BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**3352 of 2023**
Date of filing :		**01.08.2023**
Date of decision	**:**	**17.12.2024**

1. Pooja Sachdeva
2. Akash Sachdeva
Both R/o: - J-147A, Rajouri Garden, New Delhi-110027. **Complainants**

Versus

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

CORAM:
Shri Arun Kumar **Chairman**
Shri Ashok Sangwan **Member**

APPEARANCE:
Shri Garvit Gupta Advocate for the complainants
Shri Somesh Arora 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 – 100 (Page 43 of complaint)
8.	Unit area admeasuring	401 sq. ft. (Page 43 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	05.01.2017 (Page 40 of complaint)

12.	Possession clause	**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...*
13.	Due date of possession	30.03.2018 (grace period is allowed being unqualified)
14.	Total sale consideration	Rs.37,86,719/- (As alleged by the complainant in his brief facts at page 21 of complaint)
15.	Amount paid by the complainants	Rs.37,72,999/- (As stated by the complainant in his brief facts at page 21 of complaint)
16.	Occupation certificate /Completion 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.3,00,000/- at the time of booking vide cheque no. 482107 on 04.03.2013 and the respondent issued a receipt dated 22.03.2013 bearing no. 29. 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-100, ground floor admeasuring 401 sq. ft. 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 complainant by 30.09.2017.

c. That after the allotment of the unit by the respondent, the respondent raised the demand dated 01.12.2014 towards the instalment against 'Commencement of Work at Site'. The complainants believing the said payment demand to be correct, paid the demanded amount vide cheque no. 036925 on 30.12.2014 and the respondent issued a receipt dated 30.12.2014. Similarly, the respondent raised the payment demand dated 03.11.2015 against 'On Laying of Raft'. The said payment was also made by the complainants vide cheque no. 304946 on 23.11.2015 and the respondent accordingly issued receipt dated 23.11.2015. Payments towards all the instalment demands sent by the respondent were made by the complainants strictly as per the terms of the payment plan.

d. That since, the respondent had failed to execute the buyer's agreement with the complainants despite lapse of three years from the date of booking, the complainants visited the office of the respondent in the month of January, 2016 to enquire about the construction status and execution of the agreement in question. The complainant was surprised and anguished with the response of respondent who informed the complainant 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. Accordingly, on the basis of the assurances made by the respondent, the complainants made the payment of the payment demand dated 03.02.2016 sent by the respondent against 'Casting of 3rd Basement Roof Slab' and a receipt dated 22.02.2016 was issued by the respondent against the same. Similar payment against the demand raised towards 'Casting of 2nd basement Roof Slab' was also paid by the complainants and the respondent had accordingly issued receipts dated 27.04.2016.

e. That finally, after three long years, a copy of the commercial space buyer's agreement was sent to the complainants vide letter dated 06.12.2016 which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favouring the respondent and was totally against the interest of the purchaser, including the complainants herein.

f. That the complainants made vocal their objections to the arbitrary and unilateral clauses of the commercial space buyer's agreement to the respondent. The complainants repeatedly requested the respondent

for execution of a commercial space buyer's agreement with balanced terms. However, during such discussions, the respondent summarily rejected the bonafide request of the complainants and stated that the agreement terms were non-negotiable and would remain as they were. The respondent/ promoter refused to amend or change any term of the pre-printed commercial space buyer's agreement and further threatened the complainants to forfeit the previous amounts paid by them if further payments are not made. The complainants had made substantial payment before the execution of the agreement. Since the complainants had already parted with a considerable amount of the sale consideration, they were left with no other option but to accept the lopsided and one-sided terms of the commercial space buyer's agreement buyer's agreement. Since the complainants had duly paid a huge amount out of their hard-earned money, they felt trapped and had no other option but to sign the dotted lines. Hence the commercial space buyer's agreement dated 05.01.2017 was executed.

g. That in the meantime, the respondent had raised the payment demand dated 20.12.2016 towards 'Casting of 1st Basement Roof Slab +50% Project Development Charges' and the same were paid by the complainants along with VAT Charges vide Cheque no. 529745 dated 03.01.2017 and the respondent accordingly issued a Receipt dated 05.01.2017 acknowledging the said payment.

h. That, thereafter, the complainants made the payment of Rs.4,54,734/- against the demand raised towards 'Casting of 2nd floor Roof Slab' and a receipt dated 30.03.2017 was issued by the respondent. Similarly, the complainants made payment of Rs.4,73,410/- against 'Casting of

4th Floor Roof Slab' and receipts dated 31.05.2017 were issued by the respondent.

i. That the respondent kept on raising payment demands 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 complainants accordingly made payment of Rs.4,14,233/- against 'Start of Brick Work' and the respondent issued a receipt dated 24.10.2017 acknowledging the same. Similarly, the Complainants made payment of Rs. 3,49,351/- against the demand of 'Completion of Super Structure' sent on 08.01.2018 and respondent acknowledged and issued the receipt dated 25.01.2018 towards the same.

j. That despite having made the commercial space buyer's agreement dated 15.10.2012 containing terms very much favourable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter has even failed to perform the most fundamental obligation of the agreement which was to handover 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.

k. That as per clause 2.1 of the agreement , the possession of the unit was to be handed over by the respondent by 30.09.2017 with a grace period of six months. Thus, as per the terms and conditions of the commercial space buyer's agreement, the due date to handover the possession of the allotted unit elapsed on 30.03.2018. The

complainants have till date made the payment of Rs.37,72,999/- out of the total sale consideration amount of Rs.37,86,719/- 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. 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.

I. That since the time period to handover the possession stated by the respondent in the commercial space buyer's agreement had lapsed, the complainants requested the respondent telephonically, and by visiting the office of the respondent to update them about the date of handing over of the possession. The representatives of the respondent assured the complainants 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 complainants by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainants. The respondent/promoter had represented and warranted at the time of booking that it would deliver the commercial unit of the complainants to them in a timely manner. However, the failure of the respondent company has resulted in serious consequences being borne by the complainants. The complainants even made payment towards the VAT charges of Rs.36,909/- for 2017-18, as demanded by the respondent vide letter dated 03.08.2019 and a receipt dated 21.08.2019 was issued by the respondent.

m. That the respondent has miserably failed to send any other legal payment demand for the period of 4 years from the date of issuance of last payment demand for the simple reason that the respondent has not completed the construction within the agreed time frame. There has been virtually no progress and the construction activity is lying suspended since long. The last payment demand 'Completion of Super Structure' was sent by the respondent to the complainants on 08.01.2018 and the same was paid by the complainants 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 complainants because the respondent failed to complete the structure till that stage. 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 complainants 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 complainants. This further shows that the demands which were raised by the respondent didn't correspond to the actual construction status on the site.

n. 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 handover the possession of the allotted unit to the complainant.**

   III. **To execute the conveyance deed in favor of the complainant.**

   IV. **Direct the respondent not to raise any payment demand, in violation of the provisions of the Act of 2016/or contrary to the terms of the agreement**

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 till12.03.2018 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 *Rumeshwar 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.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 T0 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 1.032018 in question that is despite claiming force majeure due to external impediments, the builder continued construction activities unabated thereafter concurrently received payments from the allottees and even executed buyer's agreement during that time. This sustained course of action strongly suggests that the builder possessed the capability to fulfill their contractual obligations despite the purported hindrances. Therefore, the builder cannot invoke Force Majeure to justify the delay and consequently, cannot seek an extension based on circumstances within their control. However, during the period 13.10.2020 to 21.07.2022, there were specific directions for stay on further construction/development works in the said project passed by the Hon'ble Supreme Court of India in M.A No. 50 of 2019 vide order dated 21.07.2022 which was in operation from 13.10.2020 to 21.07.2022 and there is no evidence that the respondent did not comply with such order. The Authority observes that during this period, there was no construction carried out in the project nor any demands made by the respondent from the allottees. In view of the above, the promoter cannot be held responsible for delayed possession interest during this

period. Therefore, in the interest of equity, no interest shall be payable by the complainant as well as respondent from 13.10.2020 to 21.07.2022 in view of the stay order of Hon'ble Supreme Court on further construction/development works on the said project.

G Findings on the relief sought by the compiainants.

G. I Direct the respondent to pay delay possession charges alongwih prescribed rate of interest.

17. 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.

18. 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.

19. 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
01.12.2014	On commencement of work at site
03.11.2015	On laying of raft
03.02.2016	On casting of 3rd basement roof slab
20.12.2016	On casting of 1st basement roof slab
24.10.2017	On casting of 4th floor roof slab
08.01.2018	On completion of super structure
21.08.2019	VAT

20. 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.

21. 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.

22. 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."

23. 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)

24. **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.

25. 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.

26. 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%.

27. 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;"*

28. 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 01.03.2017, the due date of possession comes out to be 30.03.2018 including grace period being unqualified.

29. 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.

30. 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 handover the possession of the unit after obtaining occupation certificate from the concerned Authority.

31. 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.III Direct the respondent to execute the conveyance deed in favour of the complainant.

32. 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.

E.IV Direct the respondent not to raise any payment demands in violation of the provisions of the Act of 2016/or contrary to the terms of the agreement

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

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 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 10th 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. 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.

35. Complaint stands disposed of.

36. File be consigned to registry.

Ashok Sangwan
Member

Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.12.2024