

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

<b>Complaint no.</b>	<b>280 of 2018</b>
<b>Date of filing of complaint</b>	<b>16.05.2018</b>
<b>Date of decision</b>	<b>22.10.2024</b>

Sameer Kharbanda <b>R/O:</b> N-69, ground floor Mayfield Garden, Hurugram-122001, Haryana	<b>Complainant</b>
Versus	
1 <b>M/S Aaliyah Real Estate Pvt. Ltd.</b> <b>Regd. Office:</b> 271, Udyog Vihar , Phase -2, Gurugram-122016 (Name of respondent no. 1 deleted vide proceeding of day dated 28.05.2024) 2 <b>M/s Green heights projects pvt. Ltd.</b> <b>Regd. Office:</b> N-71, Panchsheel Park, New Delhi 110017.	<b>Respondents</b>

**CORAM:**

Shri Arun Kumar	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>

**APPEARANCE:**

Sh. Gaurav Raghav (Advocate)	<b>Complainant</b>
Sh. Somesh Arora (Advocate)	<b>Respondent</b>

**ORDER**

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 under the provision of the Act or the rules and regulations made there under or to the allottee 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:

Details of allotment(s)				
1.	"Baani City Centre" R1 Sector 63, Village Maidawas, Gurugram, Haryana			
2.	Allotment letter dated		01.01.2013 (As per page no. 32 of complaint)	
3.	S.no.	Unit No.	Unit Area	Documentary proof
4.	A	606, 6 <sup>th</sup> floor	811 sq. ft.	As per provisional allotment dated 01.01.2013 page 32 of complaint
	B	504, 5 <sup>th</sup> floor in Baani Ikon Tower	796 sq. ft.	As per revised unit letter dated 14.08.2013 on page 37 of complaint

	Email w.r.t restoration of originally allotted unit	14.10.2013 (As per page no. 40 of complaint)
	Request for transfer of unit	07.06.2016 (As per page no. 56 of complaint)
<b>"Banni Center Point" R2</b> <b>Sector- M1-D, Manesar, Gurugram</b>		
	Allotment letter dated	11.07.2016 (As per page no. 58 of complaint)
	A	FF-084, first floor 331 sq. ft. As per allotment letter
5.	Date of apartment buyer's buyer agreement	BBA annexed but not signed
6.	Possession clause	<p><i>As per sample agreement (Pg. 70 of complaint)</i></p> <p><b>2. Possession</b></p> <p><i>The possession of the said Premises shall be endeavored to be delivered by the Intending Seller to the Intending Purchaser by a tentative date of 30.09.2017 with a grace period of six (6) months beyond this date, however, subject to completion of construction and subject to clause 9 herein and strict adherence to the payment plan and other terms and conditions of this Agreement by the Intending Purchaser. In case the Intending Seller is not able to handover the possession in the aforesaid manner, it shall be liable to pay an interest @9% p.a. for the delayed period beyond the six (6) months grace period, subject to however clause 9 herein and strict adherence to the</i></p>

		<i>terms and conditions of this agreement and timely payments being made by the Intending ...</i>
7.	Due date of possession	30.03.2018 (including grace period being unqualified)
8.	Total sale consideration as per payment plan	Rs. 37,17,130/- [As per allotment letter on page no. 58]
9.	Amount paid by the complainant	Rs.23,11,766/- [As per page no. 38 of complaint]
10.	Occupation certificate	Not obtained
11.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. That the respondents are the companies incorporated under the provisions of the companies act and the respondent no. 2 company i.e. M/s. Green Heights Projects Pvt. Ltd, is a sister concern of the respondent no.1 company. Both the respondent companies are into the business of the Real Estate Developer, having same directors, registered office and corporate office.
4. That the respondent no.1 i.e. Aaliyah Real Estate Pvt. Ltd, is a private limited company and is involved into business of developing maintaining and selling group housing societies/ commercial complexes in India. During the course of business the respondent no.1 made various advertisements and promotional packages to attract the investors for their upcoming commercial project i.e. Baani City Center, at Sector 63 Gurgaon, Haryana.

5. That in November, 2012, the complainant booked two commercial units in the aforesaid project of the respondent vide application dated 07/11/2012 and at the time of the booking of the said units in upcoming project of the respondent, the complainant had paid Rs. 8 Lakhs for the each unit to the respondent no.1 through the cheques i.e. cheque bearing no. 469655 dated 06/11/2012 amounting Rs. 8 lakh and cheque bearing 469656 dated 06/11/2012 amounting Rs. 8 lakh, both drawn on Central Bank of India. It is pertinent to mention here that for the aforesaid booking amount the respondent had also issued the acknowledgement receipts to the complainant.
6. That thereafter the complainant met with Mr. Ashish Thapar who had represented himself as Director of the respondent and Mr. Ashish Thapar further assured the complainant that they had taken all the clearance from the concerned departments and construction work will be started soon and the project will be ready within 36 months from the date of the booking. The payment plan was also handed over by the respondent to the complainant. The complainant with the actual state of affairs at the site was not very assured that the respondents will be able to deliver the project as assured.
7. That the complainant henceforth approached the respondent company in the month of Dec, 2012 and requested to convert his aforesaid two booking of commercial units into one single unit of area measuring 800 sq. ft. in the same project i.e. Baani City Center, at Sector 63 Gurgaon, Haryana which was accepted by the respondent no.1 and subsequently on the request of the complainant a single unit number 606 of measuring area 811 sq. ft. was

raised but even the payment plan which was earlier quoted / given by Mr. Ashish Thapar at the time of booking was also changed.

12. That it is pertinent to mention here that the respondent had changed preferential location of the complainant to the totally disadvantageous location is absolutely wrong, unjustified and illegal which amount to deficiency in service and was not acceptable to the complainant.
13. That since then the complainant is continued in follow up with the respondent with request to restore his original allotment status and also the original payment plan, but no response was given by the respondent no.1.
14. That it is pertinent to mention here that the respondent no. 1 was raising demands only and there was no development in the construction at the site. The complainant henceforth sent a mail to the respondent no.1 company on 14<sup>th</sup> October, 2013 wherein it was clearly stated that originally the complainant was allotted unit no. 606 in the said commercial project i.e. Baani City Center. Thereafter the respondent had changed the unit and also had sent different payment plan. It is submitted by the complainant that the complainant intended and desired to purchase the same unit only and on the basis of the initial payment plan and any change in payment plan disrupt his financial planning and it would not be possible his to make the payment timely.
15. That on 21.10.2013 and 22.10.2013 the respondent company reverted to the e-mails of the complainant respondent and vide E Mail Dated 22/10/2013 the respondent was asking the further payment without restoration of the original units and original payment plan.

16. That the respondent company henceforth sent a final demand notice dated 23/10/2013 regarding unit no. 504 in the commercial project of the Respondent No. 1 company wherein the complainant was asked to pay the outstanding /balance due amount failing which the respondent threatened to cancel the allotment and to forfeit the earnest amount. Lastly the complainant served the respondent with another e-mail on 07/11/2013 showing his unwillingness to proceed further until his unit and the payment plan be restored as originally.
17. That on 12<sup>th</sup> November, 2013 the complainant received an e-mail from the respondent wherein the respondent stated that they had noted the request and will change the unit once they have availability in future.
18. That thereafter the complainant was served with the final notice for the payment of overdue instalments by the respondent demanding an amount of Rs.7,16,539/- along with interest, failing with the allotment of the complainant shall be cancelled.
19. That the complainant being was left with no other option accepted the offer of the respondent no. 1 as the complainant had paid a huge amount and the respondent no.1 threatening the complainant to cancel the unit and forfeit the entire amount.
20. That lastly under coercion and duress the complainant accepted the shift to the new project on the assurances given by the respondents to the complainant that the said project namely "BANNI CENTER POINT", will be ready for possession shortly and much earlier as compared to the project where the complainant had booked his space initially. The possession of the unit in "BANNI CENTER POINT" was assured till March 2017 and the

complainant would be able to enjoy the possession and other benefits of units.

21. That the complainant henceforth as asked wrote a letter requesting for transfer of the commercial space on 07/06/2016 and the same was duly acknowledged by the officials of the respondent companies. Subsequent to the receipt of the letter the complainant was issued a provisional allotment letter dated 11/07/2016 by the respondent no. 2 wherein the complainant was allotted commercial space in the project "Bani Centre Point" Sector M1D, Gurgaon, Manesar, Urban Complex, Gurgaon, Haryana of commercial space number FF-084 on First Floor having super area 331 sq. ft. it is worth mentioning that all the original documents of the respondent no. 1 company were surrendered. The total cost of the commercial space number FF-084 on first floor having super area 331 sq. ft. in the project of the respondent No. 2 company was Rs. 37,17,130/- and a sum of Rs. 23,11,766.80/- was acknowledged by the respondent No. 2 to be received.
22. That the complainant was sent a letter regarding buyer agreement dated 11/11.2016 wherein the respondent asked to execute the buyer's agreement as per the agreed terms and condition. And copy of the buyer's agreement in respect of the commercial space number FF-084 on First Floor having super area 331 sq. ft. was sent to the complainant.
23. That as per the clause 2.1 of the Buyers Agreement, the possession of the said premises shall be endeavored to be delivered by the intending seller to the intending purchaser by a tentative date of 30/09/2017 with grace period of six months beyond this date which was actually contrary to the agreed terms as at the time of meeting and negotiation. Even going by the



said terms of the agreement the project should have been completed till 31/03/2018 however till date the project is not ready for possession.

24. That the complainant even received a reminder letter dated 21/09/2017 wherein the respondent had demanded an over installment of amount Rs. 48,581/-, whereas the outstanding payments were to be made at the time of offer of possession.
25. That as the respondent No. 2 failed to give the possession in accordance with the proposed terms of the agreement, the complainant wished to withdraw from the project and asked for return on the Rs.23,11,766/- along with interest at @24% per annum which was paid by the complainant and demanded the same vide E Mail dated 08/04/2018 initially for booking of unit in the project of the respondent no.1.

**C. Relief sought by the complainant:**

26. The complainant has sought following relief(s):
- i. Refund of the amount invested / paid to the respondents i.e. Rs.23,11,766 /- along with interest @ 24 % per annum from the date of booking i.e. November, 2012 to till payment received from the respondent.
  - ii. Further compensation of Rs. 5,00,000/- towards the acute mental agony and harassment caused to the complainant or such other amount as deemed appropriate.

**D. Reply by respondent:**

27. In the present case, the complaint pertains to the alleged delay in delivery of possession for which the complainant has filed the present complaint

under Rule- 28 of the said Rules and is seeking the relief of refund, interest and compensation u/s 18 of the said Act. The project of the respondent registered with the RERA Authorities vide Memo No. HRERA-193/2017/1025 dated 14.09.2017 and as per the disclosure in the said RERA certificate the project will be completed within the time specified therein or granted by the authority, the complaint, if any, is still required to be filed before the Adjudicating Officer under Rule-29 of the said Rules and not before this Hon'ble Regulatory Authority under Rule- 28 as this Hon'ble Regulatory Authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.

28. That without prejudice to the above, it is stated that the statement of objects and reasons of the said Act clearly state that the RERA is enacted for effective consumer protection. RERA is not enacted to protect the interest of investors. As the said Act has not defined the term consumer, therefore the definition of "Consumer" as provided under the Consumer Protection Act, 1986 has to be referred for adjudication of the present complaint. The complainant is an investor and not a consumer. It is also most respectfully submitted that the Authority has no jurisdiction to entertain the present complaint as the Complainant has not come to this Hon'ble Regulatory Authority with clean hands and has concealed the material fact that the complainant has been a willful defaulter, having deliberately failed to make the payment of various installments as and when the same became due or the demand has been raised as per the agreed payment schedule reflecting at page No.84 of the complaint.

