

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

**Complaint no.** : 3478 of 2023  
**Date of filing :** 24.08.2023  
**Date of decision :** 10.12.2024

1. Joginder Yadav  
2. Sunita Yadav  
Both R/o: - H.No.110-A, Village Qumeruddin Nagar  
Nangloi-Delhi-110041.

**Complainants**

Versus

M/s Green Height Projects Private Limited  
Office at: N-71, Panchsheel Park, New Delhi-110017.

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Garvit Gupta  
Shri Somesh Arora

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 24.08.2023 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 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 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 unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	"Baani Centre Point", Sector-M-ID, Gurgaon, Manesar
2	Project area	2.681 Acres
3	Nature of the project	Commercial Project
4	DTCP license no. and validity status	License no. 59 of 2009 dated 26.10.2009 valid up to 25.10.2013
5	RERA registered/ not registered	187 of 2017 dated 14.09.2017 valid up to 13.09.2019 (Lapsed at present)
6	Unit no. and area	K-004, Lower Ground (Page no. 57 of complaint)  344 sq ft
7	Date of execution of buyers' agreement	Not executed
8	Provisional allotment dated	01.12.2014 (Page no. 34 of complaint)
9	Total sale consideration	Rs. 32,01,553/- (as per page 02 of reply)
10	Total amount paid by the complainants	Rs. 32,01,553/- (As per page 02 of complaint)
11	Due date of delivery of possession	<b>30.03.2018</b> <b>(taken from the similar case of same project)</b>

12	Offer of possession	Not offered
13	Occupation certificate	Not obtained

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint: -

- a. That the complainants, induced by the assurances and representations made by the respondent, decided to book a commercial unit in the project of the respondent as the complainants required the same in a time bound manner for their 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 complainants would be positively handed over within the agreed time frame. It was also confirmed by the representatives of the Respondent that the payment plan in question would be 'Construction Linked Plan'. The complainants 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 complainants were not given chance to read or understand the said documents and they signed and completed the formalities as desired by the respondent.
- b. That the complainants had made the payment of Rs. 2,67,566/- at the time of Booking vide cheque no. 905680 on 08.10.2013 and the respondent had issued a receipt dated 08.10.2013. Vide Provisional Allotment Letter dated 01.12.2014 i.e almost after more than 1 year from the date of first payment, the respondent allotted a Shop bearing no. KG-004, Lower Ground Floor admeasuring 344 sq. ft super area. It is pertinent to mention herein that at the time of allotment, it was

- promised and assured by the respondent to the complainants that the unit would be handed over to the complainants by 30.09.2017.
- c. That after the allotment of the unit by the respondent, the respondent raised the demand dated 01.12.2014 for the net payable amount of Rs. 2,67,567/-towards the installment against 'Commencement of Work at Site'. The complainants believing they said payment demand to be correct, paid the demanded amount vide cheque no. 905687 on 22.12.2014 and the respondent issued a receipt dated 22.12.2014.
- d. That similarly, the respondent raised the payment demand dated 03.11.2015 against 'On Laying of Raft and Service Tax'. The said payment was also made by the complainants vide cheque no. 171375 on 03.01.2016 and the respondent accordingly issued receipt dated 04.01.2016. Subsequently, respondent had also demanded HVAT from the complainants vide letter dated 29.12.2015 and the same has also been duly paid.
- e. That the complainants further made the payment against the demand letter dated 03.02.2016 sent by the respondent against 'Casting of 3<sup>rd</sup> Basement Roof Slab and VAT charges' and a Receipt dated 14.03.2016 was issued by the respondent against the same.
- f. That despite several efforts made by the complainants, the respondent failed to communicate with the respondent with respect to the status of the construction of the project and failed to execute the Agreement in question. A payment demand was raised towards 'Casting of 2<sup>nd</sup> Basement Roof Slab and 50% parking charge' on 11.04.2016 by respondent, which was also paid by the Complainants vide cheque No. 905700 dated 18.05.2015 and the Respondent had accordingly issued Receipt dated 18.05.2016. Subsequently, respondent again raised a

- demand for payment of VAT via letter dated 08.08.2016. The said demand was also paid by the complainants.
- g.** That since, the respondent had failed to execute the Buyer's Agreement with the complainants despite lapse of years from the date of booking, the complainants visited the office of the respondent in the month of October, 2016 to enquire about the construction status and execution of the Agreement in question. The complainants were surprised and anguished with the response of respondent who informed the complainants that the execution of the buyer's agreement would take some more time. However, since, the complainants had made substantial payment towards the total sale consideration of the unit, the complainants had no other option but to believe the said representations of the respondent.
- h.** That, after three long years from the date of the first payment towards the allotment, an intimation letter dated 11.11.2016 for execution of the commercial space buyer's agreement was sent to the complainants. It is pertinent to mention herein that the said letter was sent by the respondent merely in order to create false evidence as no draft of the agreement to be signed was sent along with it. To the surprise of the complainants, no copy of the agreement formed part of the letter dated 11.11.2016.
- i.** That in the meantime, the respondent had raised the payment demand dated 20.12.2016 towards 'Casting of 1<sup>st</sup> Basement Roof Slab, 50% Project Development Charges' and '2<sup>nd</sup> Floor Roof Slab plus 50% PLC charges' and demand dated 09.03.2017 towards 'Casting of 2<sup>nd</sup> Floor Roof Slab'. The said demands, despite there being delay on the part of the respondent in executing the agreement, were adequately met by

- the complainants. The respondent accordingly issued receipts dated 10.05.2017 acknowledging the said payments.
- j. That further, a demand for payment on account of "Casting of 4<sup>th</sup> floor roof slab and 50% Parking charges along with VAT, PLC and Service charges was raised vide letter dated 10.05.2017. The amount raised towards the said demand was also paid by the complainants vide Cheque No. 010150 and 059432 dated 21.07.2017. The respondent consequently issued the payment receipts dated 24.07.2017.
- k. The respondent kept on raising payment demands without executing the buyer's agreement in order to extract amounts from the complainants. The complainants believing all the representations of the respondent to be true kept on making the payment with the hope that the respondent would hand over the possession of the commercial unit within the promised timeline. The respondent had demanded the net payable amount of Rs. 4,06,626/- against 'Start of Brick Work' vide payment demand letter dated 10.10.2017. Although there was no rhyme or reason for the complainants to make the payment, yet they made the said payment and the respondent accordingly issued a receipt dated 04.01.2018 acknowledging the same.
- l. That the complainants visited the project site of the respondent in the month of February, 2018 to enquire about the construction status and execution of the Agreement in question. The complainants were finally allowed to inspect the project site and she was in complete shock to see that the payment demands being raised were not at all corresponding to the actual ground reality. It was evident that the respondent had demanded the payment only to somehow illegally

extract the amount from the complainants when in reality, no such development had even taken place. It is very important and pertinent to mention herein that the complainants always wanted to inspect the location of the allotted unit and had requested the representatives of the respondent several times in meetings and through telephonic conversations to allow her to do the same. However, the respondent kept on making excuses and did not allow the complainants to inspect the location of the unit in question.

- m.** That by the meantime, the complainants 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 as even after 6 years from the date of booking, 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. The complainants made vocal their objections to the arbitrary and wrong acts of the respondent. The complainants again visited the office of the respondent and clearly and specifically intimated to the respondent that they would not be making any payment unless and until the Agreement for the unit was sent and executed between the parties. It was assured by the respondent that all the needful would be done strictly in compliance with the provisions of the Haryana Real Estate (Regulation and Development) Rules, 2017 and that an agreement would be shared with the complainants soon. The respondent/promoter has even failed to perform the most fundamental obligation of the agreement which was to hand over the possession of the commercial within the promised time frame, which in the present case has been delayed for an

extremely long period of time. The failure of the respondent and the fraud played by it is writ large.

- n. That the complainants have till date made the payment of Rs. 35,22,321/- out of the total sale consideration amount strictly as per the terms of the allotment and the construction linked payment plan and no default in making timely payment towards the instalment demands has been committed by the complainants. It is submitted that the respondent/promoter used to only provide a short time span to make the payment of all the payment demands. Yet, all the payments were made by the complainants without any delay.
- o. That the respondent has committed various acts of omission and commission by making incorrect and false statements at the time of booking. There is an inordinate delay of 63 months calculated upto July, 2023 and till date the possession of the allotted unit has not been offered by the respondent to the complainants. The non-completion of the project is not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by the respondent/promoter. The respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainants and are unconcerned about the possession of the unit despite repeated assurances

**C Relief sought by the complainants: -**

4. The complainants have sought following relief(s)





- I. **Direct the opposite party to pay interest at the prescribed rate for every month of delay from the due date of possession till date of offer of possession.**
  - II. **Direct the respondent to execute the agreement of the unit allotted as per the provisions of RERA Act, 2016.**
  - III. **Direct the respondent to handover the possession of the allotted unit to the complainant.**
  - IV. **To execute the conveyance deed in favor of the complainant.**
5. On the 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 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.
- ii. That vide letter dated 23.05.2013 the entire External Development Charges and Internal Development Charges in respect of land were paid to Directorate, Town and Country Planning, Haryana.
  - iii. 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
  - iv. 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.
  - v. 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.

- vi. That the project namely Baani Center Point was registered with Haryana Rera Registration Number 187 of 2017 dated 14.09.2017.
- vii. That vide judgement dated 12.03.2018, the project **BAANI CENTER POINT, SECTOR M1D, MANESAR** of M/s Green Heights Projects Pvt. Ltd. was not included in tainted projects which clearly meant that the respondent could commence construction subject to renewal of licenses and other permissions.
- viii. 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 **BAANI CENTER POINT, SECTOR M1D, MANESAR** 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.
- ix. 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 M/s. Paradise Systems Pvt. Ltd.'s project of **Baani Center Point, Sector M1D, Manesar.**

- x. 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.
- xi. That the present dispute is *sub judice* before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court has ordered a *status quo* in the construction of the project on a clarification application filed by the state of Haryana in the matter of *Rameshwar Vs. State of Haryana & Ors.* CA 8788 of 2015.
- xii. 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.
- xiii. It is further submitted that M/s Green Heights Projects Pvt. Ltd. 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 is given to the Allottees very soon. There is no malafide intention of M/s Green Heights Projects Pvt. Ltd. to get the delivery of the project delayed to the allottees.

