BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: **6082 of 2024**
Date of decision:- **30.10.2024**

Rashmi Jain
R/o: - Flat no.-401, Tower-11, Orchid Petals,
Sector-49, Sohna Road, Gurugram-122018. **Complainant**

Versus

M/s. Green Heights Projects Pvt. Ltd.
Regd. office: N-71, Panchsheel Park,
New Delhi-110017. **Respondent**

CORAM:
Shri Ashok Sangwan Member

APPEARANCE:
Mr. Garvit Gupta (Advocate) Complainant
Ms. Preeti Yadav (Advocate) Respondent

ORDER

1. The present complaint dated 09.01.2024 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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

obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Banni centre Point", Sector-M1D, Gurugram.
2.	Area of the project	2.681 acres
3.	Nature of project	Commercial colony
4.	DTCP license no.	Licence no.-59 of 2009
5.	RERA registered	Registered Registration no. 187 of 2017 dated 14.09.2017
6.	Unit no.	LG-039, Lower Ground Floor
7.	Unit area	436sq.ft [Super-Area] (As on page no. 25 of complaint)
8.	Provisional allotment letter	24.12.2015 (As on page no. 26 of complaint)

9.	Date of execution of buyer's agreement	Not executed
10.	Possession clause	Not available
11.	Due date of possession	24.12.2018 [Calculated 36 months from the date of allotment]
12.	Total sale consideration	Rs.39,80,680/-
13.	Total amount paid by the complainant	Rs.12,61,345/-
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has submitted as under:

I. That the complainant is a simple, law abiding and peace -loving person. The complainant had throughout acted as per the terms of the allotment, rules and regulations and the provisions laid down by law and no illegality whatsoever has been committed by him in adhering to their contractual obligations.

II. That the respondent is a company incorporated under the Companies Act, 1956 having its registered office at the above-mentioned address and existing under the Companies Act, 2013. The respondent is comprised of several clever and shrewd types of persons.

III. That the respondent offered for sale units in a commercial complex known as 'Baani Centre Point' which claimed to comprise of commercial units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Sector M1D, Gurugram, Haryana. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 59 of 2009 on a land area of about 2.681 acres in Village Lakhnaula, Tehsil Manesar, Gurugram to its associates companies for development of a commercial colony in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder.

IV. That the complainant received a marketing call from the office of respondent in the month of June, 2014 for booking in commercial project of the respondent.

V. The complainant had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. That the complainant, induced by the assurances and representations made by the respondent, decided to book a commercial unit in the project as the complainant required the same in a time bound manner for his own use. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the commercial unit to be allotted to the complainant would be positively handed over within the agreed time frame. The complainant signed several blank and printed papers at the instance of the respondent who obtained the same on the ground that the same were required for completing the booking formalities. The complainant was not given chance to read or understand the said

documents and he signed and completed the formalities as desired by the respondent. The complainant was not given chance to read or understand the said documents and he signed and completed the formalities as desired by the respondent.

VI. That the complainant had made the payment of Rs.4,87,345/- at the time of booking on 28.09.2014 and accordingly, the respondent had issued an acknowledgement receipt dated 10.10.2014. It is pertinent to mention here that the respondent vide the said acknowledgment receipt provisionally allotted a shop no. LG-039, Lower Ground Floor, having a super area of 436 sq. ft. at the rate of Rs 9,140/- per sq. ft. It is pertinent to mention herein that the said allotted unit was located at a prime location. Moreover, at the time of booking, it was promised and assured by the respondent that the agreement would be executed in a short span of time and the said unit would be handed over to the complainant by 30.09.2017.

VII. That despite several efforts made by the complainant, the respondent failed to communicate w.r.t the status of the construction of the project and failed to execute the Agreement in question.

VIII. That the respondent had failed to execute the Buyer's Agreement with the complainant despite lapse of two years from the date of booking. The complainant visited the office of the respondent in January, 2016 to enquire about the construction status and execution of the Agreement. The complainant was surprised and anguished with the response of the respondent that the execution of the Buyer's Agreement would take some more time. However, since the complainant had made payment towards the total sale consideration

of the unit, the complainant had no other option but to believe the representations of the respondent.

IX. That finally, after almost two long years from the date of allotment, an intimation letter dated 11.11.2016 for execution of the Commercial Space Buyer's Agreement was sent to the complainant, the respondent intimated the complainant regarding the execution of the Buyer's Agreement vide letter dated 11.11.2016. It is pertinent to mention that no copy of the agreement to be signed was sent along with it. Vide the said letter, it was informed to the complainant that the construction of the project was going on in full swing and that the respondent had already casted 2nd floor roof slab.

