

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

Complaint no.: 629 of 2024
Date of filing: 05.03.2024
Date of order: 11.04.2025

Smt. Raj Bala Yadav

R/O: - 83/3, Hans Enclave, Sector 33, Gurugram-122022

Complainant

Versus

M/S Green Heights Projects Private Limited
Regd. Office At: 271, Phase-II, Udyog Vihar, Gurugram,
Haryana- 122016

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Garvit Gupta (Advocate)

Complainant

Sh. Naveen Kumar Shukla (Advocate)

Respondent

ORDER

1. The present complaint dated 05.03.2024 has been filed by the complainant/allottee 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. 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 |
| | License name | M/s Paradise System Private Limited |
| 5. | Unit no. | FC-25, 2 nd floor [page 31 of complaint] |
| 6. | Unit area admeasuring | 316 sq. ft. super area [page 31 of complaint] |
| 7. | Date of MoU | 19.02.2019 [page 30 of complaint] |
| 8. | Date of allotment | 13.03.2019 [Page 26 of complaint] |
| 9. | Date of space buyer's agreement | 29.07.2019 [Page 37 of complaint] |
| 10. | Date of start of construction | Not available |
| 11. | Possession clause | 7 Possession <i>The Promoter shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Authority and towards handing over the Premises alongwith parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent</i> |

| | | |
|-----|--------------------------------|---|
| | | <i>authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017.</i> |
| 12. | Assured return clause | <p>2. "The first party shall pay to the to the Second party an assured return-cum guaranteed Lease Rent at the rate of ₹38.63/- per sq. ft. (Super Area) i.e.) i.e., ₹12,207/- (Rupees Twelve Thousand Two Hundred Seven) per month on the amount received by the First Party against the Commercial Space(s) allotted to the Second Party until offer of Possession a Assured Return on investment and thereafter ₹57.37/- per sq. ft. (super area) i.e., ₹18,129/- (Rupees Eighteen Thousand One Hundred Twenty Nine) per month as guaranteed Lease Rent upto receipt of balance Basic Sale Price (BSP) along with other charges. Assured Return-cum guaranteed Lease Rent shall be paid by the First party to the Second Party for a total period of 36 months starting from 14.03.2019.</p> <p>[page 32 of complaint]</p> |
| 13. | Due date of possession | <p>30.06.2020</p> <p>[As disclosed at the time of registration of the project]</p> |
| 14. | Total sale consideration | <p>Rs.17,57,592/-</p> <p>[as per payment plan & BBA at page 27 & 44 of complaint]</p> |
| 15. | Amount paid by the complainant | <p>Rs.8,84,800/-</p> <p>[as per payment plan at page 27 of complaint]</p> |
| 16. | Occupation certificate | Not received |
| 17. | Offer of possession | Not offered |

B. Facts of the complaint:

3. The complainant has made the following submissions

1. That the respondent offered for sale units in a commercial complex 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.
- II. That the complainant received a marketing call from the office of respondent in the month of December, 2018 for booking in commercial project of the respondent, 'Baani Centre Point', situated at Sector M1D, Gurugram.
 - III. That the complainant, decided to book a commercial unit in the project of the respondent as the complainant required the same in a time bound manner. The respondent sent an allotment letter along with the payment plan to the complainant on 13.03.2019 and accordingly allotted unit no. FC-25 to the complainant. As per payment plan sent by the respondent, the total sale consideration was to be paid in two instalments, i.e., at the time of booking and at the time of notice of possession. The complainant accordingly at the time of booking made a payment of Rs.1,00,000/- and Rs.7,90,000/-. The respondent issued the receipts dated 13.03.2019 confirming the payment of Rs.8,84,800/- received by it from the complainant.
 - IV. That a copy of the memorandum of understanding was shared by the respondent with the complainant. Vide the said memorandum of understanding, it was proposed that the total sale consideration was Rs.17,57,592/-. Moreover, as per Clause 2 of the said MOU, the respondent promised to pay an assured return of Rs.12,207/- per month to the complainant on the amount received until offer of

possession and Rs.18,129/- per month as guaranteed lease return upon receipt of balance basic sale price thereafter. The said assured return/guaranteed lease return were payable for a period of 36 months starting from 14.03.2019.

