

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

Order pronounced on: 23.07.2024

NAME OF THE BUILDER		M/s Green Heights Pvt. Ltd.
PROJECT NAME:	Bani City Centre	APPEARANCE
1	CR/1360/2022 Brahm Singh Yadav & Kulbhushan Yadav Vs. Green Height Projects Private Limited	Advocate Sh. Garvit Gupta (Complainant) Advocate Sh. Somesh Arora (Respondent)
2	CR/4948/2021 Virender Singh Vs. Green Height Projects	Advocate Sh. Riju Mani (Complainant) Advocate Sh. Somesh Arora (Respondent)
3	CR/646/2022 Dr. Saroj Dahiya Vs. Green Height Projects Private Limited	Advocate Sh. Satyavan Kundalwal (Complainant) Advocate Sh. Somesh Arora (Respondent)
4	CR/1096/2022 Rampratap Singh and Vikas Kumar Singh Vs. Green Height Projects Private Limited	Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)
5	CR/1098/2022 Manish Yadav and Rekha Yadav Vs. Green Height Projects Private Limited.	Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)
6	CR/1115/2022 Rinchen Gosh and Alpana Gosh Vs. Green Height Projects Private Limited	Advocate Sh. Garvit Gupta (Complainant) Advocate Sh. Somesh Arora (Respondent)
7	CR/1160/2022 Sunil Arora and Shalini Arora Vs. Green Height Projects Private Limited	Advocate Sh. Garvit Gupta (Complainant) Advocate Sh. Somesh Arora (Respondent)

8	CR/1168/2022	Inderjeet Height Limited	Kaur Vs. Projects	Green Private	Advocate Sh. Garvit Gupta (Complainant) Advocate Sh. Somesh Arora (Respondent)
9	CR/1172/2022	Urmila Height Limited	Yadav Vs. Projects	Green Private	Advocate Sh. Garvit Gupta (Complainant) Advocate Sh. Somesh Arora (Respondent)
10	CR/1182/2022	Lalita Height Limited.	Singhal Vs. Projects	Green Private	Advocate Sh. Garvit Gupta (Complainant) Advocate Sh. Somesh Arora (Respondent)
11	CR/1206/2022	Shalini Arora and Sunil Arora Vs. Private Limited	Green Height Projects		Advocate Sh. Garvit Gupta (Complainant) Advocate Sh. Somesh Arora (Respondent)
12	CR/1232/2022	Pardeep Height Limited	Yadav Vs. Projects	Green Private	Advocate Sh. Garvit Gupta (Complainant) Advocate Sh. Somesh Arora (Respondent)
13	CR/1274/2022	Pardeep Height Limited	Yadav Vs. Projects	Green Private	Advocate Sh. Garvit Gupta (Complainant) Advocate Sh. Somesh Arora (Respondent)
14	CR/1363/2022	Vikender Height Limited	Singh Vs. Projects	Green Private	Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)
15	CR/1384/2022	Rakesh Kapoor & Kunal Kapoor Vs. Projects Private Limited.	Green Height		Advocate Sh. Garvit Gupta (Complainant) Advocate Sh. Somesh Arora (Respondent)
16	CR/1438/2022	Anil Kumar Sinha and Amita Sinha Vs. Projects Private Limited	Green Height		Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)

17	CR/1441/2022	Reema Khanna And Pankaj Khanna Vs. Green Height Projects Private Limited	Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)
18	CR/1474/2022	Rahul Garg Vs. Green Height Projects Private Limited	Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)
19	CR/1525/2022	Deepak Arora Vs. Green Height Projects Private Limited	Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)
20	CR/1563/2022	Reema Rohtgi Vs. Green Height Projects Private Limited	Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)
21	CR/1595/2022	Vikarm Jeet Singh Malik and Siddharth Singh Vs. Green Height Projects	Advocate Sh. K.K. Kohli (Complainant) Advocate Sh. Somesh Arora (Respondent)

CORAM:

