

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

Complaint no. : 4037 of 2024
Order pronounced on: 30.07.2025

1. Sarojini Vats
2. Smriti Vats
3. Yuvika Vats

All R/o: A-702, Winter Hills Apartments,
Sector-77, Gurugram.

Complainants**Versus**

M/s Green Heights Project Pvt. Ltd
Regd. office: 271, Phase-II, Udyog Vihar, Gurugram,
Haryana-122016

Respondent**CORAM:**

Shri Ashok Sangwan

Member**APPEARANCE:**

Vijender Parmar (Advocate)
Harshit Batra (Advocate)

**Complainants
Respondent****ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, the due date of proposed handing over of the possession,
1. and the delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Banni Centre Point"
2.	Location of the project	Sector-M1D, Urban Complex, Village-Nakhnaula, Sector-M-1D, Tehsil-Manesar, Gurugram.
3.	Nature of the project	Commercial Colony
4.	DTCP license no.	59 of 2009 dated-26.10.2009
5.	Registered/not registered	Registered Vide registration no. 187 of 2017 dated-14.09.2017
6.	Provisional allotment letter	01.12.2014 (As on page no. 58 of reply)
7.	Unit no.	FF-106, first floor (As on page no. 58 of reply)
8.	Area of the unit	357 sq.ft. [Super Area] (As on page no. 58 of reply)
9.	Request for change of unit from FF-106 to FF-107	09.12.2014 (As on page no. 59 of complaint)

10.	Death certificate of allottee	02.04.2023 (As on page no. 15 of complaint)
11.	Legal heir certificate	14.12.2023 (As on page no. 18 of complaint)
12.	Commercial Space Buyer's Agreement	Not executed
13.	Possession clause	Not available
14.	Due date of possession	30.03.2018 [Taken from similar project's BBA executed with other allottees]
15.	Sale consideration	Rs.23,20,500/- (Calculated @Rs.6,500 per sq.ft. x 357sq.ft.)
16.	Total amount paid by the complainant	Rs.9,81,598/- (As per receipts issued by the respondent)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Surrender request	09.08.2024 (As on page no. 70 of complaint)

B. Facts of the complaint:

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

1. That Late Sh. Lalit Kumar Vats was the allottee of unit bearing no. FF-107, who unfortunately passed away on 02.04.2023, leaving behind the following legal heirs i.e. Sarojini Vats (wife of Late Sh. Lalit Kumar Vats), Smriti Vats and Yuvika Vats (Daughters of Late Sh. Lalit Kumar Vats),

who are now filing the present complaint on behalf of Late Sh. Lalit Kumar Vats.

- II. That the real estate project named "BAANI CENTRE POINT", is situated at Village Nakhnaula, Sector-M-1D, Gurugram-Manesar, Urban Complex Gurugram, the respondent company had launched the abovementioned project somewhere in the year 2012-2013.
- III. The respondent have issued an Allotment Letter and raised Payment Receipts etc. In the year 2012, the respondent through its marketing executives approached the complainant with an offer to invest and buy a commercial space in the proposed project namely "Baani Centre Point". The complainant, while relying on the representations and warranties of the respondent and believing them to be true, had booked a commercial space for a basic sale price of Rs.23,20,500/- in the project of the respondent.
- IV. That the complainant was one of the successful applicants vide the Application Form dated 29.03.2013 for the allotment of commercial space in the aforementioned project and the complainant was allotted a commercial unit bearing no.FF-106, First Floor, having approx super area of 357 sq.ft. @Rs.6,500 per sq.ft. vide Provisional Allotment Letter dated 01.12.2014. It is pertinent to mention here that the complainant vide letter dated 08.12.2014, requested the respondent to change the commercial unit from FF-106 to FF-107, which was duly changed by the respondent vide letter dated 10.12.2014.
- V. Thereafter, the complainant requested the respondent to allot the promised commercial space and to execute the agreement for the same. However, the respondent ignored all the requests of the complainant and till date has not executed the Buyer's Agreement. This act of the respondent clearly showcases the malafide intent of the respondent to usurp the hard-earned money of the complainant.

- VI. As per clause 2.1 of the Builder Buyer Agreements executed by the respondent for the same project with all the other allottees, the delivery of the flat would be done by a tentative date of 30.09.2017 with a grace period of six (6) months. It is further submitted that the respondent has still not completed the construction of the above said commercial project till date and has failed to hand over the peaceful, vacant and physical possession of the above mentioned unit of the complainant / his legal heirs.
- VII. That the complainant had paid a total of Rs.9,81,598/- towards the sale consideration as on today but the respondent has failed to complete the construction of the commercial unit and deliver the same. Upon the payment of the aforesaid amount, Sh. Lalit Kumar Vats kept following up with the respondent with respect to the status of the construction and date of delivery of the said project. However, the respondent kept providing one or other excuse and did not provide any satisfactory answer in this regard and as a matter of fact the construction of the said project is still not completed and even the occupation certificate has not been obtained even today by the respondent.
- VIII. That the respondent took the hard earned money of the complainant but there was no construction carried out for the said project as per the schedule informed to the complainant and the respondent miserably failed to carry out its part of the obligations as under the Flat Buyers Agreement and the Act, 2016, on the contrary the respondent had sent a unilateral and arbitrary reminders for payment, which proves that the main objective of the respondent was to cheat and defraud the complainant amongst many other such innocent buyers. The respondent was already in receipt of Rs.9,81,598/- of the total sale consideration but had not completed the construction which clearly shows that the respondent had failed to deliver the possession of the

unit and thus, the said act of the respondent amounts to deficiency in service and unfair trade practice on the part of the respondent.