29. That the complainant has concealed material facts and documents from the Authority. The true facts pertaining to the present matter are as follows:

- a) That the complainant approached the respondent no.1 and showed his interest in booking commercial space being developed by the respondent no.1 at Sector 63 and had agreed to adhere the construction linked plan and the tentative unit No.606 at 6th floor in IKON Tower, having super area of 811 Sq. feet was blocked and after finding the application form in order, the said unit was allocated to the complainant at the basic sale price of Rs.9200/- alongwith PLC at the rate of 7.5%, EDC at the rate of Rs.360/- per Sq. feet of the super area and IDC at the rate of Rs.53/- per Sq. feet of the super area. The complainant alongwith the application form, had deposited two cheques of sum of Rs.8,00,000/- each which are reflected at page 30 and 31 of the complaint book. The provisional allotment letter acknowledging the provisional allotment of the unit bearing No.606 having a super area of 811 sq. feet at the rate of Rs.9200/- per sq. feet exclusive of other charges i.e. IDC, EDC etc. mentioned at the bottom of the page. The said provisional allotment letter is reflected at page No.32 of the complaint.
- b) That as per the agreed payment schedule, the complainant was to pay the next installment within 100 days of the booking, intimation of which was sent to the complainant and the same is annexed in complaint book at page no.33, and the said amount was duly paid by the complainant vide receipt appearing at page No.35 of the complaint. The next installment was payable at the commencement

of work at the site which was duly intimated to the Complainant vide intimation dated 04.06.2013 appearing at page No.36 of the complaint.

- c) That the building plans of the project were redrawn and as per revised building plan, the unit no.606 was revised to unit no. 504 and the super area of 811 sq. feet was revised to 796 Sq. feet and while incorporating the changing it was ensured that the orientation location of the previous unit matches with the current unit to the maximum extent possible. The said letter dated 14.08.2013 was duly received by the complainant and the same is annexed at page no.37 of the complaint book. The respondent issued reminder of the due installment vide letter dated 12.09.2013 which is appearing at page No.38 of complaint book. The second reminder was also sent by the respondent to the complainant to clear the payment of due installment on 04.10.2013 appearing at page no.39 of the complaint.
- d) That the complainant sent mails regarding change of unit and regarding payment plan which was duly replied by the respondent vide mail dated 22.10.2013 and the payment plan which was agreed at the time of allotment of unit. As the complainant was making payment of installment as and when it became due, the respondent issued final notice dated 23.10.2013 which is annexed at page No.46 of the complaint. Another letter regarding overdue of installment was sent to the complainant on 26.11.2013 appearing at page No.51 of the complaint book, but even after that the complainant failed to make the payment of the installment. The respondent then issued intimation dated 11.04.2014 for payment of next installment which

is appearing at page no.52 of the complaint, the reminder of the same was sent on 20.05.2014 and 04.07.2014. The next intimation for due payment or installment on commencement of 3rd basement roof slab was issued on 15.12.2014, which is appearing at page No.53 of the complaint.

- e) That vide letter dated 04.09.2015 the complainant was informed about the fact that Tata Capital Financial Services Ltd. has approved the commercial project being developed by the Respondent no.1 and has also shown his willing to give NRP loan facility to the interested persons in regard to their commercial space. The respondent further issued a letter for payment of HVAT demand vide letter dated 30.12.2015. The respondent then issued intimation dated 23.02.2016, 22.04.2016 which are appearing at page No.54 and 55 of the complaint book. It is pertinent to mention here that till that time the construction had reached fourth floor roof slab, the complainant was in default of installments No.5, 6, 7, 8 and 9. When the complainant failed to make the above said installments, the complainant approached the respondent no.1 with the request to shift the complainant to a smaller unit of less investment value. On the request of the complainant and because the complainant had not signed the buyers builder agreement, the respondent agreed to shift the complainant to another project of theirs which was developed by respondent no.2. The complainant also agreed to the said transfer vide letter dated 07.06.2016 appearing at page No.56 of the complaint.

- f) That the complainant again submitted an application on 09.06.2016 for allocation of commercial unit to the complainant and the tentative unit allocated to the complainant was unit no.FF-84 on First Floor having super area of 331 Sq. feet at the rate of Rs.10750/- per sq. feet super area alongwith PLC, EDC etc. The payment plan opted by the complainant was 60% at the time of booking and 40% at the time of possession. The amount paid by the complainant in the previous booking was adjusted in this booking and again a provisional allotment letter was issued on 11.06.2016 to the complainant, which is appearing at page No.58 and 59 of the complaint book. The respondent then issued a letter dated 08.08.2016 to the complainant to clear the VAT due.
- g) That vide letter dated 11.11.2016 the respondent issued a letter requesting the complainant to complete the details so as to enable the respondent to issue a proper buyers agreement and it was also informed that the construction has reached second floor roof slab.
- h) That the respondent issued letter dated 16.01.2017 along with the buyer's agreement and requested the complainant to complete and sign the same and return as early as possible. The buyer's agreement is annexed with the complaint book from page No.62 to 91, but the complainant failed to send the duly signed buyers agreement. This did not happen even when the complainant was repeatedly requested on telephone to send the signed document.
30. That without prejudice to the fact that there is no delay on part of the respondent in fulfilling its obligations under the application form/agreement executed between the parties. It is submitted that the

delay and modifications, if any, have been caused due to the delay caused by the appropriate Govt. authorities in granting the requisite approvals, which act is beyond the control of the respondent.

31. That the complainant has made false and baseless allegations with a mischievous intention to retract from the agreed terms and conditions duly agreed in form of the agreement entered into between the parties. In view of the same, it is submitted that there is no cause of action in favour of the complainant to institute the present complaint.

32. All other averments were denied in total.

33. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**Additional submissions by the respondent:**

34. It is submitted that the complainant was initially allotted a tentative unit vide allotment letter dated 01.01.2013 in the project Baani City Center developed by respondent no. 1.

35. That the building plans of project Baani City Centre were revised due to which the complainant's unit was changed and he was duly informed about the same vide letter dated 14.08.2013.

36. The complainant had objections with the revised unit and thereafter vide letter dated 07.06.2016 the complainant himself surrendered his unit in project baani city center and requested for an allotment in the project baani center point developed by respondent no. 2. It was specifically

mentioned in the letter that the complainant will be left with no rights or interest in the unit of Baani City Centre.

37. That the complainant's request was fulfilled, and his allotment was transferred from Baani City Centre of respondent no. 1 to Baani Center Point of respondent no. 2. It is submitted that the complainant signed on the application form for his allotment in Baani Center Point in which it was mentioned that the amount paid by complainant in previous booking in project Baani City Center of respondent no. 1 was transferred/adjusted in his booking in Project Baani Center Point of respondent no. 2.
38. It is submitted that he was allotted the unit no. FF-84 admeasuring 331 sq.ft. @Rs.10,750/- per sq.ft. in project Baani Centre Point vide provisional allotment letter dated 11.07.2013.
39. That the respondent no. 2 sent the builder buyer agreement to the complainant on 16.01.2017 for signing but the complainant failed to execute for reasons best known to him.
40. It is submitted that the complainant sent an email on 08.04.2018 to the director of respondent no. 1 in which he had stated the following - "I had agreed to transfer the funds submitted to you against previous booking towards the revised booking in your project 'Baani Center Point' ". The above submission makes it clear that the amount paid by the complainant for his booking in Baani City Centre was transferred to Baani Center Point on his request.
41. It is submitted that a collaboration agreement dated 30.03.2013 was entered into between M/s Paradise Systems Pvt. Ltd. as the original



landholder and Green Heights Projects Pvt. Ltd., as the developer for the project namely "Baani Center Point".

42. That the Green Heights Pvt. Ltd. i.e., respondent as per the terms of the collaboration agreement paid the amount of Rupees Twenty-Eight crores and forty lakhs to the landowners i.e. Paradise Systems Private Limited by way of cheques and RTGS from the period 27.02.2013 to 03.02.2016.
43. That the land owner and the license holder vide letter dated 23.05.2013 paid the entire external development charges and internal development charges in respect of land to Directorate, Town and Country Planning, Haryana and plans for construction of the commercial colony were filed which were sanctioned vide sanction letter dated 23.07.2014.
44. 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.
45. That the land owner approached the Hon'ble Supreme Court Of India for the clarification of the stay order as to whether it is applicable to the land and license however Hon'ble Supreme Court vide order dated 21.08.2015 directed it to approach DTCP for clarifications.
46. That the Land owner approached DTCP vide various representations however DTCP did not take any decision as the matter was pending in the Supreme Court. It was further intimated by DTCP vide order dated 20.04.2016 that the original files in respect of land portions of entire 912 acres have been taken by Central Bureau of Investigation of all the projects and till original files are returned by CBI, DTCP will not be in a position to

provide clarification in respect of various representations. The landowner then approached Hon'ble Punjab and Haryana high court for directions to CBI to handover original files in respect of the project of respondent and the High Court by order dated 27.03.2017 passed appropriate directions.

47. It is pertinent to mention here that between the periods of 24.04.2015 till 12.03.2018, the Hon'ble Supreme Court of India had passed directions in respect of 912 Acres of land in 3 Villages including the land where the present project is constructed. The respondent did not leave any stone unturned to get the clearances so that the construction which was in progress may be restarted. However, all the efforts went in vain as DTCP did not permitted construction till judgment by the Hon'ble Supreme Court of India. Vide judgement dated 12th March 2018, the project of respondent was not included in tainted projects which clearly meant that respondent could commence construction subject to renewal of licenses and other permissions.

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

49. That later on the HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 through M.A. No. 50 of 2019 in the matter of Rameshwar Vs. State of Haryana & Ors. CA 8788 of 2015 being "Application for Clarification of Final Judgment dated 12.03.2018 passed

by this Hon'ble Court". It is submitted that the Hon'ble Supreme Court through its order dated 13.10.2020 again granted an injunction on further construction of projects of the parties to the said case including M/s. Paradise Systems Pvt. Ltd. project of Baani Center Point.

50. That vide letter dated 26.07.2022 the complainant was informed that the project has been cleared from stay on construction and creation of third-party interests, by Hon'ble Supreme Court vide order dated 21.07.2022.
51. That the respondent vide letter dated 25.07.2022 has also applied for renewal of license and other permissions from DTCP which is awaited. It is also important to mention that the project was registered with RERA vide registration no. 187 of 2017 and after the judgement of Hon'ble Supreme Court the respondent has filed an application for extension of the registration under section 7 sub clause 3 dated 04.08.2022.
52. It is pertinent to mention that as per the Clause 9 - Force Majeure of the builder buyer agreement "the intending seller shall not be held responsible or liable for failure or delay in performing any of its obligation or undertakings as provided for in this agreement, if such performance is prevented, delayed or hindered by "court orders" or any other cause not within the reasonable control of the intending seller". Therefore, as the project "Baani Centre Point" was under stay orders of the Hon'ble Supreme Court of India for 6 years 8 months which was beyond the respondent's reasonable control and because of this no construction in the project could be carried during this period. Hence, there is no fault of the respondent in delayed construction which has been considered by DTCP and RERA while considering its applications of considering zero period, renewal of license and extension of registration by RERA. Due to reasons

stated hereinabove it became impossible to fulfil contractual obligations due to a particular event that was unforeseeable and unavoidable by the respondent.

53. It is humbly submitted that the Stay on construction order by the Hon'ble Supreme Court is clearly a "Force Majeure" event, which automatically extends the timeline for handing over possession of the Unit. The Intention of the Force Majeure clause is to save the performing party from consequences of anything over which he has no control. It is no more res integra that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the negligence or malfeasance of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the buyer agreement.

**E. Jurisdiction of the authority:**

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

**E.1 Territorial jurisdiction**

55. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of the Real

Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes with offices 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 complaint.

**E. II Subject matter jurisdiction**

56. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

57. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

58. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers*

*Private Limited Vs State of U.P. and Ors.” 2021-2022(1)RCR(C), 357 and followed in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:*

*“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”*

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

#### **F. Findings on the objections raised by the respondent.**

60. 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.

61. 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."*

62. 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'.



63. 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 1.032018 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. Finding on the relief sought by the complainants.**

**G.I Refund of the amount invested / paid to the respondents i.e. Rs.23,11,766 /- along with interest @ 24 % per annum from the date of booking i.e. November, 2012 to till payment received from the respondent.**

64. The complainant booked commercial unit in the aforesaid project of the respondent no. 1 vide application dated 07/11/2012 and at the time of the booking of the unit in upcoming project of the respondent. The complainant was allotted commercial space in IKON tower having commercial space number 606 on 6th floor having approximately super area 811 sq. ft. The respondent no. 1 had changed the allotted unit of 606 to unit no. 504 without the knowledge and without consent of the complainant. The complainant was not willing to accept the changed location and was asking for refund of the payment but the respondents were not willing to refund the same. Number of Emails were also sent by the complainant which were replied by the respondent no. 1 with an assurance to look into the aspect of the changed unit. Another unit was offered by the respondent in another project namely Banni Center Point of respondent no. 2 and was assured that the project will be completed till March 2017 and commercial space no: FF084 on 1<sup>st</sup> floor was allotted with Total cost of Rs 37,17,130/- as no other option was left to the complainant.
65. The complainant states that the unit has been changed from Baani City Centre to Baani Centre Point , in Sector M1 Manesar without the consent of the complainant although he had agreed to the change of the unit. The complainant allottee does not wish to continue with the project and

seeking refund of the deposited amount already paid to the respondent multiple times.

66. Vide proceeding dated 13.02.2024, the complainant was directed to file amended memo of parties as two respondents had been impleaded while the unit allotted by R1 has been transferred to the project being undertaken by R2 on the request of the complainant allottee and hence, the complainant to specify as to what relief is being sought from R1 in terms of latest allotment letter and BBA, if any, to suitably amend the memo of parties. Vide proceeding dated 09.04.2024, the complainant filed memo of parties and stated that M/s Green Heights Projects Pvt Ltd. is to be the sole respondent and no relief against M/s Aaliyah Real Estate Pvt. Ltd. is being sought as the amount deposited with the latter company stands transferred to M/s Green Heights Projects Pvt Ltd and hence, the refund of the amount deposited is being sought accordingly. The application of deletion the name of M/s Aaliya Real Estate Pvt. Ltd. was allowed on 28.04.2024.

67. 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.

68. 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.

69. 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:

<b>Demand Raised On</b>	<b>Demand Raised On Account Of</b>
11.04.2014	Commencement of work at site and on lying of raft
15.12.2015	On casting of 3 <sup>rd</sup> basement roof raft
23.02.2016	On casting of 2 <sup>nd</sup> basement roof slab
22.04.2016	On casting of 4 <sup>th</sup> roof slab
08.08.2016	VAT

70. 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.

71. 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.
72. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under the proviso to section 18(1) of the Act. Section 18(1) proviso reads as under:
- "Section 18: - Return of amount and compensation***  
***18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —***  
.....  
***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."***
73. As buyer agreement is not executed in the present case between the complainant and the respondent (Green Heights Project Private Limited), Clause 2.1 of the flat buyer's agreement taken from the similar case of

same project 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)*

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

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

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

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*



76. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ease uniform practice in all the cases.
77. Consequently, as per the website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate + 2% i.e., 11.10%.
78. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*  
*Explanation. —For the purpose of this clause—*
- i. *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
  - ii. *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
79. 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. By virtue of clause 2.1 of the agreement taken from the similar case of

similar project, the due date of possession comes out to be 30.03.2018 including grace period being unqualified.

80. It is pertinent to mention over here that even after a passage of more than 7 years (i.e., from the date of allotment till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

81. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

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

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

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

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

84. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a.

(the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

### G.II Compensation

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

### H. Directions of the Authority:

86. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

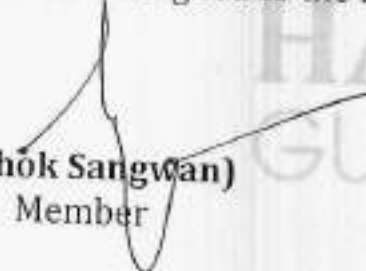
- i. The respondent/promoter is directed to refund the amount i.e., Rs. 23,11,766/- received by it from the complainants along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017

from the date of each payment till the actual date of refund of the deposited amount. No interest shall be payable by the respondent from 13.10.2020 to 21.07.2022 in view of the stay order Hon'ble Supreme Court on further construction/development works on the said project.

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

87. Complaint stands disposed of.

88. File be consigned to the registry.

  
(Ashok Sangwan)  
Member

  
(Arun Kumar)  
Chairman

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.10.2024