

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

Complaint no. : 6156 of 2024
Date of decision : 12.11.2025

1. Nirmala Kumari
2. Saurabh Juneja
Both R/o- A-35, Floor-1st, Kibithu Homes,
Sector-47, Gurugram-122018.

Complainants

Versus

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

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Garvit Gupta (Advocate)
Harshit Batra (Advocate)

Complainants
Respondent

ORDER

1. This 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 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Baani 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.	Allotment letter	26.07.2018 (As on page no. 29 of complaint)
7.	Office/Shop/Commercial space/Food Court no.	Commercial space no.-L-04. Floor-2 nd (As on page no. 31 of complaint)
8.	Area of the unit	732 sq.ft. [Super Area] 197 sq.ft. [Carpet Area] (As on page no. 31 of complaint)



9.	Memorandum Understanding	of 02.08.2018 (As on page no. 30 of complaint)
10.	Commercial Space Buyer's Agreement	29.07.2019 (As on page no. 39 of complaint)
11.	Possession clause	Clause 7 TIME IS ESSENCE: <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 authority, as the case may be, as [provided under Rule 2(1) (f) of Rules, 2017. [Emphasis supplied]</i> (As on page no. 48 of complaint)
12.	Due date of possession	13.09.2019 (As disclosed at the time of registration of the project)
13.	Assured return clause	Clause 2. <i>That First party shall pay to the Second Party an Assured return-cum-guaranteed Lease rent at the rate of Rs.45/- per sq.ft (Super Area) i.e., Rs.32,940/- (Rupees Thirty Two Thousand Nine Hundred Forty) per month on the amount received by the First Party against the Commercial Space(s) allotted to the Second Party until the offer of Possession as Assured return on investment and thereafter Rs.70/-</i>

		<p>per sq.ft. (Super Area) i.e., Rs.51,240/- (Rupees Fifty One Thousand Two Hundred Forty) per month as guaranteed Lease Rent upon receipt of balance Basic Sale Price (BSP) alongwith 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 27.07.2018.</p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 32 of complaint)</i></p>
14.	Sale consideration	<p>Rs.49,38,804/-</p> <p><i>(As on page no. 32 of complaint)</i></p>
15.	Total amount paid by the complainants	Rs.24,59,520/-
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Intimation for Discontinuance of Assured Returns	<p>13.05.2021</p> <p><i>(As on page no. 69 of complaint)</i></p>

B. Facts of the complaint

3. The complainants have made the following submissions: -

1. That the complainants are simple, law abiding and peace -loving person. The complainants have throughout acted as per the terms of the allotment, rules and regulations and the provisions laid down by land no illegality whatsoever has been committed by them in adhering to the contractual obligations.

- II. That the respondent is a company incorporated under the Companies Act, 1956 having its registered office at the above-mentioned address and existing under the Companies Act, 2013. The respondent is comprised of several clever and shrewd types of persons.
- III. 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.
- IV. That the complainants received a marketing call from the office of respondent in the month of April, 2018 for booking in commercial project of the respondent.
- V. The complainants had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. That the complainants, induced by the assurances and representations made by the respondent, decided to book a commercial unit in the project 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 or the unit would be leased by the respondent.
- VI. That as per the payment plan sent by the respondent, the total sale consideration was to be paid in two instalments:
- i. At the time of booking
 - ii. On offer of possession.
- VII. The complainants accordingly at the time of booking made payment of Rs.24,59,520/- on 26.07.2018. The respondent issued the receipts dated 26.07.2018 confirming the payments of Rs.4,00,000/-, Rs.10,00,000/- and Rs.10,59,520/- received by it from the complainants. Vide allotment letter dated 26.07.2018, the respondent intimated the complainants that a unit bearing no./ L-04 on Second Floor admeasuring Super Area of 732 sq.ft has been allotted to the complainants.
- VIII. That a copy of the MOU was shared by the respondent with the complainants. Vide the said MOU, it was proposed that the total sale consideration of the unit was Rs.49,38,804/- . Moreover, as per Clause 2 of the said MOU, the respondent promised to pay an Assured Return of Rs.32,940/- per month to the complainants on the amount received until the offer of possession and thereafter, an amount of Rs.51,240/- per month was to be paid. The said guaranteed amount was payable starting from 27.07.2018. Eventually, a MOU was executed between the parties on 02.08.2018.
- IX. As per Clause 12 of the MOU, an Agreement to Sell was to be executed between the complainants and the respondent. The complainants

vide several telephonic conversation and meetings requested the respondent for execution of the Commercial Space Buyer's Agreement in respect of the said unit. The Commercial Space Buyer's Agreement was executed between the parties on 29.07.2019. As per Clause 7 of the Commercial Space Buyer's Agreement, the possession of the unit was to be offered as per the timeline disclosed at the time of registration of the project. As per the information disclosed at the time of registration, the due date of completion of the project was 30.06.2020.

- X. That since the due date of handing over the possession had lapsed, and the fact that no intimation regarding the application of Occupation Certificate was given by the respondent speaks about the volume of illegalities and deficiencies on the part of the respondent.
- XI. 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.
- XII. That the complainants have paid a sum of Rs.24,59,520/- out of the total sale consideration of Rs.55,62,951/- (inclusive of taxes). Furthermore, it is evident that the entire demanded amount has already been paid by the complainants and no balance amount remains payable by the complainants.

C. Relief sought by the complainants:

- 4. The complainants have sought following relief(s):
 - i. Direct the respondent to pay the amount of Assured Returns of Rs.32,940/- per month from the date of discontinuance i.e 01.04.2021 till offer of possession along with interest at the

applicable rate and the guaranteed lease rent of Rs.51,240/- per month from final offer of possession along with interest at the applicable rate on the due amount.

- ii. Direct the respondent to pay Delayed Possession Charges from 30.06.2020 till the date of actual offering of possession as per Section 18 of the Act, 2016.
 - iii. Direct the respondent to offer possession of the unit after obtaining the Occupation Certificate from the concerned authorities.
 - iv. Direct the respondent to lease out the unit after obtaining the Occupation certificate from the concerned authorities.
 - v. In case, the respondent is unable to lease out the said unit within 3 months from the date of receipt of OC, then the respondent be directed to demarcate the unit and handover possession for leasing to the complainant.
 - vi. Direct the respondent to execute Conveyance deed of the allotted unit in favour of the complainants.
 - vii. Direct the respondent not to raise any payment demand, in violation of the provisions of the RERA Act, 2016 and /or contrary to the terms of the Agreement.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:



- I. That the request of allotment of the complainants was accepted by the respondent, subject to such terms and conditions as came to be agreed between the parties and hence, the aforementioned provisional unit bearing tentative number LG-04 tentatively admeasuring 197 sq. ft. was allotted.
- II. That thereafter, a Memorandum of Understanding (MOU) was executed between the parties on 02.08.2018. As per the MOU, the assured return was payable for the period of 36 months from the date of 27.07.2018.
- III. That the parties agreed to execute the buyer's agreement to handover the physical possession of the unit and accordingly, the respondent requested for details of allottees for execution of the Buyer's Agreement and sent the BBA to the complainant, and thereafter, a builder buyer agreement was executed on 29.07.2019.
- IV. That from the beginning of the implementation of the project, there have been various intervening circumstances, beyond the control and apprehension of the respondent that have affected this commercial relationship between the parties. For ease of reference all the factors and events having a direct effect on the project have been delineated herein below. For a detailed comprehension, the events having a direct effect on the jural relationship between the parties has been diving into 4 categories:

Category I:	Period between 06.04.2004 and 23.04.2015	The events that transpired under this category show that there was not one event that could have been pre-conceived by the Respondent and neither was there any event / default on part of the Respondent that has led
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		to the subsequent stay and the departmental delays.
Category II:	Period between 24.04.2015 and 13.03.2018 (hereinafter referred to as Zero Period I)	Due to the pendency of the proceedings before the Hon'ble Supreme Court, a stay was affected over the project land, however, permission was granted to Paradise to approach DTCP to seek clarifications qua the applicability of stay over the project in question. During this time, the company was in constant follow up with DT P (enforcement) with respect to grant of necessary permissions concerning the project.
Category III:	Period Between 14.03.2018 and 12.10.2020	After the removal of the stay by the Hon'ble Supreme Court, continuous follow ups were made by the Respondent regarding the grant of pending permissions. The Respondent herein is seeking the grace of this period as the entire time was utilised in following up with the concerned departments.
Category IV:	Period Between 13.10.2020 - 21.07.2022 (hereinafter referred to as the Zero Period II)	The Project was under injunction by the Hon'ble Supreme Court due to an application filed by HSIIDC.
Category V:	Period from 22.07.2022 till Date	The Respondent is seeking the benefit of this period as a grace period from this Id. Authority. The entire list of events ex facie show that the Respondent has been left at the mercy of the competent department and has been entangled in the procedural requirements and departmental delays due to no fault whatsoever on part of the Respondent.

V. That the project land had become a part of certain land acquisition proceedings by the State. The following detailed list of dates,

shows the detailed events that have transpired relating such land acquisition proceedings, within the period falling in the aforesaid categories:

S. No	CATEGORY	DATE	EVENTS
1	CATEGORY I: The events that transpired prior to the effect of the Hon'ble Supreme Court's orders over the Project. This shows the required permissions for the project were obtained in a timely fashion.	06.04.2004	Paradise Systems Pvt. Ltd. purchased 2.681 acres of land in the village Lakhnula by registered sale deeds, hence Paradise Systems Pvt. Ltd. is the landowner of the project in question (hereinafter referred to as " Paradise ")
2		07.04.2024	
2		27.08.2004	A notice was issued by Haryana Govt, industries Department under Section 4 of Land Acquisition Act, 1894 for acquiring land admeasuring 912 acres 7 Marlas from village Manesar, Lakhnula and Naurangpur, Tehsil & Dist Gurugram for setting up Chaudhari Devi Lal Industrial Township. Paradise's Land fell under the above mentioned 912 acres. The land acquisition proceedings were withdrawn by the State Government on 24.08.2007
2		24.08.2007	
3		09.09.2007	Paradise entered into a collaboration agreement with the erstwhile developer - Sunshine Telecom Services Pvt. Ltd. Paradise granted the 'absolute developmental right' of land for construction of commercial office space to Sunshine.
4		20.09.2007	Haryana State Industrial & Infrastructure Development Corporation (hereinafter referred to as the " HSIIDC ") proposed to constitute an Inter Department Committee to submit a report with recommendations regarding issuance of fresh acquisition.



5	26.10.2009	Paradise had obtained license for of land measuring 2.681 acres situated at village Lakhnaula Manesar M1D, from the Town and Country Planning Department, Govt. of Haryana (hereinafter referred to as the "DTCP") vide License No. 59/2009 dated 26.10.2009, being valid up to 25.10.2013. The license was granted for the development of the Project in question.
6	29.01.2010	The report of the interdepartmental committee was submitted and the said report was duly endorsed by HSIIDC. The State Government in Industries and Commerce Department decided to close the acquisition proceedings in view of the recommendations of the Inter Departmental Committee.
7	30.03.2013	Paradise alleged that Sunshine did not adhere to the terms of the collaboration agreement. Paradise claims to have refunded all amounts received by it and annulled that transaction by deed dated 30.03.2013.
8	30.03.2013	Paradise thereafter entered into a collaboration agreement with Green Heights projects Pvt. Ltd. (the Respondent herein) for the development of the Project in question.
9	22.05.2013	The <i>bonafide</i> of the Respondent is evident from the fact that in order to comply with the then applicable guidelines and regulations, the Respondent paid the entire External Development Charges and Internal Development Charges (EDC & IDC) to the DTCP.
10	01.04.2014	Paradise was granted the NOC for Height clearance from the Airports Authority of India.
11	23.07.2014	The building plans for the development of the Project in question were approved by DTCP.





12		17.10.2014	Environment clearance was granted for construction of the commercial project in question.
13		24.04.2015	The said Land became the subject of the proceedings before the Hon'ble Supreme Court in a case titled <i>Rameshwar & Ors. vs. State of Haryana & Ors.</i> bearing Civil Appeal No. 8788 of 2015. The Hon'ble Apex Court, vide its order dated 24.04.2015 in the <i>Rameshwar</i> Case, stayed the construction on the said land with effect from 24.04.2015, which was eventually affected till 12.03.2018. Notably, on 24.04.2015, the Project land, <i>inter alia</i> , became the subject land in the legal proceedings in the <i>Rameshwar</i> Case.
14		27.04.2015	Pursuant to the directions passed by the Apex Court, the DTCP directed all Owners/Developers to stop construction in respect of the entire 912 Acres of land which included our Real Estate Project Baani Center Point vide letter dated 27.04.2015.
15	CATEGORY II: ZERO PERIOD I Due to the pendency of the proceedings before the Hon'ble Supreme Court, a stay was affected over the	21.08.2015	Paradise approached the Hon'ble Supreme Court of India for the clarification of the stay order as to whether order dated 24.04.2015 was applicable to the land and license no. 59 of 2009. Paradise contended that their land was distinct from the land involved in the <i>Rameshwar</i> case. The Hon'ble Supreme Court directed Paradise to seek clarifications from DTCP, designating the DTCP as the appropriate authority to issue orders in the matter.



16	project land, however, permission was granted to Paradise to approach DTCP to seek clarifications qua the applicability of stay over the project in question. During this time the company was in constant follow up with DT P (enforcement) with respect to grant of necessary permissions concerning the project.	25.08.2015 08.01.2016	Paradise approached DTCP on 25.08.2015 for clarification and stated that the land owned by Paradise doesn't fall within the ambit of the Rameshwar case. Paradise had also issued a reminder dated 08.01.2016 to DTCP for the clarification being sought.
17		15.01.2016	In the meanwhile, the permissions and approvals, previously granted qua the project had expired and hence, Paradise had also requested DTCP for renewal of the permissions. Paradise also submitted an application for transfer of license and change in developer, in favour of Green Heights Projects Pvt. Ltd.
18		20.04.2016	That Paradise 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 (hereinafter referred to as the "CBI") 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.
19		13.09.2016 (receiving dated 14.09.2016) 21.10.2016 (receiving dated 25.10.2016) 01.02.2017	Paradise again wrote to DTCP to retrieve the original files from CBI. It was informed that in the writ petition filed seeking retrieval of the original files, directions for handing back of the original files as already passed. It was requested that such retrieval be done and DTCP should process the pending application for renewal and transfer of License and sanction of revised building plans. Due to the non-action part of DTCP,

		(Received on 02.02.2017)	multiple reminders and representations were written by Paradise with a <i>bonafide</i> attempt towards the completion of the project.
20		27.03.2017	Paradise then approached Punjab and Haryana High Court for directions to CBI to handover original files in respect of the project of Green Heights and the High Court by order dated 27.03.2017 noting the handover.
21		09.05.2017	Paradise approached DTCP to issue BR-III for revised building plans stating that the conditions of the in-principle approval have been complied with.
22		07.08.2017	Paradise again approached DTCP to issue BR-III for revised building plans.
23		2015-2017	Despite various efforts and representatives DTCP did not clarify about the status of land and license of Paradise thus the order of the Supreme Court de-facto remained applicable on the said project.
24		14.09.2017	After the implementation of the RERA Act, the Real Estate Project Baani Center Point was registered under RERA Act 2016 and Haryana RERA Rules 2017. The project was registered on 14.09.2017 vide registration no. 187 of 2017.
25		23.10.2017	Paradise wrote to DTCP detailing all the facts and events that have led to the present situation and again requested the DTCP to issue BR-III revised building plans. It was also highlighted that the delay in issuance of BR III is also delaying the service plan estimates and fire



			scheme approvals.
26		27.11.2017	Paradise requested DTCP to consider the period during which the no construction order is in frame, as the cooling period and extend the license accordingly.
27		15.12.2017	DTCP wrote to Paradise that the final approval for sanction of building plans on BR-III will be issued only after the Hon'ble Supreme Court of India removes the restrictions imposed for not raising further construction in the area.
28		12.03.2018	The stay of supreme court was lifted and the project Baani Center Point was not included in tainted projects.
29	CATEGORY III: After the removal of the stay by the Hon'ble Supreme Court, continuous follow ups were made by the Respondent regarding the grant of pending permissions. The Respondent herein is seeking the grace of this	14.03.2018	Paradise wrote to DTCP that the order dated 12.03.2018 has clarified that lands transferred/purchased prior to 24.08.2004 are not governed by the directions being given by Hon'ble Supreme Court which only pertain to lands transferred/purchased between the period from 27.08.2004 till 29.01.2010 only. The land owned by Paradise stands excluded from the dispute as the land was purchased on 06.04.2004 and 07.04.2004. Paradise requested DTCP to consider the period as Zero Period and requested for the renewal of the license and issue BR-III.



30	period as the entire time was utilised in following up with the concerned departments	23.07.2018	Paradise approached DTCP for renewal of license to begin construction which was granted to them on 23.07.2018. That while renewing the license the entire period of 24.04.2015 till 12.03.2018 was exempted as Zero period by DTCP.
31		01.07.2019	The HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 in the matter of Rameshwar & Ors. Vs. State of Haryana & Ors. to include the land of Paradise developed by Green Heights in the award dated 26.08.2007, being Application for Clarification of Final Judgment dated 12.03.2018 passed by the Supreme Court.
32		31.08.2019 13.09.2019	DTCP has passed an order dated 31.08.2019 stating that the renewal and transfer of license of Paradise and approval of revised building plan will be processed only after clarification is given by the Hon'ble Supreme Court on the application filed by HSIIDC. The intimation of this order was received from DTCP vide letter dated 13.09.2019.
33	CATEGORY IV: ZERO PERIOD II	13.10.2020	The Hon'ble Supreme Court through its order dated 13.10.2020 granted injunction on further construction and creating third party rights of projects to the said case including project Baani Center Point.
34	The Project was under injunction by the Hon'ble Supreme Court	21.07.2022	Through the judgment dated 21.07.2022 in <i>Rameshwar Case</i> , the stay on construction was cleared by the Hon'ble

	due to an application filed by HSIIDC		Supreme Court of India with directions to Green Heights for payment of Rs. 13,40,50,000/- (Rupees Thirteen crores forty lakhs and fifty thousand only) as additional cost of land payable to HSIIDC @ Rs. 5 crores per acre. This order was passed by the Hon'ble Supreme Court after considering the development status of the project, amount received from the allottees, and to protect the interest of the allottees.
35	CATEGORY V: The Respondent is seeking the benefit of this period as a grace period from this Id. Authority. The entire list of events ex facie show that the Respondent has been left at the mercy of the competent department and has been entangled in the procedural requirements and departmental delays due to no fault whatsoever on part of the Respondent.	25.07.2022 (Receiving dated 26.07.2022) 04.08.2022 (Receiving dated 05.08.2022)	Paradise approached DTCP to issue BR-III for revised building plans as the land owned by Paradise shall be excluded from the deemed award after depositing a sum of 13,40,50,000/- to HSIIDC. It was highlighted that DTCP had previously (vide its letter dated 15.12.2017) stated that any application of the Project will be processed only after the restrictions imposed by Hon'ble Supreme Court were removed. Due to such acts of DTCP, there had been many delays in getting the necessary permissions. It was intimated that no such restriction is effective now and hence, DTCP was requested to process the following: <ul style="list-style-type: none"> • Renewal of license no. 59 of 2009; • Application dated 07.09.2020 with request to consider the period between 23.07.2018 till 21.07.2022 as cooling / zero period as no approvals were granted; • BR-III for revised building plans which were approved on 22.02.2017 • Grant of approval of transfer of license and change of developer

36	04.08.2022	Green Heights filed an application for extension of the RERA registration under section 7 sub clause 3 dated 04.08.2022 which is awaited.
37	16.11.2022 14.12.2022	In complete compliance of the order passed by the Hon'ble Supreme Court, and with an intent to complete the development of the Project, Green Heights projects Pvt. Ltd. paid the amount ₹ 13,40,50,000/- from its own resources on 16.11.2022 and requested for confirmation of such compliance. HSI IDC wrote to Green Heights confirming the amount 13,40,50,000/- received in HSI IDC account and that Green Heights has complied with the orders of Hon'ble Supreme Court.
38	15.12.2022 (Receiving dated 16.12.2023)	Paradise approached DTCP to issue BR-III for revised building plans as the sum of 13,40,50,000/- was deposited by Green Heights to HSI IDC and now the land was excluded from the deemed award.
39	05.01.2023 (Receiving dated 11.01.2023)	Paradise approached DTCP to process the pending applications for transfer of license.
40	02.09.2023 (Receiving dated	Paradise again approached DTCP to process the pending applications for renewal and transfer of license and



		04.09.2023)	issuance of BR-III.
41		03.10.2023	Paradise vide letter dated 03.10.2023 again approached for renewal of license no. 59 of 2009 and grant of approval for transfer of license and change of developer.
42		17.10.2023 23.10.2023	DTCP renewed the license no.59. of 2009 up to 21.01.2025. DTCP granted Zero Period from 23.07.2018 to 21.07.2022. BR III was also issued.
43		31.10.2023	Paradise vide letter dated 31.10.2023 again approached DTCP for grant of pending approval of transfer of license no. 59 of 2009 and change of developer.
44		20.02.2024 04.04.2024	The Hon'ble Supreme Court had directed the enforcement directorate to inquire about the projects falling within the purview of the subject matter. While following up from DTCP, it came within the knowledge of Green Heights Projects Pvt. Ltd. that DTCP is awaiting clearance from the enforcement directorate before proceeding towards the grant of pending permissions. Taking matters in its own hands, Green Heights Projects Pvt. Ltd. approached the enforcement directorate seeking a closer report.
45		15.04.2024 17.05.2024 (Receiving dated 20.05.2024) 03.06.2024	Paradise has been approaching DTCP, time and again, seeking the issuance of the pending permission for change of developer and transfer of license. Highlighting the urgency of the matter, it was informed that the project has been completed and around 400 customers are awaiting the possession. As part of the proactive approach of the company, Paradise also conveyed DTCP



			of the relevant email ids that need to be addressed while seeking clarifications from the enforcement directorate.
46		26.11.2024	Paradise again wrote to DTCP. It was highlighted that while DTCP allowed the BR III on 26.10.2023 and had also renewed the license, no further approvals were granted. It was highlighted that the project is complete and requested for grant of pending approvals.
47		As on date	The approval for transfer of license and change of developer is pending at the department's end, due to no fault of the Respondent or Paradise.

- VI. That the complainant has prayed for the relief of "Assured Returns", inter alia, on the basis of a Memorandum of Understanding, which is beyond the jurisdiction of the Authority. That from the bare perusal of the Act, it is clear that the said Act provides for three kinds of remedies in case of any dispute between a developer and allottee with respect to the development of the project as per the Agreement for sale. That nowhere in the said provision the Authority has been dressed with jurisdiction to grant "Assured Returns".
- VII. That the payment of assured return is not maintainable before the Authority upon enactment of the Banning of Unregulated Deposits

Schemes Act, 2019 [BUDS Act] wherein, under section 7 'competent authority' shall have the jurisdiction to deal with cases pertaining to the Act. That any direction for payment of assured return shall be tantamount to violation of the provisions of the BUDS Act. It is stated that the assured returns or assured rentals under the said Agreement, clearly attracts the definition of "deposit" and falls under the ambit of "Unregulated Deposit Scheme".

- VIII. That as per clause 2 of the MOU, the respondent was under the obligation to make the payment of assured return cum lease rent for period of 36 months from the date of 05.11.2018. Thus, the obligation of the respondent was up till 05.11.2021. The performance of payment of Assured Return was only when no events beyond the control of the respondent existed. However, the peculiar facts of the present case categorically show that the not only the project was gravely hindered, but also, there was a change in the law, as noted above - with the implementation of the BUDS Act.
- IX. That it is most humbly submitted that the respondent has already paid its complete obligation of assured returns to the complainant till April 2021. The respondent seeks leave of this court to file the assured return proof/ sheet.
- X. That the obligations of payment of the Assured Returns as per the MOU have been rightfully completed. That the MOU was replaced by the BBA on 31.07.2019 and thus all the rights and obligations under the MOU stands discharged. Thereafter, as a bonafide

gesture and the payments of assured returns were continued for some extra time. The same was paid till March 2021, without there being any contractual obligation on part of the respondent, in any manner whatsoever.

- XI. The complainants have failed in noting that the Agreement (BBA) having been novated has superseded the MOU, as is also evident from Clause 37 of the BBA. In any circumstance, whatsoever, the Act does not speak of recognition of multiple agreements for sale of property.
- XII. That the entire project along with other land parcels were entangled with the land acquisition proceedings. However, at every stage and instant, the respondent had, communicated the complainant, of all the updates of the matter. For instance, reference may be given to the letters dated 26.03.2021, 26.07.2022, and 06.12.2022 which show that the respondent had duly informed the complainants about the injunction over the project, the resumption of the construction works, and the imposition of additional fee of 13.4 crore upon the respondent.
- XIII. That the booking of the unit was made in July 2018, i.e., during the implementation of the "Zero Period I", when the matter qua the project land was pending before the Hon'ble Supreme Court. The factum of such pendency before the Hon'ble Supreme Court was in complete public sphere and well within the knowledge of the complainant. It is most vehemently submitted that the complainant was completely aware of the said fact and hence, the

effective due date of 16.06.2029 is absolutely applicable in the present case.