- xiv. 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.
- xv. It is submitted that on 03.10.2023, Paradise vide letter to the DTCP requested the 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.
- xvi. It is further submitted that since the DTCP did not process the application for the transfer of the license, 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.

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

7. All other averments made in the complaint were denied in toto.
8. 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 these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose 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**

11. 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)**

**Section 11**

....  
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

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

12. 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 complainants at a later stage.

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

**F.1 Objection regarding the circumstances being 'force majeure**

13. 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.

14. 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."*

15. 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'.

16. In this regard, the Authority is of view that even though the contents of Para 25 of the order passed by the Hon'ble Supreme Court in the case of M/s M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. does not form part of the directions but it cannot be denied that an interpretation of sections 18(1) and 19(4) has been rendered in the order in para 25 in unequivocal terms with respect to the statutory rights of the allottee. Further, the pivotal issue arises from the builder's actions during the period between 24.04.2015 to 1.03.2018 in question that is despite claiming force majeure due to external impediments, the builder continued construction activities unabated thereafter concurrently received payments from the allottees and even executed buyer's agreement during that time. This sustained course of action strongly suggests that the builder possessed the capability to fulfill their contractual obligations despite the purported hindrances. Therefore, the builder cannot invoke Force Majeure to justify the delay and consequently, cannot seek an extension based on circumstances within their control. However, during the period 13.10.2020 to 21.07.2022, there were specific directions for stay on further construction/development works in the said project passed by the Hon'ble Supreme Court of India in M.A No. 50 of 2019 vide order dated



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

**G Findings on the relief sought by the complainants.**

**G. 1 Direct the respondent to pay delay possession charges alongwith prescribed rate of interest.**

17. The respondent states that the land on which Baani Center Point Project is constructed was notified in Section 4 Notice dated 27 August 2004 and the details of this land are mentioned on Page No. 05 of the Section 4 notice of the Land Acquisition Act, 1894, Notification. This land was not in Section 6 Notification dated 25 August 2005. vide judgement dated 21 July 2022, the Supreme Court in para 32, specifically passed directions that the lands which were not notified in Section 6 notification and there was no transfer during the period 27 August 2004 to 29 January 2010 and were not part of the deemed award. HSIIDC filed an application for clarification on 01 July 2019, for inclusion of this land parcel also in the deemed award, however, subject to payment of penalty this land parcel was exempted from deemed award.



18. 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.

19. 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.

20. After consideration of all the facts and circumstances, authority is of view that the matter concerns two distinct periods: from 24.04.2015 to 12.03.2018 and from 13.10.2020 to 21.07.2022. The respondent collected payments and executed buyer's agreements during the first period, i.e. 24.04.2015 to 12.03.2018, which indicates their active involvement in real estate transactions. Further, it is important to note that during the "stay period", the respondent -builder raised demands which are reproduced below as:

Demand Raised On	Demand Raised ON Account Of
03.11.2015	On laying of raft
03.02.2016	On casting of 3 <sup>rd</sup> basement roof slab
11.04.2016	On casting of 2 <sup>nd</sup> basement roof slab
08.08.2016	VAT
20.12.2016	On casting of 1 <sup>st</sup> basement roof slab
09.03.2017	On casting of 2nd roof slab plus 50% PLC
10.05.2017	On casting of 4 <sup>th</sup> floor roof slab
10.10.2017	On start of Brick Work
08.01.2018	On completion of super structure

21. 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.
22. 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.

23. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 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."*

24. As buyer agreement is not executed in the present case between the complainants and the respondent, 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)*

25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

26. 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.

27. 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., 10.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
28. 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;"*

29. In 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.



30. It is pertinent to mention over here that even after a passage of more than 6 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
31. 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.

**E.II Direct the respondent to execute the buyer agreement of the allotted unit as per provisions of RERA Act, 2016.**

32. As per Section 13, the promoter was under an obligation to execute buyer agreement as the complainant has paid more than 10% of the consideration. Since, the respondent has not complied with the same till date. So, hereby it is directed to execute the buyer agreement in favour of the complainant within period of 30 days from the date of this order.

**E.III Direct the respondent to handover the possession of the unit after obtaining occupation certificate from the concerned Authority.**

33. Since the possession has not been offered, the respondent builder is directed to handover the possession of the unit after obtaining occupation certificate from the concerned Authority.

**E.IV Direct the respondent to execute the conveyance deed in favour of the complainant.**

34. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. The respondent is directed to get the conveyance deed executed in favour of the complainant after obtaining occupation certificate from the competent Authority.

**H. Directions of the authority**



35. 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 function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest to the complainant(s) 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 allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent-builder is directed not to charge anything which is not part of buyer agreement.
- v. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred



upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.

- vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

36. Complaint stands disposed of.

37. File be consigned to registry.

Ashok Sangwan  
Member

Vijay Kumar Goyal  
Member

Arun Kumar  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.12.2024