- V. That the respondent categorically assured the complainant that she need not worry and that the respondent would complete the project on time and would keep on making payment towards the committed returns and thereafter the lease returns, after the unit was leased out. The complainant was also assured by the respondent that as per Clause 2 of the MOU, it was specifically observed that the offer of possession was to be made by the respondent to the complainant and only thereafter, the respondent would either lease the unit in question or would hand over the possession, subject to the stopping of payment of the assured return amount, if the said offer was made within 3 years period from 14.03.2019. Since the complainant had already parted with a huge amount, she was left with no other option but to accept the terms of the Memorandum. The complainant felt trapped and had no other option but to sign the dotted lines.
- VI. That as per Clause 12 of the MOU, an Agreement to Sell was to be executed between the complainant and the respondent. It was agreed vide the said clause that both the parties would be bound by the terms of the agreement. The complainant vide several telephonic conversations and meetings requested the respondent for execution of the commercial space buyer's agreement in respect of the said unit. However, no satisfactory response was ever received from the respondent. Thereafter, upon receiving several reminders from the complainant, the respondent finally agreed to execute the commercial

space buyer's agreement. A copy of the commercial Space Buyer's Agreement was shared with the complainant on 29.07.2019 which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favoring the respondent and was totally against the interest of the purchaser, including the Complainant herein.

- VII. That the complainant made vocal her objections to the arbitrary and unilateral clauses of the commercial Space buyer's agreement to the respondent. The complainant repeatedly requested the respondent for execution of the commercial space buyer's agreement with balanced terms. However, during such discussions, the respondent summarily rejected the bonafide request of the complainant 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 complainant to forfeit the previous amounts paid by her if further payments are not made. It is pertinent to mention herein that the complainant had made substantial payment before the execution of the agreement. Since the complainant had already parted with a considerable amount of the sale consideration, she was left with no other option but to accept the lopsided and one-sided terms of the commercial space buyer's agreement.
- VIII. That as per clause 7 of the commercial space buyer's agreement, the possession was to be handed over by the respondent to the complainant as per the timeline disclosed by the respondent at the time of registration of the project. As per the information disclosed at the time of registration by the respondent, the due date of the

completion of the project was 30.06.2020. Therefore, the due date of handing over of possession lapsed on the aforesaid date.

- IX. That since the time period to handover the possession stated by the respondent in the commercial space buyer's agreement had lapsed, the complainant requested the respondent telephonically, and by visiting the office of the respondent to update her about the status of the project. The representatives of the respondent assured the complainant that the respondent would keep on making the payment towards the assured return amount and would take all possible efforts to complete the construction and lease the unit in question. It was also categorically informed that if the respondent fails to lease the unit, then the respondent would handover the possession as per the terms of the agreement.
- X. That, in addition, the respondent miserably failed to make the payments towards the assured returns as promised under clause 2 of the MOU from April, 2021. The complainant vide telephonic conversations and by visiting the office of the respondent enquired about the sudden stopping of the payment of assured returns. The respondent tried to cover up its laches by further assuring the complainant that the said unpaid amounts against the assured returns would be adjusted in the further payments. The respondent further categorically assured the complainant that the respondent would comply with its obligations of paying assured returns without any delay or defaults in the future.
- XI. That the respondent vide its letter dated 13.05.2021 intimated the complainant about the discontinuation of the assured returns from 01.04.2021 which were to be payable till 14.03.2022. The said

discontinuation of the assured returns was arbitrary and unilateral and no valid reasoning was ever given by the respondent behind the said discontinuation of the assured returns. It was also assured that respondent would make the payment towards the delayed possession interest as per the prescribed rate as stipulated in the then newly enacted Real Estate (Regulation and Development) Act, 2016. Interestingly, it was mentioned by the complainant in the said letter that the construction of the superstructure of the project was completed and only finishing work was left.