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 21 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 award for delayed possession charges and other reliefs.
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	Reply Status	Unit no. & Area measuring	Date of allotment letter	Date of execution of builder buyer's agreement	Due of possession	Offer of possession	Relief Sought
1	CR/1360/2022 Braham Singh Yadav & Kuibhushan Yadav Vs. Green Height Projects Private Limited 31.03.2022	22.07.2022	GF-039 (Page 34 of complaint) 437 sq. ft. (Page 34 of complaint)	01.12.2014 (Page 34 of complaint)	28.03.2017 (Page 35 of complaint)	30.03.2018	DC - Not obtained TC - Rs. 42,44,720/- (Page 4 of reply) AP - Rs. 42,44,721/- (Page 4 of reply)	1. Possession 2. DPC 3. Direct the respondent to adjust the payment of DPC towards dues from the complainant 4. Direct the respondent not to create any third party interest in the property. Litigation cost
2.	CR/4948/2021 Virender Singh Vs. Green	21.02.2022	FF-005 (Page 16 of complaint)	01.12.2014 (Page 16 of complaint)	19.01.2017 (Page 31 of complaint)	30.03.2018	- OC - Not obtained	1. Possession 2. Interest on @15 p.a. 3. Direct the respondent to not charge anything out

	Height Projects 16.12.2021		372 sq. ft. (Page 16 of complaint)				TC - Rs. 33,88,033/- (Page 18 of complaint) AP - Rs. 33,46,969/- (Page 18 of complaint)	of the Buyer agreement 5. To clear all dues of the HSIIDC and government authorities before handing over of possession
3	CR/646/2022 Dr. Saroj Dahiya Vs. Green Height Projects Private Limited 09.03.2022	25.03.2022	FF - 01B (Page 8 of complaint) 372 sq. ft. (Page 8 of complaint)	05.01.2017 (Page 8 of complaint)	05.01.2017 (Page 8 of complaint)	30.03.2018	OC - Not obtained TC - Rs. 32,72,335/- (Page 8 of complaint) AP - Rs. 31,77,314/- (Page 8 of complaint)	1. Possession 2. DPC
4	CR/1096/2022 Rampratap Singh and Vikas Kumar Singh Vs. Green Height Projects Private Limited 16.03.2022	12.05.2022	GF - 051 (Page 51 of complaint) 437 sq. ft. (Page 51 of complaint)	01.12.2014 (Page 27 of complaint)	12.01.2017 (Page 46 of complaint)	30.03.2018	OC - Not obtained TC - Rs. 42,44,720/- (Page 28 of complaint) AP - Rs. 42,45,719/- (Page 28 of complaint)	1. Possession 2. Direct the respondent not to create any third party rights 3. DPC 4. Direct the respondent to adjust the payment of DPC towards dues from complainant 5. Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till date of offer of possession. 6. Litigation
5	CR/1098/2022 Manish Yadav and Rekha Yadav Vs. Green Height Projects Private Limited 16.03.2022	24.03.2022	GF - 070 (Page 59 of complaint) 437 sq. ft. (Page 59 of complaint)	01.12.2014 (Page 52 of reply)	31.03.2017 (Page 54 of complaint)	30.03.2018	OC - Not obtained TC - Rs. 44,21,709/- (Page 34 of complaint) AP - Rs. 38,27,750/- (Page 34 of complaint)	1. Possession 2. Direct the respondent not to create third party rights 3. DPC 4. Direct the respondent to award pendent lite interest @ 18% p.a. from the date of payment of amounts till realization 5. Litigation cost
6	CR/1115/2022	12.05.2022	GF - 107	01.12.2014	05.04.2017	30.03.2018	OC - Not obtained	1. Possession 2. Direct the respondent not to

	Rinchen Ghosh and Alpana Ghosh Vs. Green Height Projects Private Limited	24.03.2022	(Page 56 of complaint) 401 sq. ft. (Page 56 of complaint)	(Page 50 of complaint)	(Page 53 of complaint)		TC - Rs. 34,79,641/- (Page 29 of complaint) AP - Rs. 34,76,217/- (Page 29 of complaint)	create third party rights 3. DPC 4. Direct the respondent to award pendent light interest @18% p.a. from the date of payment of amounts till realization 5. Litigation cost
7	CR/1160/2022 Sunil Arora and Shalini Arora Vs. Green Height Projects Private Limited	26.04.2022	GF - 012 (Page 48 of complaint) 416 sq. ft. (Page 48 of complaint)	01.12.2014 (Page 41 of complaint)	09.03.2017 (Page 43 of complaint)	30.03.2018	OC - Not obtained TC - Rs. 35,07,674/- (Page 30 of complaint) AP - Rs. 33,18,862/- (Page 31 of complaint)	1. DPC 2. Direct the Respondent to let out the unit in question in terms of agreement to handover the possession of the said unit. 3. Direct the respondent to not to charge holding charges. 4. Direct the respondent to not to charge GST and HVAT charges. 5. Direct the respondent to provide exact layout plan
8	CR/1168/2022 Inderjeet Kaur Vs. Green Height Projects Private Limited	12.05.2022	GF - 006 (Page 47 of complaint) 541 sq. ft. (Page 47 of complaint)	01.12.2014 (Page 24 of complaint)	21.01.2017 (Page 42 of complaint)	30.03.2018	OC - Not obtained TC - Rs. 46,30,705/- (Page 25 of complaint) AP - Rs. 43,49,977/- (Page 25 of complaint)	1. Possession. 2. Direct the respondent not to create any third-party interest in the property. 3. DPC 4. Direct the respondent to adjust the payment of DPC towards dues from the complainant 5. Litigation cost
9	CR/1172/2022 Urmila Yadav Vs. Green Height Projects Private Limited	25.03.2022	GF - 112A (Page 32 of complaint) 401 sq. ft. (Page 32 of	01.12.2014 (Page 23 of complaint)	08.03.2017 (Page 27 of complaint)	30.03.2018	OC - Not obtained TC - Rs. 37,25,543/- (Page 24 of complaint) AP - Rs. 35,59,990/-	1. Possession 2. Direct the respondent not to create third party rights 3. DPC 4. Litigation