- IX. That the respondent did not adhere to the demand for the refund of the complainants and did not address the said concern of the complainants. On the contrary, the respondent kept trying to illegally extract the hard earned money of the complainant. The respondent has not refunded the amount paid by the complainant despite the demand raised for the same over email dated 09.08.2024.
- X. That the cause of action accrued in favor of the complainant and against the respondent on 30.09.2017 i.e. the due date of delivery of possession and further arose on each and every day when the complainants demanded the refund of amount paid by them towards the said unit and finally arose on 09.08.2024 when the complainants sent an email again to demand the refund of their hard earned money.

C. Relief sought by the complainants :

4. The complainants have sought the following relief(s):
- Direct the respondent to refund the amount of Rs.9,81,598/- paid by the complainants to the respondent in respect of unit alongwith interest at the prescribed rate.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the Respondent:

6. The respondent has made following submissions in the reply:
- That the commercial relationship between the parties revolves around a commercial unit in the project. That upon gaining knowledge of the project, Mr. Lalit Kumar Vats being an investor, sought to apply for a provisional unit in the project.

- II. That the said request of allotment was accepted by the respondent and a unit bearing no. FF-106 tentatively admeasuring 357 sq.ft was allotted to Mr. Lalit Kumar Vats.
- III. After the allotment of the unit, Mr. Lalit Kumar Vats wrote to the respondent requesting the change of location of the unit from FF-106 to FF-107 on 08.12.2014. The said request was accepted and consequently, the change in the unit was reflected in the records of the respondent and the confirmation in this regard was given to Mr. Lalit Kumar Vats.
- IV. Thereafter, a copy of the Buyer's Agreement was sent to Mr. Lalit Kumar Vats , however, due to reasons best known to Mr. Lalit, the signed copy of the Agreement was never returned to the respondent.
- V. Due to Force Majeure the intending seller shall not be held responsible or liable for failure or delay in performing any of its obligation or undertakings, 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.
- VI. 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.

- VII. 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.
- VIII. On 03.10.2023, M/s Paradise requested the DTCP for 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, M/s 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.
- IX. The respondent also sent a letter on 04.04.2024 to the Enforcement Directorate, requesting clearance to the DTCP for the transfer of the license and change of the developer. However, as of now, the clearance is still awaited.
- X. The delay in possession handover was because of the "Zero Period" granted by the Department of Town and Country Planning ("DTCP") Haryana from:
- i. 24.04.2015 to 12.03.2018 and then again from;
 - ii. 23.07.2018 to 21.07.2022

- XI. 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. For the period from 13.03.2018 to 22.07.2018, the handover of possession 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 Corporation ("HSIIDC") approached the Supreme Court for clarification and adjudication in respect of project including others was pending and Supreme Court granted stay and further construction/completion.
- XIII. On the directions of the Supreme Court to check the status of construction as in November 2020, HSIIDC filed an affidavit before Supreme Court, specified that after the order of the Hon'ble Supreme Court on 12.03.2018 no approval was 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.
- XIV. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

7. 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

8. 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 the entire Gurugram District for all purposes 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

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

F. Objection raised by the respondent

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

11. The respondent took a plea that due to force majeure the intending seller shall not be held responsible or liable for failure or delay in performing any of its obligation or undertakings, 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. 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.
12. In this regard, 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. Also, no builder buyer's agreement has been executed between the parties till date. 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. Therefore, in the interest of equity, no interest shall be payable by the complainants 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.1 Direct the respondent to refund the total amount received by the promoter respect of the allotted unit along with interest at the prescribed rate of interest.

13. The allottee i.e., Late Sh. Lalit Kumar Vats was allotted a unit in the project of respondent "Baani Centre Pont" at MID, Urban Complex, Manesar, Gurugram vide allotment letter dated 01.12.2014 for a total sum of Rs.23,20,500/- and he has paid a total sum of Rs.9,81,598/-. The present complaint has been filed by the legal heirs of the allottee, the legal heir certificate and the Death Certificate of the allottee has been placed on record. The complainants intend to withdraw from the project and are seeking refund of the paid-up amount as provided under the 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, —

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

he shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

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."

14. In the present case, no Buyer's Agreement has been executed between the parties till date. The due date of possession is calculated after taking into account the possession clause of the agreements executed between the other allottees of the similar project and the respondent i.e., 30.09.2017, alongwith a grace period of 6 months . Thus, the due date of possession comes out to be 30.03.2018.
15. The occupation certificate of the buildings/towers where allotted unit of the complainants is situated has not been received till date. The complainants are seeking refund of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the buyer's agreement and wished to withdraw from the project.
16. Keeping in view the fact that the allottees/complainants wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
17. However, 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."

18. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). In the present case, the promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

19. **Admissibility of refund at prescribed rate of interest:** The complainants intend to withdraw from the project seeking refund amount on the amount already paid by them in respect of the subject unit at the prescribed rate of interest as provided 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.

20. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rule, 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.

21. 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., 30.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

22. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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—

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 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;"

23. In view of all the facts and circumstances, the promoter is liable to return the amount received by it i.e., Rs. 9,81,598/- with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions issued by the Authority:


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

- I. The respondent is directed to refund the entire amount of Rs. 9,81,598/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. from the date of each payment till the actual date of refund of the deposited amount as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
- II. No interest shall be payable by the 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.
- III. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
- IV. The respondent is further directed to not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of the complainants.

25. Complaint stands disposed of.

26. File be consigned to the Registry.

Dated: 30.07.2025



(Ashok Sangwan)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram