

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

Complaint no. : 3372 of 2023
Date of filing : 01.08.2023
Date of decision : 17.12.2024

Nisha Agarwal
R/o: - Flat No. 603, Tower-5, Uniworld Garden, Sohna
Road, Sector 47, Gurugram- 122002.

Complainant

Versus

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

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Shri Garvit Gupta
Shri Somesh Arora

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated **01.08.2023** 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. 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 no. 187 of 2017 dated 14.09.2017 valid upto 13.09.2019
7.	Unit no.	GF - 85, Ground floor (Page 26 of complaint)
8.	Unit area admeasuring	437 sq. ft. (Page 26 of complaint)
9.	Date of booking	22.03.2013 (Page 26 of complaint)
10.	Date of allotment letter	01.12.2014 (Page 26 of complaint)
11.	Date of execution of commercial space Buyer agreement	Annexed but not executed

12.	Possession clause	2.1 Possession <i>The possession of the said premises shall be endeavored to be delivered by the intending purchaser by tentative date of 30.09.2017 with a grace period of 6 months beyond this date subject to clause 9 and completion of construction...</i> <i>(taken from the same case of similar project)</i>
13.	Due date of possession	30.03.2018 (including grace period)
14.	Total sale consideration	Rs.37,98,185/- (As per payment plan at page 51 of complaint)
15.	Amount paid by the complainants	Rs.14,53,233/- (As stated by the complainant in his brief facts at page 22 of complaint)
16.	Occupation certificate /Completion certificate	Not obtained
17	Offer of possession	Not offered

B. Facts of the complaint

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

1. 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.

- II. That the complainant had made the payment of Rs. 3,15,352/- at the time of booking vide cheque no. 075163 on 15.03.2013 and the respondent had issued a receipt dated 22.03.2013 bearing no. 30. Vide provisional allotment letter dated 01.12.2014 i.e almost after 1.5 years from the date of first payment, the respondent allotted a unit bearing no. GF-85, Ground Floor admeasuring 437 sq. ft. Copy of the receipt dated 22.03.2013 and provisional allotment letter dated 01.12.2014. It is pertinent to mention herein that at the time of allotment, it was promised and assured by the respondent to the complainant that the unit would be handed over to the complainant by 30.09.2017.
- III. That despite several efforts made by the complainant, 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. The respondent subsequently raised the payment demand dated 03.02.2016 against 'Casting of 3rd Basement Roof Slab and VAT' and demand dated 11.04.2016

against 'Casting of 2nd Basement Roof Slab'. By the meantime, the complainant understood that the representations made by the respondent at the time of booking of handing over the physical possession of the unit was nothing but misleading as even after 3 years 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.

- IV. That it is very important and pertinent to mention herein that the complainant 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 complainant to inspect the location of the unit in question.
- V. That the complainant visited the project site of the respondent in the month of May, 2016 to enquire about the construction status and execution of the agreement in question. The complainant was 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 complainant when in reality, no such development had even taken place. Furthermore, the respondent had unilaterally and without any consent from the complainant had changed the layout of the project in question.
- VI. That however, the assurances and representations of the respondent turned out to be false. The respondent intimated the

complainant vide its email dated 09.12.2016 that the builder buyer agreement was ready and that the complainant could collect the same from the respondent. When the complainant perused the contents of the draft agreement, she realized that instead of re-allotting a new unit, the complainant had shared the agreement for the old unit i.e unit no. GF-085.

VII. That finally vide letter dated 20.03.2018, the respondent informed the complainant about the new unit number GF-025 being allotted to the complainant. Vide the said letter it was also informed that the respondent was in the process of finalizing the buyer's agreement and would be soon sent to the complainant for execution. However, no such agreement was ever received by the complainant from the respondent. The complainant made vocal her objections to the arbitrary and wrong acts of the respondent. The complainant again visited the office of the respondent and clearly and specifically intimated to the respondent that she would not be making any payment unless and until the Agreement for the new 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 a new agreement would be shared with the complainant soon. Instead, the respondent in order to create false evidence started sending demand letters dated 04.04.2018, 24.08.2018 and 19.02.2019 asking for payments from the complainant.

VIII. That it is pertinent to mention herein that as per Section 13 of the Real Estate (Regulation and Development) Act, 2016, the

respondent could not have even demanded any payment of more than 10% of the total sale consideration prior to the execution of the agreement in question and hence the demand letters as mentioned above are null, void being against the law. The complainant repeatedly requested the respondent for execution of a commercial space buyer's agreement. The respondent vide its letter dated 30.10.2019 intimated to the complainant that it is executing the agreement with respect to the unit in question. However, to the surprise of the complainant, no copy of the agreement formed part of the letter dated 30.10.2019.

- IX. That the complainant has till date made the payment of Rs. 14,53,233.54 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 complainant. That since the time period to handover the possession stated by the respondent in the unsigned commercial space buyer's Agreement had lapsed and on account of non-execution of the agreement for the new unit, the complainant requested the respondent telephonically, and by visiting the office of the respondent to update them about the date of handing over of the possession and about the execution of the agreement in question. The representatives of the respondent assured the complainant that the possession of the unit would be handed over to them very shortly as the construction was almost over. The respondent has continuously been misleading the allottees including the complainant by giving incorrect information and timelines within which it was to hand over the possession of the



unit to the complainant. The respondent/promoter had represented and warranted at the time of booking that it would deliver the commercial unit of the complainant to her in a timely manner. However, the failure of the respondent company has resulted in serious consequences being borne by the complainant

- X. That the respondent has miserably failed to send draft agreement for the new unit and has failed to complete the construction within the agreed time frame. There has been virtually no progress and the construction activity is lying suspended since long. It is pertinent to mention herein that the last payment demand 'Completion of Super Structure' was sent by the respondent to the complainant on 19.02.2019 and the same was paid by the complainant within the time period. The next payment demand as per the terms of the allotment and the construction linked payment plan which was to be raised at the stage of 'Offer of Possession' has till date not been issued by the respondent to the complainant because the respondent failed to complete the structure till that stage. It is very important to note that since all the payment demands except the demand to be raised at the time of offer of possession were sent by the respondent to the complainant, then the respondent/promoter should have been in the condition even otherwise to apply for the grant of the Occupation Certificate in the year 2019 itself. The fact that no intimation regarding the application for the grant of the occupation certificate was given by the respondent to the complainant speaks about the volume of illegalities and deficiencies on the part of the respondent/promoter. There is inordinate delay in developing the project well beyond what was

promised and assured to the complainant. This further shows that the demands which were raised by the respondent didn't correspond to the actual construction status on the site.

- XI. 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 complainant. 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 complainant and are unconcerned about the possession of the unit despite repeated assurances.
- XII. That the complainant has been duped of their hard-earned money paid to the respondent regarding the commercial unit in question. The complainant enquired from the respondent vide its email dated 20.05.2022 the date on which the unit in question would be handed over but the respondent has been dilly-dallying the matter. The complainant has been running from pillar to post and have been mentally and financially harassed by the conduct of the respondent. It is pertinent to mention herein that at the time of booking, it was represented by the respondent company that the project would consist of retail units at Ground Floor, First Floor, Second Floor and restaurants with terrace dining on 2nd floor on some blocks.

Moreover, it is evident from a bare perusal of the payment plan of the allotted unit that the concept of lower and upper ground floor was never in existence. The complainant had accordingly made the booking taking into consideration the said layout along with the floor plans which were shared by the respondent with the complainant in the brochure of the project. However, the actual ground reality is altogether different. When the complainant went to inspect the project site, they realized that the respondent has added another floor in the project and is now referring the same as 'Lower Ground Floor'. Hence, the location of the unit allotted to the complainant on ground floor has been changed by the respondent. It is pertinent to mention herein that the respondent has unilaterally, after making the booking, completely altered the layout and the floor plans of the project without taking the written consents of the allottees of the project and without any approval from the Statutory Authorities. The complainant specifically reserves its right to claim compensation for the same.

- XIII. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to hand over the possession and finally about a week ago when the respondent refused to refund the amount paid with interest amount and compensation. The complainant reserve her right to approach the appropriate forum to seek compensation.

C Relief sought by the complainants: -

4. The complainants have sought following relief(s)

- I. Direct the respondent to refund the entire paid amount along with interest.
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 MID, 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 MID, 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.
13. 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."

14. 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

F.1 Objection regarding force majeure conditions.

15. 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.

16. 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 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."

17. 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'.
18. 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 refund the entire amount paid by the complainant alongwith prescribed rate of interest.

19. 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.

20. 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.

21. 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 rd basement roof slab
11.04.2016	On casting of 2 nd basement roof slab

22. As per aforementioned details, the respondent has raised the demands during the period in which stay was imposed. 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 entitle to a zero period and should be held accountable for their actions during the stay period. However, the period from 13.10.2020 to 21.07.2022 shall stand exempted from interest to the respondent from 13.10.2020 to 21.07.2022 on the refunded amount as per directions of the Hon'ble Supreme Court clearly retraining the promoter from creation of 3rd party rights and fresh development of unfinished works at site except those related to maintenance and upkeep of the site. So, no interest shall be charged to the respondent from 13.10.2020 to 21.07.2022 as per the direction of Hon'ble Supreme Court.
23. In the present complaint, the complainant intends to withdraw from the project and is seeking refund 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. At the inception, it is relevant to comment on the pre-set possession clause of the allotment letter 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.

26. **Admissibility of refund 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.

27. 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.
28. 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., 17.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
29. 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;"

30. 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.
31. 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. 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.

32. 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....."

33. 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."


34. 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 terms of agreement for sale or duly completed by the date specified therein. 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.
35. 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*.

H. Directions of the authority

36. 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/promoter is directed to refund the amount i.e., Rs. 14,53,233/- 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 judgement of Hon'ble Supreme Court wherein this was explicitly instructed to cease any further development in the project.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
37. Complaint stands disposed of.
38. File be consigned to registry.


Ashok Sangwan
Member


Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.12.2024