

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

Date of decision: - 11.04.2025

NAME OF THE BUILDER		Green Heights Projects Private Limited	
PROJECT NAME		Baani Centre Point Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/739/2024	Loveleen Malhotra and Shikha Malhotra V/S Green Heights Projects Private Limited	Adv. Garvit Gupta (Complainant) Adv. Naveen Kumar Shukla (Respondent)
2.	CR/769/2024	Rajat Kumar Mathur V/S Green Heights Projects Private Limited	Adv. Garvit Gupta (Complainant) Adv. Naveen Kumar Shukla (Respondent)
3.	CR/770/2024	Sushree Mathur V/S Green Heights Projects Private Limited	Adv. Garvit Gupta (Complainant) Adv. Naveen Kumar Shukla (Respondent)
CORAM:			
Shri Arun Kumar			Chairman

- The order shall dispose off all the three complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules"). Since the core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, Baani Centre

Point, Gurugram being developed by the same respondent- promoter i.e. Green Heights Projects Private Limited. The terms and conditions of the builder buyer's agreements that had been executed between the parties *inter se* are also similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver the possession as per the terms of the builder buyers' agreement, seeking possession along with interest and execute conveyance deed in favour of the allottees.

2. The details of the complaints, reply status, unit no., date of allotment letter, date of agreement, due date of possession, offer of possession and relief sought are given in the table below:

<p>Possession Clause 2.1: <i>The possession of the said Premises shall be endeavoured to be delivered by the Intending Seller to the Intending Purchaser by a tentative date of 30.09.2017 with a grace period of six (6) months beyond this date, however, subject to completion of construction and subject to clause 9 herein and strict adherence to the payment plan and other terms and conditions of this Agreement by the Intending Purchaser. In case the Intending Seller is not able to handover the possession in the aforesaid manner, it shall be liable to pay an interest @9% p.a. for the delayed period beyond the six (6) months grace period, subject to however clause 9 herein and strict adherence to the terms and conditions of this agreement and timely payments being made by the Intending Purchaser in accordance with the payment plan attached as annexure-I. The Intending Seller shall give notice to the Intending Purchaser with regard to the date of handing over of possession, and in the event, the Intending Purchaser fails to accept and take the possession of the said Premises on such date specified in the notice of the possession, the possession of the said Premises shall be deemed to have been taken over by the Intending Purchaser on the date indicated in the notice of possession and the said Premises shall remain at the risk and cost of the Intending Purchaser.</i></p> <p>Occupation certificate received on N/A Offer of Possession: N/A</p>								
Sr. No.	Complaint No./Title/ Date of filing/ Reply status	Unit/sho p no. and area	Date of execution of builder buyer's agreement	Due date of possession	Total sale consideration	Amount Paid up by the complainant	Zero period	Relief sought
1	CR/739/2024 DOF:- 05.03.2024	FC-051, 1 st floor 393 sq. ft	18.03.2017	30.03.2018	Rs.31,70,865/-	Rs.18,91,979/-	Zero period given from 13.10.2020-21.07.2022 as	1. DPC 2. Handover the possession

	RR:- 07.05.2024						per Supreme court order	3. Direct the respondent to execute the CD.
2.	CR/769/2024 DOF:- 05.03.2024 RR:- 07.05.2024	GF-073, Ground floor 437 sq. ft	11.01.2017	30.03.2018	Rs. 42,54,524.39/-	Rs. 42,02,089.59/-	Zero period given from 13.10.2020-21.07.2022 as per Supreme court order	1. DPC 2. Handover the possession 3. Direct the respondent to execute the CD.
3.	CR/770/2024 DOF:- 05.03.2024 RR:- 07.05.2024	GF-030, Ground floor 416 sq. ft	11.01.2017	30.03.2018	Rs. 38,53,680/-	Rs. 9,72,241/-	Zero period given from 13.10.2020-21.07.2022 as per Supreme court order	1. DPC 2. Handover the possession 3. Direct the respondent to execute the CD.

3. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/739/2024** titled as **Loveleen Malhotra and Shikha Malhotra V/S Green Heights Projects Private Limited** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

4. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and 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, Gurugram
2.	Nature of the project	Commercial Colony

3.	RERA Registered/ not registered	187 of 2017, dated 14.09.2017, valid upto 13.09.2019 (Lapsed project)
4.	License no. and validity	59 of 2009 dated 26.10.2009
	Licensed area	2.681 acres
5.	License name	M/s Paradise System Private Limited
6.	Unit no.	FC-051, 1 st floor [page 52 of complaint]
7.	Unit area admeasuring	393 sq. ft. super area [page 31 of complaint]
8.	Date of provisional allotment	01.12.2014 [Page 34 of complaint]
9.	Date of commercial space buyer's agreement	18.03.2017 [Page 49 of complaint]
10.	Date of start of construction	Not available
11.	Possession clause	2.1 Possession <i>The possession of the said Premises shall be endeavoured to be delivered by the Intending Seller to the Intending Purchaser by a tentative date of 30.09.2017 with a grace period of six (6) months beyond this date, however, subject to completion of construction and subject to clause 9 herein and strict adherence to the payment plan and other terms and conditions of this Agreement by the Intending Purchaser. In case the Intending Seller is not able to handover the possession in the aforesaid manner, it shall be liable to pay an interest @9% p.a. for the delayed period beyond the six (6) months grace period, subject to however clause 9 herein and strict adherence to the terms and conditions of this agreement and timely payments being made by the</i>

		<p><i>Intending Purchaser in accordance with the payment plan attached as annexure-I. The Intending Seller shall give notice to the Intending Purchaser with regard to the date of handing over of possession, and in the event, the Intending Purchaser fails to accept and take the possession of the said Premises on such date specified in the notice of the possession, the possession of the said Premises shall be deemed to have been taken over by the Intending Purchaser on the date indicated in the notice of possession and the said Premises shall remain at the risk and cost of the Intending Purchaser.</i></p> <p style="text-align: right;">[Page 57 of complaint]</p>
12.	Due date of possession	30.03.2018 [grace period of 6 month included.] <i>[Zero period given from 13.10.2020-21.07.2022 as per Supreme court order]</i>
13.	Total sale consideration	Rs.31,70,865/-
14.	Amount paid by the complainants	Rs.18,91,979/-
15.	Occupation certificate	Not received
16.	Conveyance deed	Not executed

B. Facts of the complaint:

5. The complainants have made the following submissions

1. That the respondent offered for sale unit in a commercial colony known as 'Baani Centre Point' which claimed to comprise of commercial units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Sector M1D, Gurugram, Haryana. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 59 of 2009 on a land area

- of about 2.681 acres in Village Lakhnaula, Tehsil Manesar, Gurugram to its associates companies for development of a Commercial Colony in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976. The complainants received a marketing call from the office of respondent in the month of December, 2012 for booking in residential project of the respondent, 'Baani Centre Point', situated at Sector M1D, Gurugram.
- II. That the complainants, 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.
- III. That the complainant had made the payment of Rs. 2,56,100/- at the time of booking vide cheque no. 578822 on 30.03.2013 and accordingly, the respondent had issued an acknowledgement receipt dated 13.05.2013. The respondent vide the said acknowledgment receipt provisionally allotted a shop no. BF-061 having a super area of 393 sq. ft. at the rate of Rs 6,500 per sq. Moreover, at the time of booking, it was promised and assured by the respondent to the complainant that the agreement would be executed in a short span of time and the said unit would be handed over to the complainant by 30.09.2017.

- IV. That the respondent sent a demand letter dated 01.12.2014 intimating the complainants about the due installment against 'On commencement of work at site'. The complainants were in complete shock and dismay when it was informed to them vide the said demand letter that the unit number of the commercial space allotted to them was changed from BG-061 to FF-051. The respondent had unilaterally and without any consent from the complainants had changed the layout of the project in question and allotted an entirely different unit without taking a prior consent of the complainants or even intimating the complainants about the said fact. Moreover, a provisional allotment letter dated 01.12.2014 was also sent to the complainants vide which the unit no. FF-051 was allotted to the complainants. The respondent had allotted a unit at the prime location at the time of booking and assured the complainants that there would be no further changes in the allotment of the said unit. However, the respondent thereafter unilaterally changed the allotted unit from BG-061 to FF-051 and only intimated the said fact to the complainants after the said re-allotment was done.
- V. That the complainants enquired about the said change in the layout plan of the project and the location of the newly allotted unit but to no avail as the complainants never received any satisfactory answer. However, it was assured by the respondent that the location of the unit has not been compromised and that the unit would remain at the same location as it was. The complainants made the

payment of Rs. 2,73,745/- vide cheque dated 551602 dated 22.12.2014 after believing the promises of the respondent.

- VI. That the complainants made the payment of Rs. 2,73,745/- vide cheque dated 551602 dated 22.12.2014 after believing the promises of the respondent. On 03.11.2015, the respondent raised a payment demand against 'On Laying of Raft' which was duly paid by the complainants and accordingly a receipt dated 19.12.2015 was issued by the respondent for an amount of Rs. 2,66,178/-.
- VII. That after several reminders sent by the complainants in respect of the execution of the buyer's agreement, the respondent vide its letter dated 25.01.2016 intimated the complainants that the construction of the said project was going on in full swing and that the buyer's agreement would be executed by 30.05.2016. Vide the said letter dated 25.01.2016, the respondent enclosed a payment plan, the payment plan opted by the complainants was development linked plan and the total sale consideration was Rs. 31,70,865/-.
- VIII. That the respondent raised another payment demand dated 03.02.2016 against 'on casting of 3rd basement roof slab'. The respondent raised another payment demand dated 11.04.2016 against 'On Casting of 2nd basement roof slab'. The said payments were duly paid by the complainants and accordingly, the respondent issued receipt dated 02.04.2016 acknowledging the same.
- IX. That on account of a delay of more than 3 years in execution of the buyer's agreement, the complainants visited the office of the

respondent to enquire about the execution of the said agreement. Finally, after almost three long years, the respondent intimated the complainants regarding the execution of the buyer's agreement vide letter dated 11.11.2016.

- X. That in the meantime, the respondent sent payment demand dated 20.12.2016 against 'Casting of 1st basement roof slab' and demand dated 09.03.2017 against 'Casting of 2nd floor roof slab'. However, since, the respondent had failed to execute the agreement with the complainants, the complainants were left with no other choice but to restrain from making the said payments till the time an agreement was duly executed between the complainants and the respondent.
- XI. That the complainants repeatedly requested the respondent for execution of the 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 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 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 buyer's agreement dated 18.03.2017 was executed.

- XII. That the complainants in lieu of the demands raised by the respondent, made the payment and the respondent accordingly issued payment receipt dated 18.03.2017. Then subsequently, the respondent sent the payment demand dated 10.05.2017 against 'Casting of 4th Floor Roof Slab'. Similarly, the respondent sent a payment demand dated 10.10.2017 against 'On Start of Brick Work'. Thereafter, the respondent sent a payment demand, in complete violation of the promised timeline on 08.01.2018 against 'completion of super structure'.
- XIII. 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. 18,91,979/- out of Rs. 31,70,865 strictly as per the terms of the allotment and the development linked payment plan and the same is evident from one of the reminder sent by the respondent to the complainants.
- XIV. That since the time period to handover the possession stated by the respondent in the 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 miserably failed to send any other legal payment demand for the period of 5 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 are lying suspended since long. The last payment demand 'completion of super structure' was sent by the respondent to the complainants in the year 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. There is an inordinate delay of 71 months calculated up to March, 2024 and till date the possession of the allotted unit has not been offered by the respondent to the complainants.

- XV. That the complainants have been duped of their hard-earned money paid to the respondent regarding the commercial unit in question. The complainants requested the respondent to hand over the possession of the allotted unit to him but the respondent has been dilly-dallying the matter. The complainants have been running from pillar to post and have been mentally and financially harassed by the conduct of the respondent.

XVI. That the respondent has even failed to renew registration certificate of the project from this Hon'ble Authority and has acted in blatant violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016. But a week ago, the respondent has in complete defiance of its obligations refused to hand over the possession to the complainants along with delayed possession charges leaving them with no other option but to file the present complaint. Since respondent miserably failed in its obligations, hence the complainants are entitled to delayed possession charges at the rate prescribed as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.

C. Relief sought by the complainants:

6. The complainants have sought following relief(s):
- i. Direct the respondent to pay interest for every month of delay at prevailing rate of interest from 30.03.2018 till actual handing of the possession.
 - ii. Direct the respondent to handover the possession of the unit in a habitable state after obtaining the occupation certificate from the concerned authorities.
 - iii. Direct the respondents to execute conveyance deed of the allotted unit in favour of the complainant.
 - iv. Direct the respondent to not to raise any payment demand in violation of provision of RERA.

D. Reply by the respondent:

7. The respondent 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. The 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. Plans for construction of the commercial colony were filed which were sanctioned vide sanction letter dated 23.07.2014.
 - 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. 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.