X. That the complainant understood that the representations made by the respondent at the time of booking of handing over the physical possession of the unit was nothing but misleading the construction of the unit was nowhere near completion and even the basic requirement of any allotment i.e., the Buyer's Agreement was not even executed.

XI. The complainant made her objections vocal to the arbitrary and wrong acts of the respondent. The complainants visited the office of the respondent and clearly intimated to the respondent that she would not be making any payment unless and until the Agreement for the unit was sent and executed between the parties.

XII. That the complainant has till date made the payment of Rs. 12,61,345/- out of Rs.39,80,680/- strictly as per the terms of the allotment and the development linked payment plan and no default in making timely payment towards the instalment demands has been committed by the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

   i. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest from 30.03.2018 till actual handing over of the possession.

   ii. Direct the respondent to handover the possession of the unit, in a habitable state, after obtaining the Occupation Certificate from the concerned authorities.

   iii. Direct the respondent to execute the conveyance deed of the unit in favour of the complainant.

5. On the last date of hearing, the Authority explained to the respondent/promoter 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 respondent

6. The respondent has contested the complaint on the following grounds:

I. 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. That the respondent as per the

terms of the collaboration agreement paid the amount of Rs.28,40,00,000/- .

II. 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.

III. 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 Supreme Court directed it to approach DTCP for clarifications.

IV. 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 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.

V. That the project namely Baani Center Point was registered with Haryana Rera Registration Number 187 of 2017 dated 14.09.2017. That vide judgement dated 12.03.2018, the project was not included in tainted projects which clearly meant that the respondent could commence construction subject to renewal of licenses and other permissions.

VI. 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 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.

VII. 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 & ors 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 the project.

VIII. That finally through the 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***.

IX. 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 the 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.

X. It is further submitted that the respondent has made the payments as per the direction of the orders of the Hon'ble Supreme Court and is now taking required approvals from Government Authorities so that the offer of possession be made to the allottees very soon.

XI. 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. 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.

XII. That on 03.10.2023, M/s Paradise requested the DTCP for renewal of License No. 59 of 2009 and approval for the transfer of said license. Subsequently, on 18.10.2023, DTCP issued an office memo granting the renewal of the license. However, DTCP did not process the application for the transfer of the license.

XIII. It is further submitted that since the DTCP did not process the application for the transfer of the license, M/s Paradise sent another letter dated 31.10.2023 to the DTCP, requesting approval for the transfer of License No. 59 of 2009 along with other pending applications.

XIV. That the respondent also sent a letter on 04.04.2024 to the Enforcement Directorate, requesting clearance to the DTCP for the transfer of the license and change of the developer. However, as of now, the clearance is still awaited.

XV. It is that the delay in possession handover was because of the "Zero Period" granted by the Department of Town and Country Planning ("DTCP") Haryana from:

i. 24.04.2015 to 12.03.2018 and then again from;

ii. 23.07.2018 to 21.07.2022.

The construction work between the above periods was not continuous because of the Supreme Court Proceedings as well as non-clarity in DTCP on implementation of Supreme Court Order dated 24.04.2015. This directly affected the agreed-upon date for handing over possession, as the respondent couldn't continuously work on the project during this time. It caused unavoidable delays in completing and delivering thus DTCP granted Zero Period from 24.04.2015 to 12.03.2018.

XVI. That for the period from 13.03.2018 to 22.07.2018, the handover of possession was delayed because the respondent required to renew licenses and get other necessary approvals from DTCP to resume construction but the approvals were not granted during that period as Haryana State Industrial & Infrastructure Development Corporation ("HSIIDC") approached the Supreme Court for clarification and adjudication in respect of project including others was pending and Supreme Court granted stay and further construction/completion.

XVII. That on the directions of the Supreme Court to check the status of construction as in November 2020, HSIIDC filed an affidavit before Supreme Court, specified that after the order of the Hon'ble Supreme Court on 12.03.2018 no approval was granted for building plans and any further construction. The requests for the issuance of revised

building plans, change in developer and transfer of license is pending and no permission in this regard has been granted.

XVIII. That in the same affidavit while stating site status of commercial colony by HSIIDC, it was described as, - 3 level basements has been constructed at site and structure work of Lower Ground Floor, Upper Ground Floor, 1st Floor and partly 2nd & 3rd floor have been completed. The Theatre/Cinema has been constructed at 3rd Floor, which has double height.

XIX. That as per Clause 2.1 of the Builder Buyer Agreement signed with other similarly placed allottees, clearly stated that the date for handing over of possession was 30.09.2017, with a provision for a six-month grace period, thereby extending to 13.03.2018 and subject to force majeure (Clause 9) situations mentioned in the said agreement. The possession clause reads as under: -

> *"The possession of the said premises shall endeavor to be delivered by the intending seller to the intending purchase by a* ***tentative date of 30.09.2017 with a grace period of six months*** *beyond this date, however subject to completion and* ***subject to clause 9*** *herein and strict adherence to the payment plan and other terms and conditions in this agreement by the intending purchaser"*

XX. That as per Clause 9 of the Builder Buyer Agreement signed with other similarity placed allottees, the obligation to handover possession is subject to force majeure events. The said clause articulates a comprehensive list of scenarios, including but not limited to acts of God, war, government actions, and any other unforeseeable circumstances that could hinder the performance obligations of the promoter.

XXI. That the construction timeline and, consequently, the possession schedule were significantly affected by two "zero periods" mandated by

the DTCP. These periods were; (i) First Zero Period: 24.04.2015 to 12.03.2018 and (ii) Second Zero Period: 23.07.2018 to 21.07.2022. The combined effect of these zero periods significantly extended the project timeline.

7. 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

8. 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

9. 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.IISubject matter jurisdiction

10. 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;

11. 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

12. The respondent took a plea that as per the similarly signed Space Buyer Agreement, Clause 9 - Force Majeure "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 an act of god, fire, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy, labour, equipment, facilities, material or supplies, failure of transportation, strike, lock-outs, action of labour union, change of Law, new legislation, enactment, court orders, delays in Government approval, change of Law, new legislation, enactment, court orders, delays in government approval, Act of Government or intervention of Statutory Authorities 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 T0 21/07/2022) which was beyond the respondent's reasonable control and because of this no construction in the project could be carried. 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 the Authority.

13. 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 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 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.

14. The Authority is of the view that the pivotal issue arises from the builder's actions during the period between 24.04.2015 to 1.032018 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 complainant

G.I Direct the respondent to pay interest for every month of delay possession charges at the prevailing rate of interest from 30.03.2018 till actual handing of the possession.

G.II. Direct the respondent to handover the possession of the unit, in a habitable state, after obtaining the Occupation Certificate from the concerned authorities

15. The above mentioned reliefs are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected

16. The respondent stated that a collaboration agreement dated 30.03.2013 was entered into between M/s Paradise Systems Pvt. Ltd. being the original landholder and M/s. 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 the Hon'ble 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 back 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. 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 judgment dated 12.03.2018, the project of the 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 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.

17. 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 the 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 the 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.

18. After consideration of all the facts and circumstances, the Authority is of the 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 during the first period, i.e. 24.04.2015 to 12.03.2018, which indicates their active involvement in real estate transactions.

19. 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.

20. 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, no construction was carried out in the project nor any demands were 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.

21. In the complaint, the allottee intend to continue with the project and is 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."

22. As per Clause 2.1 of the flat buyer's agreement executed between respondent and the allottees of similar project, 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..."*

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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.*

24. 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.

25. 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., 30.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

26. 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;"*

27. 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 executed with the allottees of the same project. By virtue of clause 2.1 of the agreement executed between the respondent and the allotteea of the same project, the due date of possession comes out to be 30.03.2018 including grace period being unqualified.

28. 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 her 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.

29. 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. Further, the respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent

authority. The complainant 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.

30. The Authority observes that no Builder Buyer Agreement has been executed between the respondent and the complainant till date. Thus, the Authority directs the respondent/promoter to enter into a registered Builder Buyer Agreement with the complainants w.r.t the unit in question within a period of one month.

G.III. **Direct the respondent to execute conveyance deed of the allotted unit in favour of the complainant.**

31. In the present complaint, the respondent has not obtained the Occupation Certificate yet. As per Section 11(4)(f) and Section 17 (1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the allottees. Also, as per Section 19 (11) of the Act, 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

32. In view of the above, the respondent is directed to execute conveyance deed in favour of the complainants in terms of Section 17 (1) of the Act, 2016 on payment of stamp duty and registration charges as applicable, within three months from the date of obtaining Occupation Certificate.

H. Directions of the authority

33. 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 against the paid-up amount at the prescribed rate of interest i.e.,11.10% 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 allottee 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 complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iv. The respondent is directed to offer possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainant 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 occupation certificate.

v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, 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.

vi. The respondent is directed to execute conveyance deed in favour of the complainants in terms of Section 17 (1) of the Act, 2016 on payment of stamp duty and registration charges as applicable, within three months from the date of obtaining Occupation Certificate.

vii. The respondent-builder is directed not to charge anything which is not part of buyer's agreement.

34. Complaint stand disposed of.

35. File be consigned to registry.

(Ashok Sangwan)

Dated- 30.10.2024

Member

Haryana Real Estate Regulatory Authority