			compl aint)				(Page 25 of complaint)	
10	CR/1182/2 022 Lalita Singhal Vs. Green Height Projects Private Limited 25.03.2022	12.05. 2022	GF - 069 (Page 48 of compl aint) 437 sq. ft. (Page 48 of compl aint)	01.12.2014 (Page 25 of complaint)	16.01.2017 (Page 43 of complaint)	30.03.2018	OC - Not obtained TC - Rs. 40,90,804/ - (Page 26 of complaint) AP - Rs. 38,95,294/- (Page 26 of complaint)	1. Possession 2. Direct the respondent not to create third party rights 3. DPC 4. Direct the respondent to award pendent light interest @18% p.a. from the date of payment of amounts till realization 5. Litigation cost
11	CR/1206/2 022 Shalini Arora and Sunil Arora Vs. Green Height Projects Private Limited 29.03.2022	26.04. 2022	GF - 012A (Page 47 of compl aint) 416 sq. ft. (Page 47 of compl aint)	01.12.2014 (Page 41 of complaint)	09.03.2017 (Page 42 of complaint)	30.03.2018	- OC - Not obtained TC - Rs. 32,39,455/- (Page 31 of complaint) AP - Rs. 30,57,331/- (Page 31 of complaint)	1. Possession 2. DPC 3. Direct the respondent to not to charge holding charges. 4. Direct the respondent to not to charge GST and HVAT charges.
12	CR/1232/2 022 Pradeep Yadav Vs. Green Height Projects Private Limited 29.03.2022	05.07. 2022	FF- 036 (Page 40 of compl aint) 372 sq. ft. (Page 40 of compl aint)	01.12.2014 (Page 40 of complaint)	06.09.2013	30.03.2018	OC - Not obtained TC - Rs. 33,41,579/ - AP - Rs. 24,18,301/-	1. Possession 2. DPC 3. Direct the respondent to adjust the payment of DPC towards dues from the complainant 4. Direct the respondent not to create any third- party interest in the property. 5. Litigation cost Direct the respondent to pay cost of Rs. 1,00,000/- mental agony, harassment and litigation.
13	CR/1274/2 022 Pradeep Yadav Vs. Green Height Projects	15.07. 2022	GF- 026 (Page 36 of compl aint)	01.12.2014 (Page 36 of complaint)	Not executed	30.03.201 8	OC - Not obtained TC - Rs. 41,49,752/- (Page 3 of reply)	1. Possession 2. Direct the respondent not to create any third- party interest in the property. 3. DPC 4. Direct the respondent to

	Private Limited 29.03.2022		437 sq. ft. (Page 36 of complaint)				AP - Rs. 42,02,088/- (Page 3 of reply)	adjust the payment of DPC towards dues from the complainant 5. Direct the respondent to pay cost of Rs. 1,00,000/- mental agony, harassment and litigation.
14	CR/1363/2022 Vikender Singh Vs. Green Height Projects Private Limited 01.04.2022	22.07.2022	FF-047 (Page 3 of reply) 393 sq. ft. (Page 3 of reply)	- (Page 3 of reply)	24.01.2017 (Page 3 of reply)	30.03.2018	- OC - Not obtained TC - Rs. 35,52,303/- (Page 4 of reply) AP - Rs. 35,16,722/- (Page 4 of reply)	1. Possession 2. DPC 3. Direct the respondent to adjust the payment of DPC towards dues from the complainant 4. Direct the respondent not to create any third-party interest in the property 5. Litigation cost
15	CR/1384/2022 Rakesh Kapoor & Kunal Kapoor Vs. Green Height Projects Private Limited 31.03.2022	29.07.2022	GF - 0027 (Page 34 of complaint)	01.12.2014 (Page 34 of reply)	26.04.2017 (Page 35 of complaint)	30.03.2018	- OC - Not obtained TC - Rs. 38,38,527/- (Page 4 of reply) AP - Rs. 20,23,752/- (Page 4 of reply)	1. Possession 2. DPC 3. Direct the respondent to adjust the payment of DPC towards dues from the complainant 4. Direct the respondent not to create any third-party interest in the property. 5. Litigation cost
16	CR/1438/2022 Anil Kumar Sinha and Amita Sinha Vs. Green Height Projects Private Limited 06.04.2022	29.07.2022	GF - 080 (Page 28 of complaint) 199 sq. ft. (Page 28 of complaint)	01.12.2014 (Page 28 of complaint)	Not executed	30.03.2018	- OC - Not obtained TC - Rs. 16,50,134/- (Page 29 of complaint) AP - Rs. 16,23,545/- (Page 29 of complaint)	1. Possession 2. Direct the respondent not to create any third-party interest in the property. 3. DPC 4. Direct the respondent to adjust the payment of DPC towards dues from the complainant 5. Direct the respondent to pay cost of Rs. 1,00,000/- mental agony, harassment and litigation
17	CR/1441/2022	29.07.2022	GF - 112	1.12.2014	09.02.2017	30.03.2018	-	1. Possession 2. Direct the respondent not to

	Reema Khanna And Pankaj Khanna Vs. Green Height Projects Private Limited 06.04.2022	Additional reply 16.11.2022	372 sq. ft. (Page 3 of reply)		(Page 3 of reply)		OC - Not obtained TC - Rs. 29,78,715/- AP - Rs. 29,44,761/-	create third party rights 3. DPC 4. Direct the respondent to award pendent light interest @18% p.a. from the date of payment of amounts till realization
18	CR/1474/2022 Rahul Garg Vs. Green Height Projects Private Limited 06.04.2022	29.07.2022 Additional reply 07.11.2022	FF - 048 (Page 41 of complaint) 393 sq. ft. (Page 41 of complaint)	01.12.2014 (Page 35 of complaint)	27.01.2017 (Page 36 of complaint)	30.03.2018	- OC - Not obtained TC - Rs. 35,52,260/- (Page 28 of complaint) AP - Rs. 35,55,459/- (Page 29 of complaint)	1. Possession 2. Direct the respondent not to create third party rights 3. DPC 4. Direct the respondent to award pendent light interest @18% p.a. from the date of payment of amounts till realization 5. Direct the respondent to adjust the payment of DPC towards dues from the complainant. 6. Litigation Cost
19	CR/1525/2022 Deepak Arora Vs. Green Height Projects Private Limited 18.04.2022	29.07.2022	GF - 095 (Page 57 of complaint) 437 sq. ft. (Page 57 of complaint)	01.12.2014 (Page 39 of reply)	11.01.2017 (Page 52 of complaint)	30.03.2018	- OC - Not obtained TC - Rs. 41,36,688/- (Page 4 of reply) AP - Rs. 41,26,359/- (Page 4 of reply)	1. Possession 2. Direct the respondent not to create third party rights 3. DPC 4. Direct the respondent to award pendent light interest @18% p.a. from the date of payment of amounts till realization 5. Direct the respondent to adjust the payment of DPC towards dues from the complainant
20	CR/1563/2022 Reema Rohatgi Vs. Green Height Projects	22.07.2022	GF - 052A (Page 42 of complaint)	01.12.2014 (Page 36 of complaint)	03.03.2017 (Page 37 of complaint)	30.03.2018	- OC - Not obtained TC - Rs. 42,65,213/-	1. Possession 2. Direct the respondent to not cancel the unit 3. Direct the respondent not to create third party rights

	Private Limited 18.04.2022		416 sq. ft. (Page 42 of complaint)				AP - Rs. 56,49,378/- (Page 4 of reply)	4. DPC 5. Direct the respondent to adjust the payment of DPC towards dues from the complainant
21	CR/1595/2022 Vikarm Jeet Singh Malik and Siddarth Singh Vs. Green Height Projects 04.05.2022	15.07.2022 Additional reply 16.11.2022	FF - 012A (Page 39 of complaint) 372 sq. ft. (Page 39 of complaint)	01.12.2014 (Page 33 of complaint)	26.11.2016 (Page 23 of complaint)	30.03.2018	- OC - Not obtained TC - Rs. 34,30,587/- (Page 23 of complaint) AP - Rs. 34,30,587/- (Page 23 of complaint)	1. Possession 2. Direct the respondent to not cancel the unit 3. Direct the respondent not to create third party rights 4. DPC 5. Direct the respondent to adjust the payment of DPC towards dues from the complainant

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties inter se in respect of said units for not handing over the possession by the due date. In some of the complaints, issues other than delay possession charges in addition or independent issues have been raised and consequential reliefs have been sought.
5. The delay possession charges to be paid by the promoter is positive obligation under proviso to section 18(1) of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement.
6. 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.

7. 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/1360/2022** at serial no. 1 titled as **Bhim Singh Yadav and Kulbhushan Yadav Vs. M/s Green Heights Pvt. Ltd.** are being taken into consideration for determining the rights of the allottees qua delay possession charges, and other reliefs sought by the complainants.

A. Unit and project related details

8. 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/1360/2022

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 - 039 (Page 34 of complaint)
8.	Unit area admeasuring	437 sq. ft.



		(Page 34 of complaint)
9.	Date of booking	07.05.2013 (Page 34 of complaint)
10.	Date of allotment letter	01.12.2014 (Page 34 of reply)
11.	Buyer agreement	28.03.2017 (Page 35 of complaint)
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>
13.	Due date of possession	30.03.2018 (including grace period being unqualified)
14.	Total sale consideration	Rs. 42,44,720/- (Page 4 of reply)
15.	Amount paid by the complainants	Rs. 42,44,721/- (Page 4 of reply)
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

The complainants have submitted as under:

9. That the complainants booked a commercial unit in the project by paying an amount of Rs. 3,39,902/- dated 07.05.2013, towards the booking of the said unit bearing no. GF-039, Ground Floor, in Sector M-1D, Gurugram, having super area measuring 437 sq. ft. to the respondent dated 07.05.2013 and the same was acknowledged by the respondent.
10. That the respondent sent an allotment letter dated 01.12.2014 to complainants confirming the booking the said unit and also mentioning the moonshine reputation of the company and the location of project. Further, providing the details of payment to be made by the complainants. Further allotting a unit no. GF-039, Ground Floor, in Sector M-1D, Gurugram, having super area measuring 437 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit ie. Rs. Rs.42,54,524/- and other specifications of the allotted unit and providing the time frame within which the next installment was to be paid.
11. It is pertinent to mention here that an allotment letter was issued by respondents after repeated reminders from the complainants and even after delay of more than one year from the date of booking.
12. That a commercial space buyer's agreement was executed between the complainants and respondent on 28.03.2017.
13. That furthermore, as per Section 13 of the RERA Act, 2016, a promoter cannot accept/demand more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for time being

in force. In present case respondents before entering into agreement for sale collect sum of Rs. 23,24,461/- from the complainants in violation and against the spirit of RERA Act, 2016.

14. That as per clause 2.1 of the buyer's agreement respondents agreed to deliver the possession of the said unit on or before 30.09.2017 along with grace period of 6 months. Therefore, due date of possession comes out to be 30.09.2017.
15. That as per demands raised and based on the payment plan as agreed upon the complainants to buy the captioned unit made the total payment of Rs. 42,02,213/- against the total consideration of Rs. 42,54,524/-.
16. That the complainants went to the office of respondent several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site and even there was no proper approach road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
17. That the complainants contacted the respondents on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response regarding the status of the construction and were never definite about the delivery of the possession. Many times complainants also raised issue of difference in total sale consideration of the allotted unit but respondent never able to provide any satisfactory answer to the complainants.
18. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a

slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc.

19. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants approached the respondent and asked about the status of construction and also raised objections towards non- completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
20. That the respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, buyer agreement and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the RERA Act, 2016 and HRERA Rules, 2017.
21. That it is abundantly clear that the respondents have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the buyer agreement executed with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
22. The complainants has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said Unit for commercial

purposes. They have not only been deprived of the timely possession of the said Unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the buyer agreement.

C. Relief sought by the complainants:

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

- i. Direct the opposite party not to create any third-party interest in the property.
- ii. Direct the opposite party to pay interest at the prescribed rate for every month of delay from the due date of possession till date of offer of possession.
- iii. Direct the opposite party to pay interest so accrued from the date of delivery of the possession till date of order within 90 days from the date of order.
- iv. Direct the opposite party to adjust the payment of DPC towards dues from the complainant.
- v. Direct the opposite party to pay subsequent interest by 10th of every succeeding month till offer of possession.
- vi. Direct the opposite party to provide possession of the flat with all amenities as assured in the brochure and as promised at the time of booking of the flat, as soon as possible.
- vii. Direct the opposite party to ensure good quality workmanship and material and peaceful possession of the flat

24. 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

The respondents have contested the complaint on the following grounds:

25. 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. That various permissions were sought from different authorities by the original landholder and the development was undertaken by the respondent consequent to those permissions and the commercial project is constructed on the subject land by the respondent duly following the norms and compliances as per law.
26. That the project namely "Baani Center Point" was registered with Haryana RERA, registration no.- 187 of 2017 dated 14/09/2017.
27. That the present dispute is *sub judice* before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court has ordered a *status quo* in the construction of the project on a clarification application filed by the state of Haryana in the matter of *Rameshwar Vs. State of Haryana & Ors.* CA 8788 of 2015.
28. That the present case is also not maintainable as the 'delay' is not attributable due to the fault of the respondent but falls under force majeure, due to the Supreme Court order for stay on development by the Hon'ble Supreme Court of India in I.A. No 93822 of 2019 in M.A 1175 of 2019 in CA 8788 of 2015 in *Rameshwar Vs. State of Haryana & Ors.*
29. That it is also pertinent to mention here that between the periods of 24.04.2015 till the final decision in the case of *Rameshwar & Ors. vs. State* on 12.03.2018 M/s. Paradise Systems Pvt. Ltd. was ordered by the Hon'ble Supreme Court of India to stay any construction on the impugned land. The

- said stay order continued upto the decision in the said matter on 12.03.2018 and the Government (while renewal of license) ordered to consider the period during which the order of the Hon'ble Supreme Court of India **regarding ban on construction activity was in force, to be treated as zero period.**
30. That based on the decision of the Hon'ble Supreme Court of India in *Rameshwar Vs. State of Haryana & Ors.* CA 8788 of 2015, the M/s. Paradise Systems Pvt. Ltd. approached HSIIDC 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 finishing works and interiors until the Hon'ble Supreme Court was pleased to pass the status quo orders on 13.10.2020.
31. That in after the passing of the judgement of the Hon'ble Court in *Rameshwar Vs. State of Haryana & Ors.* CA 8788 of 2015 dated 12.03.2018 the HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 through I.A. No. 93822 of 2019 in C.A. No. 8788 of 2015 being "*Application for Clarification of Final Judgement dated 12.03.2018 passed by this Hon'ble Court*". It is submitted that the Hon'ble Supreme Court through its order dt. 13.10.2020 again put an injunction on further construction of projects of the parties to the said case including M/s. Paradise Systems Pvt. Ltd. project of Baani Centre Point.
32. That the respondent has almost completed the construction of the project and the commercial colony, on the subject land. The respondent is prohibited under the orders of the court to complete the said project. It is submitted that not completing the construction of the project is not due to the mala-fide intentions of the respondent but rather in compliance of a judicial order of the Apex Court.
33. All other averments made in the complaints were denied in toto.

34. 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

35. 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

36. 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

37. 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.

38. 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.

F. Findings on the objections raised by the respondent

39. 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.

40. The complainant states that in the latest judgment M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (Supra), which is the authoritative landmark judgment of the Hon'ble Apex Court with respect to the interpretation of the provisions of the Act, the Hon'ble Apex Court has dealt with the rights of the allottees to seek refund and delay possession charges as referred under Section 18(1)(a) of the Act. The Hon'ble Apex Court has laid down 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 timestipulated 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."

Thus, the allottee has unqualified right to seek delay possession charge referred under section 18 of the Act, which is not dependent on any contingencies. The right of delay possession charge has been held to be 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. On the contrary, the respondent states that Paragraph 25 of the Newtech judgment is a general observation by the Hon'ble Supreme Court as 'Obiter dictum' and not 'ratio decidendi'.

41. In this regard, the Authority is of view that even though the contents of Para 25 of the order passed by the Hon'ble Supreme Court in the case of M/s M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. does not form part of the directions but it cannot be denied that an interpretation of sections 18(1) and 19(4) has been rendered in the order in para 25 in unequivocal terms with respect to the statutory rights of the allottee. Further, the pivotal issue arises from the builder's actions during the period between 24.04.2015 to 1.03.2018 in question that is 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. However, during the period 13.10.2020 to 21.07.2022, there were specific

directions for stay on further construction/development works in the said project passed by the Hon'ble Supreme Court of India in M.A No. 50 of 2019 vide order dated 21.07.2022 which was in operation from 13.10.2020 to 21.07.2022 and there is no evidence that the respondent did not comply with such order. The Authority observes that during this period, there was no construction carried out in the project nor any demands made by the respondent from the allottees. In view of the above, the promoter cannot be held responsible for delayed possession interest during this period. Therefore, in the interest of equity, no interest shall be payable by the complainant as well as respondent from 13.10.2020 to 21.07.2022 in view of the stay order of Hon'ble Supreme Court on further construction/development works on the said project

G. Findings on the relief sought by the complainants

- G.I Direct the opposite party not to create any third-party interest in the property.**
- G.II Direct the opposite party to pay interest at the prescribed rate for every month of delay from the due date of possession till date of offer of possession.**
- G.III Direct the opposite party to pay interest so accrued from the date of delivery of the possession till date of order within 90 days from the date of order.**
- G.IV Direct the opposite party to adjust the payment of DPC towards dues from the complainant.**
- G.V Direct the opposite party to pay subsequent interest by 10th of every succeeding month till offer of possession.**
- G.VI Direct the opposite party to provide possession of the flat with all amenities as assured in the brochure and as promised at the time of booking of the flat, as soon as possible.**
- G.VII Direct the opposite party to ensure good quality workmanship and material and peaceful possession of the flat.**

The above mentioned reliefs no. G.I, G.II , G.III, G.IV, G.V, G.VI & G.VII as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected

42. It is noted that In the complaints no. 1360/2022, Cr No. 1096/2022, Cr. No. 1098/2022, Cr. No. 1115/2022, Cr. No. 1160/2022, Cr. No. 1168/2022, Cr. 1172/2022, Cr. 1182/2022, Cr. No. 1232/2022, Cr. No. 1274/2022, Cr. No. 1363/2022, Cr No. 1384/2022, Cr.No. 1438/2022, Cr. No. 1441/2022, C. No. 1474/2022, Cr. No. 1525/2022, Cr. No. 1563/2022 and 1595/2022, the complainants initially sought the relief of refund. However, on 09.08.2022, the complainants moved an application for amendment of the relief to delay possession charges. On 19.06.2024, the respondent filed a reply to the application dated 09.08.2022, stating that they have no objection to the amendment of the relief sought by the complainants from a refund to delay possession charges. The respondent requested that the matter be heard afresh, focusing solely on the new relief of delay possession charges. Arguments were heard and the said application was allowed on 23.07.2024.
43. 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 allowed by Directorate of Town and Country Planning (DTCP) is for limited purpose of renewal of license and

Directorate of Town and Country Planning (DTCP) orders cannot dilute the builder buyer agreement.

44. 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.
45. On the contrary, the counsel for the respondent states that the land on which Baani 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.
46. 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.

47. 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.

48. After consideration of all the facts and circumstances, authority is of view that the matter concerns two distinct periods: from 24.04.2015 to 12.03.2018 and from 13.10.2020 to 21.07.2022. The respondent collected payments and executed buyer's agreements during the first 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
01.12.2014	Commencement of work at site
03.11.2015	On laying of raft
3.02.2016	On casting of 3 rd basement roof raft
08.08.2016	VAT
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 roof slab plus 2 nd floor roof slab
10.10.2017	On start of brick work

49. As per aforementioned details, the respondent has raised the demands during the period in which 'stay' was imposed. Also, 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. 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.

50. However, during the period 13.10.2020 to 21.07.2022, there were specific directions for stay on further construction/development works in the said project passed by the Hon'ble Supreme Court of India in M.A No. 50 of 2019 vide order dated 21.07.2022 which was in operation from 13.10.2020 to 21.07.2022 and there is no evidence that the respondent did not comply with such order. The Authority observes that During this period, there was no construction carried out in the project nor any demands made by the respondent from the allottees. In view of the above, the promoter cannot be held responsible for delayed possession interest during this period. Therefore, in the interest of equity, no interest shall be payable by the complainant as well as respondent from 13.10.2020 to 21.07.2022 in view of the stay order Hon'ble Supreme Court on further construction/development works on the said project.