- XIV. That the Builder Buyer Agreement does not specify any due date for possession. In the absence of a stipulated timeline, the standard legal presumption applies, wherein possession is to be handed over within a reasonable period—commonly interpreted as three years from the date of execution of the BBA. Therefore, it is justifiable to calculate the due date of possession as three years from the execution date, aligning with prevailing legal norms and judicial precedents governing real estate transactions and consumer protection.
- XV. That the Hon'ble Supreme Court in the matter titled *Rameshwar & Ors. vs. State of Haryana & Ors.* bearing Civil Appeal No. 8788 of 2015 vide its order dated 24.04.2015 stayed the construction on the project land for the period between 24.04.2015 till 12.03.2018. In lieu of the same, DTCP on 23.07.2018, exempted the period from 24.04.2015 till 12.03.2018 as 'Zero Period I'. That the said period of Zero Period I amounts to a period of 1054 day.
- XVI. That although the project land was freed by the Hon'ble Supreme Court in *Rameshwar (Supra)*, however, HSIIDC filed an application seeking clarification and inclusion of project land in the Award. During this period, the Hon'ble Supreme Court had again effective an injunction on further construction from 13.10.2020. The said application was dismissed with directions of payment of Rs. 13.405 Cr to HSIIDC vide order dated 21.07.2022. Considering all the facts, the DTCP renewed License No. 59 of 2009 up till

21.01.2025 and granted 'Zero Period II' for the period of 23.07.2018 to 21.07.2022. That the said period of Zero Period II amounts to a period of 1460 days. On the addition of Zero Period I, Zero Period II, the total number of days covered under zero period comes out to be 2,514 days i.e. 6 years, 10 months, 3 weeks and 3 days.

XVII. That an amount of Rs.13.4 Cr has already been imposed upon the respondent, which the respondent had rightly and timely, discharged. Only minimal works to ensure the upkeep of the construction already carried prior to imposition of the Supreme Court order were carried out.

XVIII. That apart from the requirement of the permissions, as noted above, the real estate industry faced other force majeure circumstances from 2015 to 2023. Some of which, are detailed hereunder:

S. No	Date of order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped the movement of diesel vehicles more than 10 years old which are commonly

		provide the same to the police and other concerned authorities.			used in construction activity. The order had completely hampered the construction activity.
2.	19.07.2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.		30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	08.11.2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
4.	07.11.2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect		90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the

		from 7 th Nov 2017 till further notice.			absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.
5.	09.11.2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition	09.11.2017 to 17.11.2017	9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during



		of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.			this period.
6.	29.10.2018	Haryana State Pollution Control Board vide Notification HSPC B/MS/2018/2939-52	01.11.2018 to 10.11.2018	11 days	All construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material is used) to remain closed in Delhi and other NCR Districts from November 01.10.2018
7.	24.12.2018	Delhi Pollution Control Committee vide Notification DPCC/PA to MS/2018/7919-7954	24.12.2018 to 26.12.2018	3 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida to remain closed till December, 26 th 2018
8.	01.11.2019	Environment Pollution (Prevention and Control) Authority for National Capital Region vide Direction bearing no. EPCAR/2019/L-53	01.11.2019 to 05.11.2019	6 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida to remain closed till morning of November 5, 2019 (current ban on construction was only 6 PM to 6 AM and this is new extended to be complete banned till Monday,



					November 5, 2019, morning)
9.	24.07.2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
10.	11.10.2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct/ 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11th Oct 2019 to 31st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.



11.	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as " <i>MC Mehta vs. Union of India</i> " completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 to 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
12.	11.10.2019	Commissioner of Municipal Corporation Gurugram issued direction to issue Challan for Construction Activities and lodging of FIR from 11th October to 31st December, 2019 as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019.	11.10.2019 to 31.12.2019	81 days	
13.	02.11.2023 and 05.11.2023	Commission for Air Quality Management in NCR and Adjoining Areas vide Order No. 120017/27/GRAP/2021/CAQM	02.11.2023 to 18.11.2023	17 days	The commission for Air Quality Management in NCR and adjoining areas, vide Direction No. 77 dated 6 th October, 2023, issued statutory direction for implementation of the revised schedule of the Graded Response Action Plan



					<p>(GRAP) with immediate effect as and when orders under GRAP are invoked. The Sub-Committee constituted for invoking actions under the GRAP in its meeting held on 2nd November,2023 comprehensively reviewed the air quality scenario in the region as well as the forecasts for meteorological conditions and air quality index made available by IMD/IITM. Keeping in view the prevailing trend of air quality, in an effort to prevent further deterioration of the air quality, the sub-committee decided that ALL actions as envisaged under stage III of the GRAP -'Severe' Air Quality (DELHIAQI ranging between 401-450) be implemented in right earnest by all the agencies concerned in the NCR, with immediate effect, in addition to the stage I and II</p>
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					actions are already in force. These include: 4. Construction & Demolition activities. In furtherance of the same vide Order dated 05.11.2023 GRAP IV was implemented continuing the ban on construction and demolition activity.
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5. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

The submission of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

6. 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

7. 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) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

8. 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.