- iv. 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.
- v. That the project namely Baani Center Point was registered with Haryana Rera Registration Number 187 of 2017 dated 14.09.2017. 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.
- vi. That shortly after the stay was lifted on 12.03.2018, M/s Paradise Systems Pvt. Ltd. approached DTCP for renewal of license to begin construction which was granted to them on 23.07.2018 and thereafter the respondent has developed the project Baani Center Point, Sector M1d, Manesar which is almost complete and was left for some finishing works and interiors. It shall be pertinent to mention that while renewing the license the entire period of 24.04.2015 till 12.03.2018 was exempted as Zero period by DTCP.

- vii. 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. 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.
- viii. 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.
- ix. 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. The Real Estate sector is dependent on the speed of the construction and due to the order by the Hon'ble Supreme Court, there has been a complete stoppage on all construction activities. It is further submitted that the Respondent is in the process of 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 the respondent to get the delivery of the project delayed to the allottees. 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. 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.

- x. That the 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.
- xi. That the delay in possession handover was because of the "Zero Period" granted by the Department of Town and Country Planning Haryana from: 24.04.2015 to 12.03.2018 and then again from; ii. 23.07.2018 to 21.07.2022. The construction work between the above periods was not continuous because of the Supreme Court Proceedings as well as non-clarity in DTCP on implementation of Supreme Court Order dated 24.04.2015. This directly affected the agreed-upon date for handing over possession, as the Respondent couldn't continuously work on the project during this time. It caused unavoidable delays in completing and delivering thus DTCP granted Zero Period from 24.04.2015 to 12.03.2018.
- xii. That for the period from 13.03.2018 to 22.07.2018, the possession handover was delayed because the respondent required to renew licenses and get other necessary approvals from DTCP to resume construction but the approvals were not granted during that period as Haryana State Industrial & Infrastructure Development.
- xiii. That the direction of Supreme Court to check the status of construction as in November 2020, HSIIDC filed an affidavit before Supreme Court, specified that after the order the Hon'ble Supreme Court on 12.03.2018 there was no approval granted for building plans and any further construction. The requests for the issuance

- of revised building plans change in developer and transfer of license is pending and no permission in this regard has been granted, refer Pg. 16 and 17 of Affidavit dt. 12.11.2020.
- xiv. That in the same Affidavit while stating site status of commercial colony by HSIIDC, it was described as, - 3 level basements has been constructed at site and structure work of Lower Ground Floor, Upper Ground Floor, 1st Floor and partly 2nd & 3rd Floor have been completed. The Theatre/Cinema has been constructed at 3rd Floor, which has double height, refer Pg. 24 of the Affidavit dt. 12.11.2020.
- xv. That as per Clause 2.1 of the builder buyer agreement signed with other similarly placed allottees, clearly stated that the date for handover of possession was 30.09.2017, with a provision for a six-month grace period, thereby extending to 13.03.2018 and subject to force majeure (Clause 9) situations mentioned in the said agreement.
- xvi. That as per Clause 9 of the builder buyer agreement signed with other similarity placed allottees, states that the obligation to handover possession (Clause 2.1 of the Agreement) is subject to force majeure events.
- xvii. That the construction timeline and, consequently, the possession schedule were significantly affected by two "zero periods" mandated by the DTCP. These periods were; (i) First Zero Period: 24.04.2015 to 12.03.2018 and (ii) Second Zero Period: 23.07.2018 to 21.07.2022. These government-imposed "zero periods" are critical for understanding the delay in possession, as they were

unforeseen and beyond the respondent's control, thereby invoking the force majeure provision of the agreement. For clarity, "zero period" means unavoidable delay in a project's development, due to government interventions or legal proceedings. During such periods, construction progress is halted. The combined effect of these zero periods significantly extended the project timeline.

E. Jurisdiction of the authority:

8. 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case

may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

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

F. Findings on objections raised by the respondent:

F.1 Objection regarding the project being delayed because of force majeure circumstances.

12. 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.

13. 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."

14. 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'.
15. 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 01.03.2018 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 relief sought by the complainant:

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

16. 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.

17. Later on, the HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 through **M.A. No. 50 of 2019 in the matter of Rameshwar Vs. State of Haryana & Ors. CA 8788 of 2015** being "Application for Clarification of Final Judgment dated 12.03.2018 passed by this Hon'ble Court". It is submitted that the Hon'ble Supreme Court through its order dated 13.10.2020 again granted an injunction on further construction of projects of the parties to the said case including M/s. Paradise Systems Pvt. Ltd. project of Baani Center Point. The relevant portion of the said order stated that: - "Pending further considerations, no third-party rights shall be created and no fresh development in respect of the entire 268 acres of land shall be undertaken. All three aforesaid developers are enjoined from creating any fresh third-party rights and going ahead with development of unfinished works at the Site except those related to maintenance and upkeep of the site". That finally through the recent judgment on 21.07.2022, the stay on construction was cleared by the Hon'ble Supreme Court of India in M.A. 50 of 2019 in the matter of Rameshwar Vs. State of Haryana & Ors. CA 8788 of 2015. vide letter dated 26.07.2022 the complainant was informed that the project has been cleared from stay on construction and creation of third-party interests, by Supreme Court vide order dated 21.07.2022. The respondent vide letter dated 25.07.2022 has also

applied for renewal of license and other permissions from DTCP which is awaited. It is also important to mention that the project was registered with RERA vide registration no. 187 of 2017 and after the judgment of Supreme Court the respondent has filed an application for extension of the registration under section 7 sub clause 3 dated 04.08.2022.

18. 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
24.12.2014	On commencement of work at site
24.11.2015	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
20.12.2016	On casting of 1 st floor roof slab
10.05.2017	On casting of 4 th floor roof slab
08.01.2018	On completion of super structure
19.02.2019	VAT

19. 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.

20. 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.
21. 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."

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

2.1 Possession

The possession of the said Premises shall be endeavoured to be delivered by the Intending Seller to the Intending Purchaser by a tentative date of 30.09.2017 with a grace period of six (6) months beyond this date, however, subject to completion of construction and subject to clause 9 herein and strict adherence to the payment plan and other terms and conditions of this Agreement by the Intending Purchaser. In case the Intending Seller is not able to handover the possession in the aforesaid manner, it shall be liable to pay an interest @9% p.a. for the delayed period beyond the six (6) months grace period, subject to however clause 9 herein and strict adherence to the terms and conditions of this agreement and timely payments being made by the Intending Purchaser in accordance with the payment plan attached as annexure-I. The Intending Seller shall give notice to the Intending Purchaser with regard to the date of handing over of possession, and in the event, the Intending Purchaser fails to accept and take the possession of the said Premises on such date specified in the notice of the possession, the possession of the said Premises shall be deemed to have been taken over by the Intending Purchaser on the date indicated in the notice of possession and the said Premises shall remain at the risk and cost of the Intending Purchaser.

23. As per clause 2.1 of the BBA the promoter has proposed to delivered the unit on 30.09.2017 with a grace period of six (6) months beyond this date. Therefore, the due date of possession is 30.03.2018 (Grace period allowed being unqualified.)
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., 11.04.2025 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 respondent 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 buyer's agreement executed between the parties on 18.03.2017 the possession of the subject flat was to be delivered by the respondent to the complainants on 30.09.2017 with a grace period of six (6) months. The due date of possession is 30.09.2017 and it is further provided in agreement that promoter is entitled for a grace period of 6 months. As far as grace period is concerned, the same is allowed being unqualified. Therefore, the due date of handing over possession comes out to be 30.03.2018. However, the respondent has failed to handover possession of the subject apartment to the complainant till the date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

29. It is pertinent to mention over here that even after a passage of more than 7 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.

G.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.

G.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.

G.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.

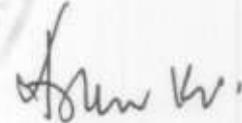
H. Directions of the authority:

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

- i. The respondent is directed to pay interest to each of the complainant(s) against the paid-up amount at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay from the due date of possession 30.03.2018 till valid offer of possession after obtaining occupation certificate, plus two months or actual handing over of possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules. No interest shall be payable by the respondent and complainant from 13.10.2020 to 21.07.2022 in view of the stay order Hon'ble Supreme Court on further construction/development works on the said project.
- ii. The arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 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.
35. This decision shall mutatis mutandis apply to cases mentioned in para 2 of this order wherein details of paid-up amount is mentioned in each of the complaints.
36. Complaint as well as applications, if any, stands disposed off accordingly.
37. File be consigned to registry

Dated: 11.04.2025



Arun Kumar
Chairman

Haryana Real Estate
Regulatory Authority,
Gurugram