

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

**Complaint no.** : 3229 of 2020  
**Date of filing :** 26.10.2020  
**Date of decision :** 22.10.2024

1. Romit Kaur  
2. Pradip Singh  
Both R/o: - WWW-042, Malibu Town, Sohna Road,  
Gurugram

**Complainants**

Versus

M/s Green Height Projects Private Limited  
Office at: 271, Phase-II, Udyog Vihar, Gurugram,  
Haryana-122016

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

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

**APPEARANCE:**

Shri Attar Singh Kharab  
Shri Somesh Arora

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 26.10.2020 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. N.	Particulars	Details
1.	Name of the project	"Baani Centre Point", Sector - M1D, Urban Complex, Manesar, Gurugram
2.	Project area	2.681 acres
3.	Nature of the project	Commercial
4.	DTCP license no. and validity status	59 of 2009 dated 26.10.2009 valid upto 12.09.2020
5.	Name of licensee	M/s Paradise System Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide regd no. 187 of 2017 dated 14.09.2017
7.	Unit no.	✓ GF - 028 (Page 25 of complaint)
8.	Unit area admeasuring	461 sq. ft. (Page 25 of complaint)
9.	Date of allotment letter	01.12.2014 (Page 24 of reply)
10.	Buyer agreement	24.04.2017 (Page 30 of complaint)

11.	Possession clause	<b>2.1 Possession</b> <i>The possession of the said premises shall be endeavored to be delivered by the intending purchaser by tentative date of 30.09.2017 with a grace period of 6 months beyond this date subject to clause 9 and completion of construction...</i>
12.	Due date of possession	30.03.2018 (including grace period being unqualified)
13.	Total sale consideration	Rs. 48,24,024/- (Page 134 of reply)
14.	Amount paid by the complainants	Rs. 45,20,563/- (Page 134 of reply)
15.	Occupation certificate /Completion certificate	Not obtained

**B. Facts of the complaint**

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

- i. That Mrs. Romit Kaur and Mr. Pradip Singh requested Green Heights Projects Pvt. Ltd for registration of provisional allotment of commercial unit/space in their Bani Centre Point at Village Nakhnula in Sector M-1D, Gurugaon, Manesar Urban Complex (Haryana).

- ii. That baani centre point acknowledge on 11.04.2013, the receipt of the booking form along with Cheque /DD/Pay Order no. 565471, 555351 dated 30.03.2013, 11/04/2013 for Rs. 1,55,022 & 1,55,022 towards booking amount. baani centre point has also mentioned the provisional allotment of a shop no.AG-018 having Super area 401 Sq.Ft. at the rate of Rs. 7500/- in their upcoming project.
- iii. That subsequently, on request of Mrs. Romit Kaur and Mr. Pradip Singh, Green Height Projects Pvt Ltd. Vide their letter dated 04.08.2016, changed the allotment from shop no. GF-104 to GF-028 having super area of 461 Sq.Ft. and accordingly the revised price and construction link payment schedule was also enclosed by the developer with the same letter
- iv. That the complainants went on making payments as and when demanded by the developer reserving that certain disputed amounts be settled at the time of taking possession of the Shop No. GF-028.
- v. That it is surprising that M/s Green Heights Projects Pvt. Ltd. the developer sent the commercial space buyer's agreement dated 24.04.2017, when considerable amount had already been made to them by us. This extra ordinary delay of Four years forced us to sign it fait accompli. It is apparent that the developer was withholding the BBA deliberately having mala fide in their mind not to disclosed the one sided term and conditions which are unilaterally drafted by them and the entire agreement is tilting to serve the interest of developer.
- vi. The developer has not completed the said project till date and not coming up to confirm or promise the date of completion and giving offer of possession as on date.

**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.
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 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.
  - ii. That the present case is also not maintainable as the 'delay' is not attributable due to the fault of the respondent but falls under force majeure, due to the Supreme Court order for stay on development by the Hon'ble Supreme Court of India in I.A. No 93822 of 2019 in M.A 1175 of 2019 in CA 8788 of 2015 in *Rameshwar Vs. State of Haryana & Ors.*
  - iii. That based on the decision of the Hon'ble Supreme Court of India in *Rameshwar Vs. State of Haryana & Ors.* CA 8788 of 2015, the M/s. Paradise Systems Pvt. Ltd. approached HSIIDC for renewal of license to begin construction which was granted to them on 23.07.2018 and

thereafter the Respondent has developed the said project which is almost complete and was left for finishing works and interiors until the Hon'ble Supreme Court was pleased to pass the status quo orders on 13.10.2020.

- iv. That in after the passing of the judgement of the Hon'ble Court in *Rameshwar Vs. State of Haryana & Ors.* CA 8788 of 2015 dated 12.03.2018 the HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 through I.A. No. 93822 of 2019 in C.A. No. 8788 of 2015 being "*Application for Clarification of Final Judgement dated 12.03.2018 passed by this Hon'ble Court*". It is submitted that the Hon'ble Supreme Court through its order dt. 13.10.2020 again put an injunction on further construction of projects of the parties to the said case including M/s. Paradise Systems Pvt. Ltd. project of Baani Centre Point.
- v. That the respondent has almost completed the construction of the project and the commercial colony, on the subject land. The respondent is prohibited under the orders of the court to complete the said project. It is submitted that not completing the construction of the project is not due to the mala-fide intentions of the respondent but rather in compliance of a judicial order of the Apex Court.
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**

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*(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.I Objection regarding maintainability of complaint**

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 <sup>an</sup> 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. I Direct the respondent to pay delay possession charges alongwith prescribed rate of interest.**

17. That the complainant has stated that the stay on Construction was on Paradise Systems Pvt. Ltd. and not on Green Heights Pvt. Ltd. as the agreement was executed between the later one and nowhere the name of Green Heights is mentioned in the alleged stay order. It further states that payment was collected by respondent in the mode of construction linked plan and respondent was sending demand letters even when the alleged stay was there and hence no relief of zero period may be extended to the respondent. The counsel for the complainant that zero period allowed by Directorate of Town and Country Planning (DTCP) is for limited purpose of renewal of license and Directorate of Town and Country Planning (DTCP) orders cannot dilute the builder buyer agreement.
18. The complainant further states that during the stay period the respondent-builder had collected the payment in the mode of construction linked plan from the allottees and even executed the buyer's agreement during that period. He further submits that the respondent-builder sent construction updates to the allottees and also revised the building plans during the said stay period. Moreover, the 912 acres of the project land would be acquired by the HSIIDC if it falls

under section 4 and section 6 of Land Acquisition Act, 1894 which is not the case.

19. On the contrary, the counsel for the respondent states that the land on which Baani Center Point Project is constructed was notified in Section 4 Notice dated 27 August 2004 and the details of this land are mentioned on Page No. 05 of the Section 4 notice of the Land Acquisition Act, 1894, Notification. This land was not in Section 6 Notification dated 25 August 2005. vide judgement dated 21 July 2022, the Supreme Court in para 32, specifically passed directions that the lands which were not notified in Section 6 notification and there was no transfer during the period 27 August 2004 to 29 January 2010 and were not part of the deemed award. HSIIDC filed an application for clarification on 01 July 2019, for inclusion of this land parcel also in the deemed award, however, subject to payment of penalty this land parcel was exempted from deemed award.
20. 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.

21. 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 enjoined 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.

22. 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>
01.12.2014	Commencement of work at site
29.12.2015	VAT
04.08.2016	On laying of raft
07.11.2016	On casting of 3 <sup>rd</sup> basement roof slab
20.12.2016	On casting of 2 <sup>nd</sup> basement roof slab
09.03.2017	On casting of 1 <sup>st</sup> basement roof slab
10.05.2017	On casting of 2nd roof slab plus 50% PLC
10.10.2017	On casting of 4 <sup>th</sup> floor roof slab
08.01.2018	On completion of super structure



23. 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.
24. 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.

25. 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."*

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

***"2.1. Possession***

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

27. **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.

28. 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.
29. 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., 15.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
30. 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;"*

31. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 2.1 of the agreement executed between the parties on 24.04.2017, the due date of possession comes out to be 30.03.2018 including grace period being unqualified.
32. It is pertinent to mention over here that even after a passage of more than 6 years (i.e., from the date of buyer agreement till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

33. 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.

**H. Directions of the authority**

34. 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 each of 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 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.
  - v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. No interest shall be payable by the respondent and complainant from 13.10.2020 to 21.07.2022 in view of the stay order Hon'ble Supreme Court on further construction/development works on the said project.

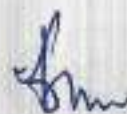
vi. The respondent-builder is directed not to charge anything which is not part of buyer agreement.

35. Complaint stands disposed of.

36. File be consigned to registry.

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

  
Arun Kumar  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.10.2024

  
**HARERA**  
GURUGRAM