F. Findings on the objections raised by the respondent.

F.I. Objection regarding Force Majeure circumstances and Zero Period to be taken into consideration.

9. The respondent took a plea that 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. Hence, there is no fault of the respondent in delayed construction which has been considered by DTCP and the Authority while considering its applications of considering zero

period, renewal of license and extension of registration by the Authority.

10. 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 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 the 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.
11. The Authority is of the view that the pivotal issue arises from the builder's actions during the period between 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 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.

F.II Objection regarding the clause of assured returns stands novated by clause 37 of the Buyer's Agreement and thereby, the complainant does not have any vested rights to seek payment of assured return.

12. The respondent submitted that the Builder Buyer Agreement had expressly supersede/novated/substituted the Memorandum of Understanding (MOU) by virtue of Clause 37 of the Buyer's Agreement. Section-62 of the Indian Contract Act, 1872 expressly recognizes the principle of novation, under which the parties to a contract may by mutual agreement, either substitute a new contract in place of the old one, or rescind, or alter the terms of the subsisting contract. The legal effect of such novation is that the original contract stands discharged in its entirety, and all the rights, obligations and liabilities comes to an end. Thereafter, the substituted contract assumes full legal force and effect, operating independently as a fresh and binding agreement between the parties. Thus, the Builder Buyer Agreement has novated the MOU, and with the execution of the Builder Buyer Agreement, the MOU ceases to exist.

13. The Authority after examining the record of the case, observes that though there is no assured return clause in the BBA executed between the parties and the document relating to the payment of the assured return was the MOU, the respondent made the payment of assured returns for some time, even after the execution of the BBA, but discontinued the payment of the assured returns in the month April 2021. As per the Statement of Accounts dated 05.07.2025, the complainants have paid an amount of Rs.24,59,520/- against the sale consideration of Rs.55,62,951/-. The Authority observes that though Section 62 of Indian Contract Act, 1872 provides for novation of contract but the same is not applicable in the present case. The respondent had continued making the payments of the Assured Returns post the execution of the Buyer's Agreement and it was only vide letter dated 13.05.2021, the respondent intimated the complainant regarding the "*Discontinuation of the Assured Returns*". Thus, implying that even post execution of the Buyer's Agreement, the obligations undertaken by the respondent of payment of the Assured Returns were fulfilled by the respondent and the complainant and the respondent was duly performing the separate agreement (the MOU dated 02.08.2018) and it was only on 13.05.2021 that the respondent sent the letter dated 13.05.2021 regarding "Intimation for Discontinuation of Assured Returns". In the said letter, it is nowhere stated implicitly/explicitly that the Assured Returns are being stopped due to the "Novation of the previous agreement/understanding". The conduct of the respondent itself questions the contention raised by the respondent regarding the novation of the contract.

14. Thus, the objection of the respondent regarding the clause of assured returns stands novated by clause 37 of the Buyer's Agreement and thereby, the complainant does not have any vested rights to seek payment of assured return is hereby denied.

G. Findings on the reliefs sought by the complainants

- G.I Direct the respondent to pay the assured return of Rs.32,940/- per month from the date of discontinuance i.e., 01.04.2021 till offer of possession along with interest at the applicable rate and the guaranteed lease rent of Rs.51,240/- per month from the final offer of possession along with interest at the applicable rate on the due amount.**
- G.II Direct the respondent to pay Delayed Possession Charges from 30.06.2020 till the date of actual offering of possession as per Section 18 of the Act, 2016.**

15. The complainants booked a unit in the project of the respondent and a MOU was executed between the complainants and the respondent on 02.08.2018. The sale consideration of the unit was Rs.49,38,804/- out of which the complainants have paid Rs.24,59,520/-. The complainants in the present complaint seeks relief for the pending assured return from 01.04.2021 till the offer of possession along with interest and thereafter, the guaranteed lease rent of Rs.51,240/- per month from the final offer of possession along with interest. The complainants are seeking the above said assured return on the basis of the Memorandum of Understanding (MOU) dated 02.08.2018.

16. 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 of the Banning of unregulated Deposit

schemes Act, 2019 (herein after referred to as the Act of 2019). But that Act 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. However, the plea of respondent is otherwise and who took a stand that though it paid the amount of assured returns and did not paid after coming into force of the Act of 2019 as it was declared illegal.

17. The M.O.U dated 02.08.2018 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understanding and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case *Neelkamal Realtors Suburban Private*

Limited and Anr. v/s Union of India & Ors., (Writ Petition No. 2737 of 2017) decided on 06.12.2017.

18. It is pleaded on behalf of respondent/builder that after the Banning of Unregulated Deposit Schemes Act of 2019 came into force, there is bar for payment of assured returns to an allottee. But again, the plea taken in this regard is devoid of merit. Section 2(4) of the above mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include:*

- (i) *an amount received in the course of, or for the purpose of business and bearing a genuine connection to such business including*
- (ii) *advance received in connection with consideration of an immovable property, under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*

19. A perusal of the above-mentioned definition of the term 'deposit', shows that it has been given the same meaning as assigned to it under the Companies Act, 2013 and the same provides under section 2(31) includes any receipt by way of deposit or loan or in any other form by a company but does not include such categories of, amount as may be prescribed in consultation with the Reserve Bank of India. Similarly rule 2(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines the meaning of deposit which includes any receipt of money by way of deposit or loan or in any other form by a company but does not include:

- (i) *as an advance, accounted for in any manner whatsoever, received in connection with consideration for on immovable property*

(ii) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

20. So, keeping in view the above-mentioned provisions of the Act of 2019 and the Companies Act 2013, it is to be seen as to whether an allottee is entitled to assured returns in a case where he has deposited substantial amount of sale consideration against the allotment of a unit with the builder at the time of booking or immediately thereafter and as agreed upon between them.
21. The Government of India enacted the Banning of Unregulated Deposit Schemes Act, 2019 to provide for a comprehensive mechanism to ban the unregulated deposit schemes, other than deposits taken in the ordinary course of business and to protect the interest of depositors and for matters connected therewith or incidental thereto as defined in section 2 (4) of the BUDS Act 2019.
22. The money was taken by the builder as 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. 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.
23. 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 2015 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant 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.

24. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings.
25. As per Clause 2 of the Memorandum of Understanding dated 02.08.2018, the respondent undertook to pay Assured Return-cum-**Rs.32,940/-** per month on the amount paid by the complainant **till the offer of possession**. Thereafter, Rs.51,240/- for a total period of **36 months starting from 27.07.2018**.
26. In the present case, the payment of the Assured Return was to be made in two parts:
- Rs.32,940/- per month till the Offer of possession.
 - Rs.51,240/- per month as guaranteed Lease Rent for a total period of 36 months starting 27.07.2018.
27. The respondent has failed to make the payments of the Assured Returns-cum-Guaranteed Lease Rent as per the terms of the MOU. Also, the Occupation Certificate in respect of the said project has not been obtained by the respondent till date and no offer of possession has been made. Thus, the liability of the respondent to pay the Assured

rent amounting to Rs.32,940/- per month is still continuing and the respondent is directed to pay the amount of Rs.32,940/- till the offer of possession, after receiving the Occupation Certificate. Thereafter, the respondent is directed to pay Rs.51,240/- for a period of 36 months as the timeline mentioned in clause 2 of the MOU dated 02.08.2018 has been delayed by the respondent. 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. Also, the respondent is exempted in making the payments of the Assured Return for the period from 13.10.2020 to 21.07.2022.

G.III Direct the respondent to offer possession of the unit after obtaining the Occupation Certificate from the concerned authorities.

G.IV Direct the respondent to lease out the unit after obtaining the Occupation certificate from the concerned authorities.

28. The respondent is directed to offer possession of the unit to the complainant within a period of thirty days after receiving the Occupation certificate from the competent authorities and thereafter,

G.III. Direct the respondent to execute sale deed after completion of the project in favour of the complainants.

29. Under Section-17(1) proviso of the Act, 2016, the respondent/promoter is under an obligation to execute the registered conveyance deed in favour of the allottee/complainant within three months from the date of issue of occupancy certificate. The relevant provision is reproduced below:

"Section 17 . Transfer of title

(1) *the promoter shall execute a registered conveyance deedlocal laws:*

Provided that, in 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 the date of issue of occupancy certificate.

[Emphasis supplied]

30. The Authority hereby directs the respondent to execute the conveyance deed in favour of the complainants within 3 months after obtaining the occupation certificate from the competent authorities.

G.IV Restrain the respondent from entering into lease deed with third party till the completion of the project.

31. The Authority is of the view that since the occupation certificate in respect to the project has not been received and without receiving the occupation certificate, the premises cannot be presumed to be fit for occupation. The respondent is directed to not force the complainants to execute any lease deed prior to obtaining the occupation certificate.

H. Directions of the Authority

36. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to pay the amount of assured return at the agreed rate i.e., Rs.32,940/- per month from the date, the payment of assured return has not been paid i.e., April 2021 till the offer of possession, after receiving the Occupation certificate from the competent authorities and thereafter, an amount of Rs.51,240/- per month as guaranteed lease rent upon receipt of the BSP along with other charges for a total period of 36 months.

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- ii. 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. Also, the respondent is exempted in making the payments of the Assured Return for the period from 13.10.2020 to 21.07.2022.
 - iii. The respondent is directed to pay arrears of accrued assured return as per MoU dated 02.08.2018 till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
 - iv. The respondent is directed to execute the registered conveyance deed in favour of the complainants within 3 months from the date of obtaining the occupation certificate.
 - v. The respondent is directed to not enter into any lease arrangement with any third party before obtaining the occupation certificate from the competent authorities.
 - vi. The respondent shall not charge anything from the complainants which is not the part of the agreement of sale.
37. Complaint stands disposed of.
38. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.11.2025