- XII. The respondent has miserably failed to disburse any other amount for the period of last 3 years from the date of disbursal of last amount in April, 2021. Moreover, the respondent has not raised construction within the agreed time frame. There has been virtually no progress and the construction activity is lying suspended since long. The complainant has a strong apprehension that the false claim of completion of the project made by the respondent in its letter dated 13.05.2021 was nothing but a dishonest attempt of the respondent to stop making payment towards the committed returns. It is reasserted that the complainant has made the payment towards the full sale consideration as demanded by the respondent and the respondent has done nothing but has only utilized the hard earned amount of the complainant for its own use and purposes. The fact that no intimation regarding the application for the grant of the occupation certificate was given by the respondent to the complainant speaks about the volume of illegalities and deficiencies on the part of the respondent/promoter. There is an inordinate delay in developing the project well beyond what was promised and assured to the complainant.

- XIII. 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 44 months calculated upto March, 2024 from the date submitted by the respondent during the time of registration and till date the possession of the allotted unit has not been offered by the respondent to the complainant.
- XIV. 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. The respondent was bound to comply with provisions of the Act and the Rules and regulations made thereunder.
- XV. That the respondent has in complete defiance of its obligations refused to hand over the possession to the complainant 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 complainant is 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.
- XVI. That the complainant vide this present complaint is seeking the payment of assured returns from the date of discontinuation of assured returns i.e., 01.04.2021 till the date of handing over of possession. Without prejudice to the rights of the complainant, in case the Authority is of the opinion that the payment of assured returns is to be paid by the respondent to the complainant till the date as specified in the MOU i.e. till 14.03.2022, then complainant seeks the relief of payment of assured returns from 01.04.2021 till 14.03.2022 along with

delayed possession charges to be payable from 14.03.2022 till the date of actual handing over of possession as per Section 18 of the RERA Act, 2016.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):

- i. Direct the respondents to pay the amount of assured return from the date of discontinuation i.e., 01.04.2021 till the date of handing over of possession.
- ii. Direct the respondents to pay assured return from 01.04.2021 till 14.03.2022 along with delayed possession charges to be payable from 14.03.2022 till the date of actual handing over of possession as per Section 18 of the Act, 2016.
- iii. Direct the respondents to handover the possession of the unit after obtaining occupation certificate from the concerned authorities.
- iv. Direct the respondents to execute conveyance deed of the allotted unit in favour of the complainant.
- v. Direct the respondent to not to raise any payment demand in violation of provision of RERA.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:

- I. That the present complaint is not maintainable before this Authority as the relief claimed is fall within the purview of Sections 71 and 72 RERA Act. As per the law laid in *M/S. Newtech Promoters and Anr. V. State of Uttar Pradesh*, the jurisdiction for complaints of demand of compensation and penalty are to be adjudicated by adjudicating officer by this Hon'ble Authority. The complaint deserves dismissal.

- II. 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.
- III. 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.
- IV. 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.
- 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. 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.
- VII. 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.
- VIII. 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.

- IX. 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.
- X. 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.

- XI. 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.

- XII. 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; 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.
- XIII. 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.
- XIV. 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.
- XV. 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 dated 12.11.2020.

- XVI. 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.
- XVII. 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.
- XVIII. 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:

6. 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

7. 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

8. 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.

9. 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.I Objection regarding the project being delayed because of force majeure circumstances.

10. 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.

11. 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."

12. 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'.

13. 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 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 respondents to pay assured return from 01.04.2021 till 14.03.2022 along with delayed possession charges to be payable from 14.03.2022 till the date of actual handing over of possession as per Section 18 of the Act, 2016.
14. In the present complaint, the complainant intend to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which 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."
15. A builder buyer agreement dated 29.07.2019 was executed between the parties. The relevant clause is reproduced below:
- "7. Schedule for possession***
The Promoter shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Authority and towards handing over the Premises alongwith parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017.
16. **Due date of handing over possession and admissibility of grace period:** As per clause 7 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a time schedule for completing the project as disclosed at the time of registration of the project. Therefore, the possession was to be handed over by 30.06.2020.

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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]

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."

18. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. 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%.
19. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 29.07.2019, the possession of the subject unit was to be delivered on or before i.e., 30.06.2020. The respondent has failed to obtain the occupation certificate in respect of the allotted unit of the complainants till date.

G.II Direct the respondents to pay the amount of assured return from the date of discontinuation i.e., 01.04.2021 till the date of handing over of possession.

20. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement read with the addendum to the agreement at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) it was held by the authority that it has no jurisdiction to deal with cases of assured returns. Though in those cases, the issue of assured returns was involved to be paid by the builder to an allottee but at that time, neither the full facts were brought before the authority nor it was argued on behalf of the allottees that on the basis of contractual obligations, the builder is obligated to pay that amount. The authority has rejected the aforesaid objections raised by the respondent in *CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.* wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

21. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra) as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
22. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.
23. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a

regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainants-allottees in terms of the builder buyer agreement read with addendum to the said agreement.

However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

24. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA or an addendum to the BBA. The assured return in this case is payable as per MOU dated 19.02.2019. The rate at which assured return has been committed by the promoter is Rs. 38.63/- per sq. ft. of the super area per month which is more than reasonable in the present circumstances. The relevant clause is reproduced below for ready reference:-

*2. "The first party shall pay to the to the Second party an assured return-cum guaranteed Lease Rent at the rate of ₹38.63/- per sq. ft. (Super Area) i.e.) i.e., ₹12,207/- (Rupees Twelve Thousand Two Hundred Seven) per month on the amount received by the First Party against the Commercial Space(s) allotted to the Second Party until offer of Possession a Assured Return on investment and thereafter ₹57.37/- per sq. ft. (super area) i.e., ₹18,129/- (Rupees Eighteen Thousand One Hundred Twenty Nine) per month as guaranteed Lease Rent upto receipt of balance Basic Sale Price (BSP) along with other charges. Assured Return-cum guaranteed Lease Rent shall be paid by the First party to the Second Party for a total period of **36 months** starting from **14.03.2019***

25. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable a Rs.12,207/- per month whereas the delayed possession charges are

payable approximately Rs. 8,814.40/- per month. By way of assured return, the promoter has assured the allottee that he would be entitled for this specific amount till completion of construction of the said building. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is put on lease. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

26. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
27. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of buyer's agreement along with interest on such unpaid assured return. As per buyer's agreement dated 29.07.2019, the promoter had agreed to pay to the complainant-allottee Rs.38.63/- per sq. ft. from the date of execution of this agreement till offer of possession and Rs.57.37/- sq. ft. per month as guaranteed lease rent upon receipt of BSP along with other charges for a period of 36 months. It is matter of record that the amount of assured return was paid by the respondent promoter till April 2021, but later on,

the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.

28. In the present complaint, OC for the block in which unit of complainant is situated has not been received by the promoter. The Authority is of the view that the construction is deemed to be complete on receipt of occupation certificate from the concerned authority by the respondent promoter for the said project. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.38.63/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., April, 2021 till the offer of possession after obtaining occupation certificate from the competent authority and thereafter, ₹57.37/- per sq. ft. per month as guaranteed lease rent upon receipt of BSP along with other charges for a period of 36 months.
29. The respondent is directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization.

G.III Direct the respondent to execute conveyance deed as per the agreed terms.

30. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the

common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

31. The Authority hereby directs the respondent to execute the conveyance deed in favor of the complainant within 3 months after obtaining the occupation certificate from the competent Authorities.
32. No interest shall be payable by the respondent as well as complainant from 13.10.2020 to 21.07.2022 in view of judgement of Hon'ble Supreme Court wherein this was explicitly instructed to cease any further development in the project.

H. Directions of the authority:

33. 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 the amount of assured return at the agreed rate i.e., @ Rs.38.63/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., April, 2021 till the offer of possession and thereafter, @ Rs.57.37/- per sq. ft. per month as guaranteed lease rent upon receipt of BSP along with other charges for a period of 36 months.
 - ii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date



of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @9.10% p.a. till the date of actual realization.

- iii. The respondent-promoter is directed to execute the registered conveyance deed in favor of the complainant-allottee within 3 months after receipt of occupation certificate from the competent authority.
- iv. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.

34. Complaint stands disposed of.

35. File be consigned to registry.

Dated: 11.04.2025

Arun Kumar
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram