NA	24.07.2017 (page 12 of complaint)	12.03.2018	OC - Not obtained TC - Rs. 45,12,750/- (Page 16 of reply) AP - Rs. 14,14,747/- (as alleged by complaint)	2. Refund with interest.

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.

5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particular's of lead case CR/1392/2022 at serial no. 1 titled as Neeraj Mahajan Vs. M/s Green Heights Pvt. Ltd. are being taken into consideration for determining the rights of the allottees qua refund, and other reliefs sought by the complainants.

A. Unit and project related details.

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/1392/2022 Neeraj Mahajan Vs. Green Height Projects Private Limited

S. N.	Particulars	Details
1.	Name of the project	"Baani Centre Point", Sector - M1D, Urban Complex, Manesar, Gurugram
2.	Project area	2.681 acres
3.	Nature of the project	Commercial
4.	DTCP license no. and validity status	59 of 2009 dated 26.10.2009 valid upto 12.09.2020
5.	Name of licensee	M/s Paradise System Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide regd no. 187 of 2017 dated 14.09.2017
7.	Unit no.	✓ GF - 108
8.	Unit area admeasuring	401 sq. ft. (Page 14 of reply)
9.	Date of booking	22.07.2013 (Page 3 of reply)
10.	Date of allotment letter	01.12.2014 (Page 39 of reply)
11.	Buyer agreement	01.03.2017 (Page 3 of reply)

12.	Possession clause	2.1 Possession <i>The possession of the said premises shall be endeavored to be delivered by the intending purchaser by tentative date of 30.09.2017 with a grace period of 6 months beyond this date subject to clause 9 and completion of construction...</i> (Page 18 of reply)
13.	Due date of possession	12.03.2018 (including grace period being unqualified)
14.	Total sale consideration	Rs. 39,98,215/- (Page 31 of complaint)
15.	Amount paid by the complainants	Rs. 39,24,037/- (Page 31 of complaint)
16.	Occupation certificate /Completion certificate	Not obtained

B. Facts of the complaint

7. The complainant has submitted as under:

- a) That the complainant booked a commercial unit in the project by paying an amount of Rs. 3,11,902.00 vide Cheque No. 102817 drawn on HDFC bank dated 20.07.2013 towards the booking of the said unit bearing no GF-108, in Sector M-1D, Gurugram, having a super area measuring 401 sq. ft to the respondent and the same was acknowledged by the it.
- b) That the respondent sent an allotment letter dated 01.12.2014 to complainant confirming the booking of the said unit and also mentioning the moonshine reputation of the company and the location of the project,

providing the details of payment to be made by the complainant. Further allotting a unit no. GF-108, Ground Floor, in Sector M-1D, Gurugram, having a super area measuring 401 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e., **Rs. 39,98,215/** and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.

- c) It is pertinent to mention here that an allotment letter was issued by respondent after repeated reminders from the complainant and even after a delay of more than one year from the date of booking. A commercial space buyer's Agreement was executed between the complainant and respondent on 01.03.2017.
- d) That as per demands raised and based on the payment plan as agreed upon the complainant to buy the captioned unit made the total payment of **Rs. 39,24,037/-** against the total consideration of **Rs. 39,98,215/-**.
- e) That the complainant went to the office of respondent several times and requested them to allow her to visit the site, but it was never allowed saying that they do not permit any buyer to visit the site during the construction period once complainant visited the site but was not allowed to enter the site and even there was no proper approach road. The complainant even after paying amounts still received nothing in return but only a loss of the time and money invested by her.
- f) It is abundantly clear that the respondents have played a fraud upon the complainant and have cheated her fraudulently and dishonestly with a false promise to complete the construction over the project site within the stipulated period. The respondent had further malafidely failed to implement and execute a buyer agreement with the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent

activities, deficiency, and failure in service of the respondent is filing the present complaint.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s):

- i. Direct the respondent to refund the entire amount paid by the complainant alongwith prescribed rate of interest.
 - ii. Litigation Cost.
- g) On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents

9. The respondents have contested the complaint on the following grounds:

- a) It is submitted that a collaboration agreement dated 30.03.2013 was entered into between M/s Paradise Systems Pvt. Ltd. as the original landholder and Green Heights Projects Pvt. Ltd., as the developer for the project namely "Baani Center Point".
- b) That the Green Heights Pvt. Ltd. i.e., respondent as per the terms of the collaboration agreement paid the amount of Rupees Twenty-Eight crores and Forty lakhs to the landowners i.e. Paradise Systems Private Limited by way of cheques and RTGS from the period 27.02.2013 to 03.02.2016.
- c) That the land owner and the license holder vide letter dated 23.05.2013 paid the entire external development charges and internal development charges in respect of land to Directorate, Town and Country Planning, Haryana and plans for construction of the commercial colony were filed which were sanctioned vide sanction letter dated 23.07.2014.

- d) That the construction was initiated in the project and during that process a letter was received from Directorate of Town and Country Planning directing to stop the construction in compliance of the injunction order from the Hon'ble Supreme Court of India dated 24.04.2015.
- e) That the land owner approached the Hon'ble Supreme Court Of India for the clarification of the stay order as to whether it is applicable to the land and license however Hon'ble Supreme Court vide order dated 21.08.2015 directed it to approach DTCP for clarifications.
- f) That the Land owner approached DTCP vide various representations however DTCP did not take any decision as the matter was pending in the Supreme Court. It was further intimated by DTCP vide order dated 20.04.2016 that the original files in respect of land portions of entire 912 acres have been taken by Central Bureau of Investigation of all the projects and till original files are returned by CBI, DTCP will not be in a position to provide clarification in respect of various representations. The landowner then approached Hon'ble Punjab and Haryana high court for directions to CBI to handover original files in respect of the project of respondent and the High Court by order dated 27.03.2017 passed appropriate directions.
- g) It is pertinent to mention here that between the periods of 24.04.2015 till 12.03.2018, the Hon'ble Supreme Court of India had passed directions in respect of 912 Acres of land in 3 Villages including the land where the present project is constructed. The respondent did not leave any stone unturned to get the clearances so that the construction which was in progress may be restarted. However, all the efforts went in vain as DTCP did not permitted construction till judgment by the Hon'ble Supreme Court of India. Vide judgement dated 12th March 2018, the

project of respondent was not included in tainted projects which clearly meant that respondent could commence construction subject to renewal of licenses and other permissions.

- h) That shortly after the stay was lifted on 12.03.2018, M/s Paradise Systems Pvt. Ltd. approached DTCP for renewal of license to begin construction which was granted to them on 23.07.2018 and thereafter the respondent has developed the said project which is almost complete and was left for some finishing works and interiors. It shall be pertinent to mention that while renewing the license the entire period of 24.04.2015 till 12.03.2018 was exempted as Zero period by DTCP.
- i) That later on the HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 through M.A. No. 50 of 2019 in the matter of Rameshwar Vs. State of Haryana & Ors. CA 8788 of 2015 being "Application for Clarification of Final Judgment dated 12.03.2018 passed by this Hon'ble Court". It is submitted that the Hon'ble Supreme Court through its order dated 13.10.2020 again granted an injunction on further construction of projects of the parties to the said case including M/s. Paradise Systems Pvt. Ltd. project of Baani Center Point.
- j) That vide letter dated 26.07.2022 the complainant was informed that the project has been cleared from stay on construction and creation of third-party interests, by Hon'ble Supreme Court vide order dated 21.07.2022.
- k) That the respondent vide letter dated 25.07.2022 has also applied for renewal of license and other permissions from DTCP which is awaited. It is also important to mention that the project was registered with RERA vide registration no. 187 of 2017 and after the judgement of Hon'ble Supreme Court the respondent has filed an application for

extension of the registration under section 7 sub clause 3 dated 04.08.2022.

- l) It is pertinent to mention that as per the Clause 9 - Force Majeure of the builder buyer agreement "the intending seller shall not be held responsible or liable for failure or delay in performing any of its obligation or undertakings as provided for in this agreement, if such performance is prevented, delayed or hindered by "court orders" or any other cause not within the reasonable control of the intending seller". Therefore, as the project "Baani Centre Point" was under stay orders of the Hon'ble Supreme Court of India for 6 years 8 months which was beyond the Respondent's reasonable control and because of this no construction in the project could be carried during this period. Hence, there is no fault of the respondent in delayed construction which has been considered by DTCP and RERA while considering its applications of considering zero period, renewal of license and extension of registration by RERA. Due to reasons stated hereinabove it became impossible to fulfil contractual obligations due to a particular event that was unforeseeable and unavoidable by the respondent.
- m) It is humbly submitted that the Stay on construction order by the Hon'ble Supreme Court is clearly a "Force Majeure" event, which automatically extends the timeline for handing over possession of the Unit. The Intention of the Force Majeure clause is to save the performing party from consequences of anything over which he has no control. It is no more res integra that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the negligence or malfeasance of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and

natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the buyer agreement.

10. All other averments made in the complaints were denied in toto.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaints for the reasons given below:

E.I Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes with office situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaints.

E.II Subject matter jurisdiction

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to

the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

15. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaints regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
16. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** 2021-2022(1)RCR(C), 357 and followed in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and

functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

17. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent.

F.I Objection regarding force majeure conditions.

18. The respondent took a plea that as per the Clause 9 - Force Majeure of the builder buyer agreement "the intending seller shall not be held responsible or liable for failure or delay in performing any of its obligation or undertakings as provided for in this agreement, if such performance is prevented, delayed or hindered by "court orders" or any other cause not within the reasonable control of the intending seller". Therefore, as the project "Baani Centre Point" was under stay orders of the Hon'ble Supreme Court of India for 7 years 3 months (24/04/2015 TO 21/07/2022) which was beyond the respondent's reasonable control and because of this no construction in the project could be carried during this period. Hence, there is no fault of the respondent in delayed construction which has been considered by DTCP and RERA while considering its applications of considering zero period, renewal of license and extension of registration by RERA. Due to reasons stated hereinabove it became impossible to fulfil contractual obligations due to a particular event that was unforeseeable and unavoidable by the respondent. It is humbly submitted that the Stay on construction order by the Supreme Court is clearly a "Force Majeure" event, which automatically extends the timeline for handing over possession of the unit. The Intention of the Force Majeure clause is to save the performing party from consequences of anything over which he has no control. It is no more res integra that force majeure is intended to include risks beyond the

reasonable control of a party, incurred not as a product or result of the negligence or malfeasance of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, it was submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the buyer agreement. After consideration of all facts and circumstances, Authority is of view that the force majeure clause stipulated in the buyer agreement does indeed exempt the builder from liability for delays in performance attributable to factors beyond their reasonable control, such as court orders. However, the pivotal issue arises from the builder's actions during the specified period in question i.e. despite claiming force majeure due to external impediments, the builder continued construction activities unabated thereafter concurrently received payments from the allottees and even executed buyer's agreement during that time. This sustained course of action strongly suggests that the builder possessed the capability to fulfill their contractual obligations despite the purported hindrances. Therefore, the builder cannot invoke Force Majeure to justify the delay and consequently, cannot seek an extension based on circumstances within their control.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to refund the entire amount paid by the complainant alongwith prescribed rate of interest.

19. That the complainant has stated that the stay on Construction was on Paradise Systems Pvt. Ltd. and not on Green Heights Pvt. Ltd. as the agreement was executed between the later one and nowhere the name of

Green Heights is mentioned in the alleged stay order. It further states that payment was collected by respondent in the mode of construction linked plan and respondent was sending demand letters even when the alleged stay was there and hence no relief of zero period may be extended to the respondent. The counsel for the complainant that zero period i.e. by DTCP is for limited purpose of renewal of license and DTCP orders cannot dilute the builder buyer agreement ^{said}

20. The complainant further states that during the stay period the respondent-builder had collected the payment in the mode of construction linked plan from the allottees and even executed the buyer's agreement during that period. He further submits that the respondent-builder sent construction updates to the allottees and also revised the building plans during the said stay period. Moreover, the 912 acres of the project land would be acquired by the HSIIDC if it falls under section 4 and section 6 of Land Acquisition Act, 1894 which is not the case.
21. On the contrary, the counsel for the respondent states that the land on which Bani Center Point Project is constructed was notified in Section 4 Notice dated 27 August 2004 and the details of this land are mentioned on Page No. 05 of the Section 4 notice of the Land Acquisition Act, 1894, Notification. This land was not in Section 6 Notification dated 25 August 2005. vide judgement dated 21 July 2022, the Supreme Court in para 32, specifically passed directions that the lands which were not notified in Section 6 notification and there was no transfer during the period 27 August 2004 to 29 January 2010 and were not part of the deemed award. HSIIDC filed an application for clarification on 01 July 2019, for inclusion of this land parcel also in the deemed award, however, subject to payment of penalty this land parcel was exempted from deemed award.

22. Further, the respondent states that a collaboration agreement dated 30.03.2013 was entered into M/s Paradise Systems Pvt. Ltd. being the original landholder and Green Heights Projects Pvt. Ltd., being the Developer for the project namely "Baani Center Point". Thereafter, the construction was initiated in the project and during that process a letter was received from Directorate of Town and Country Planning directing to stop the construction in compliance of the Injunction Order from the Hon'ble Supreme Court of India dated 24.04.2015. Thereafter the respondent builder approached the Hon'ble Supreme Court of India for the clarification of the stay order as to whether it is applicable to the land and license however Supreme Court directed it to approach DTCP for clarifications. The respondent builder approached DTCP vide various representations however DTCP did not take any decision as the matter was pending in the Supreme Court. It was further represented by DTCP that the original files in respect of land portions of entire 912 acres have been taken by Central Bureau of Investigation of all the projects and till original files are returned by CBI, DTCP will not be in a position to provide clarification in respect of various representations. The Landowner then approached Punjab and Haryana high court for directions to CBI to handover original files in respect of the project of respondent and the High Court by order dated 27.03.2017 passed appropriate directions. It is pertinent to mention here that between the periods of 24.04.2015 till 12.03.2018, the Hon'ble Supreme Court of India had passed directions in respect of 912 Acres of land in 3 Villages including the land where the present project (Baani Center Point) is constructed. That vide judgement dated 12.03.2018, the project of Respondent was not included in tainted projects which clearly meant that respondent could commence construction subject to renewal of licenses and other permissions. Shortly after the stay was lifted on 12.03.2018, M/s

Paradise Systems Pvt. Ltd. approached DTCP for renewal of license to begin construction which was granted to them on 23.07.2018 and thereafter the respondent has developed the said project which is almost complete and was left for some finishing works and interiors. It shall be pertinent to mention that while renewing the license the entire period of 24.04.2015 till 12.03.2018 was exempted as Zero period by DTCP.

23. later on, the HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 through M.A. No. 50 of 2019 in the matter of Rameshwar Vs. State of Haryana & Ors. CA 8788 of 2015 being "Application for Clarification of Final Judgment dated 12.03.2018 passed by this Hon'ble Court". It is submitted that the Hon'ble Supreme Court through its order dated 13.10.2020 again granted an injunction on further construction of projects of the parties to the said case including M/s. Paradise Systems Pvt. Ltd. project of Baani Center Point. The relevant portion of the said order stated that: - "Pending further considerations, no third-party rights shall be created and no fresh development in respect of the entire 268 acres of land shall be undertaken. All three aforesaid developers are injuncted from creating any fresh third-party rights and going ahead with development of unfinished works at the Site except those related to maintenance and upkeep of the site". That finally through the recent judgment on 21.07.2022, the stay on construction was cleared by the Hon'ble Supreme Court of India in M.A. 50 of 2019 in the matter of Rameshwar Vs. State of Haryana & Ors. CA 8788 of 2015. vide letter dated 26.07.2022 the complainant was informed that the project has been cleared from stay on construction and creation of third-party interests, by Supreme Court vide order dated 21.07.2022. The respondent vide letter dated 25.07.2022 has also applied for renewal of license and other permissions from DTCP which is awaited. It is also important to mention that the project was registered with RERA vide

registration no. 187 of 2017 and after the judgment of Supreme Court the respondent has filed an application for extension of the registration under section 7 sub clause 3 dated 04.08.2022.

24. The matter concerns two distinct periods: from 24.04.2015 to 12.03.2018 and from 13.10.2020 to 21.07.2022. As far as concerned first "Zero Period" i.e. 24.04.2015 to 12.03.2018 granted by DTCP, it is observed that the respondent-builder not only raised demands for payment of instalments from the allottees but also continued construction of the project. Therefore no relief can be granted to the respondent for the said period from 24.04.2015 to 12.03.2018. However, during the period 13.10.2020 to 21.07.2022, the respondent was expressly directed not to undertake any further development in the project and there is no evidence that the respondent did not comply with such order
25. After consideration of all the facts and circumstances, authority is of view that the respondent collected payment and executed buyer's agreement during the "stay period" i.e. 24.04.2015 to 12.03.2018, which indicates their active involvement in real estate transactions. Further, it is important to note that during the "stay period", the respondent -builder raised demands which are reproduced below as:

Demand Raised On	Demand Raised ON Account Of
03.11.2015	On laying of Raft
03.02.2016	On casting of 3 rd Basement Roof Slab
11.04.2016	On casting of 2 nd basement roof slab
20.12.2016	On casting of 1 st basement roof slab
10.05.2017	On casting of 4 th floor roof slab
08.01.2018	On completion of superstructure

As per aforementioned details, the respondent has raised the demands during the period in which stay was imposed. Hence, granting them a zero period for the purpose of completion of the project would essentially negate their involvement and the actions they took during that time. Therefore, it is justifiable to conclude that the respondent is not entitled to a zero period and should be held accountable for their actions during the stay period. However, the period from 13.10.2020 to 21.07.2022 shall stand exempted from interest to the respondent from 13.10.2020 to 21.07.2022 on the refunded amount as per directions of the Hon'ble Supreme Court clearly retraining the promoter from creation of 3rd party rights and fresh development of unfinished works at site except those related to maintenance and upkeep of the site. So, no interest shall be charged to the respondent from 13.10.2020 to 21.07.2022 as per the direction of Hon'ble Supreme Court.

26. In Cr no. **4323-2021** and **4378-2021**, the respondent-builder took a plea that both the complaints are pre-mature and needs to be dismissed as complainants till date have paid less than 10% of the sale consideration. The said amount is entitled to be forfeited and respondent is not liable to refund any amount to the complainant. Upon perusal of the record, the Authority is of view that although the complainants have paid less than 10% of the sale consideration but on the contrary, respondent has also not obtained occupation certificate. It has also observed that respondent neither cancelled the unit nor refunded the money to the complainants therefore complainants are entitled to get the refund of paid up amount. Therefore, the contention of the respondent in this regard is not tenable.
27. In all the complaints, the complainants intend to withdraw from the project and are seeking return of the amount paid by him in respect of subject unit

along with interest at the prescribed rate as provided under the proviso to section 18(1) of the Act. Section 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
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."

28. Clause 2.1 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"2.1. Possession

The possession of the said premises shall be endeavored to be delivered by the intending purchaser by tentative date of 30.09.2017 with a grace period of 6 months beyond this date subject to clause 9 and completion of construction...

....."

(Emphasis supplied)

29. At the inception, it is relevant to comment on the pre-set possession clause of the allotment letter wherein the possession has been subjected to vague terms and conditions. The incorporation of such clause in the allotment letter by the promoter is just to evade the liability towards timely delivery of the subject plot and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the respondent has misused his dominant position and the allottee is left with no option but to sign on the dotted lines

30. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

(1) 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.

31. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ease uniform practice in all the cases.
32. Consequently, as per the website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 28.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 10.85%.
33. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(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;"*

34. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 2.1 of the agreement executed between the parties on 01.03.2017, the due date of possession comes out to be 30.03.2018 including grace period being unqualified.
35. It is pertinent to mention over here that even after a passage of more than 7 years (i.e., from the date of BBA till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
36. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021*

"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

37. Further, the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. observed as under: -

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

38. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

39. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents is established. As such, the complainant is entitled to refund of the entire

amount paid by them at the prescribed rate of interest i.e., @ 10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G.II Compensation

40. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation

H. Directions of the authority

41. Based on above determination of the authority and acceptance of report of the committee, the authority hereby passes this order and issues the following directions under section 37 of the Act in respect all matter dealt jointly to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the amount i.e., Rs. 39,24,037/-/- received by it from the complainants along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of

the deposited amount. No interest shall be payable by the respondent from 13.10.2020 to 21.07.2022 in view of judgement of Hon'ble Supreme Court wherein this was explicitly instructed to cease any further development in the project.

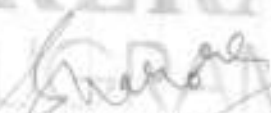
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

42. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

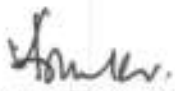
43. Complaints stands disposed off.

44. Files be consigned to registry.


(Ashok Sangwan)
Member


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 28.05.2024