51. In all the complaints, the allottees intend to continue with the project and are seeking delay possession charges 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."

52. 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)

53. Admissibility of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges. Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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.

54. 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 ensure uniform practice in all the cases.

55. Consequently, as per 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., 23.07.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.

56. The definition of term 'interest' as defined under section (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;"

57. 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.

58. It is pertinent to mention over here that even after a passage of more than 7 years (i.e., from the date of buyer agreement 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.

Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

59. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.03.2018 till valid offer of possession after obtaining occupation certificate from the competent Authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules. No interest shall be payable by the respondent as well as complainant 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.
60. In **Cr no. 1232-2022**, the respondent entered into a MoU with the complainant to pay the assured returns. As per clause 2 of the MoU dated 06.09.2013, the respondent undertook to pay investment return every month till the date when offer of possession for fitouts is given by the first party. It is important to note that the complainants initially sought the relief of refund. However, But on 09.08.2022, the complainants moved an application and changed the relief to delay possession charges. On 19.06.2024, the respondent filed a reply to the application dated 09.08.2022, stating that they have no objection to the amendment of the relief sought by the complainants from a refund to delay possession charges. The respondent requested that the matter be heard afresh, focusing solely on the new relief of delay possession charges. Considering the abovementioned arguments, the said application was allowed on 23.07.2024.
61. After consideration of all the facts and circumstances, the respondent is directed to pay interest to each of the complainant(s) against the paid-up

amount after adjustment of assured return paid to the complainant, if any, at the prescribed rate of interest i.e., 11% p.a. for every month of delay from the due date of possession 30.03.2018 till valid offer of possession after obtaining occupation certificate, plus two months or actual handing over of possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules. No interest shall be payable by the respondent as well as complainant 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.

62. In **Cr. No. 1274/2022 and 1438/2022**, the complainant states that respondent-builder till date has failed to execute buyer's agreement in favour of the complainant. After consideration of all the facts and circumstances, the respondent-builder is directed to execute buyer's agreement within a period of 30 days from the date of this order.
63. In **Cr. No. 1160/2022**, the complainant sought the relief w.r.t. provide layout plan. The Authority observes that as per Section 11(3)(a) of the RERA Act of 2016, developers are mandated to provide allottees with sanctioned plans, layout plans, and specifications at the time of booking and the issuance of the allotment letter. This disclosure ensures that homebuyers have comprehensive information about the proposed project from the outset. So, the respondent-builder is directed to provide all the necessary approvals obtained from the competent authority to the complainant.

G.VIII GST

64. In CR no. 1160-2022 and 1206-2022, it is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards GST. It is pleaded that the liability to pay GST is on the builder and not on the allottee. But the version of respondents is otherwise and took a plea that while booking

the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively. It is important to note that the possession of the subject unit was required to be delivered by 30.03.2018 and the incidence of GST came into operation thereafter on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e. date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees **where the same was leviable**, at the applicable rate, if they have not opted for composition scheme subject to furnishing of such proof of payments and relevant details.

G.IX HVAT

65. In CR no. 1160-2022 and 1206-2022, it is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards VAT. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondent is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively. The promoter shall charge VAT from the allottees **where the same was leviable**, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is liveable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis-à-vis the total area of the particular project. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads

G.X Compensation:

66. 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.

G.XI Holding charges:

67. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020

H. Directions of the authority

68. 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 is directed to pay interest to each of the complainant(s) against the paid-up amount at the prescribed rate of interest i.e., 11% p.a. for every month of delay from the due date of possession 30.03.2018 till valid offer of possession after obtaining occupation certificate, plus two months or actual handing over of

possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules. No interest shall be payable by the respondent and complainant from 13.10.2020 to 21.07.2022 in view of the stay order Hon'ble Supreme Court on further construction/development works on the said project.

- ii. The arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent-builder is directed not to charge anything which is not part of buyer agreement.
- v. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. No interest shall be payable by the respondent and complainant from 13.10.2020

to 21.07.2022 in view of the stay order Hon'ble Supreme Court on further construction/development works on the said project.

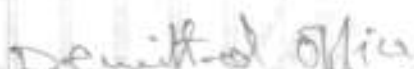
vii. **Holding charges:** The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.


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

70. Complaints stands disposed off. True certified copy of this order shall be placed in the case file of each matter.

71. 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

Dated: 23.07.2024