

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

**Complaint no.:** 5368 of 2024  
**Date of filing:** 05.11.2024  
**Order pronounced on:** 14.11.2025

Rahul Sood

**R/o:** - Chamber no. 32, Block C, District and  
Sessions Court, Gurugram-122001

**Complainant**

Versus

M/s. Green Heights Projects Private Limited.  
**Regd. office:** - N-71, Panchsheel Park,  
New Delhi-110017.

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Garvit Gupta (Advocate)  
Harshit Batra (Advocate)

Complainant  
Respondent

**ORDER**

1. This complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made 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:

S. No.	Particulars	Details
1.	Name of the project	Baani Centre Point, sector M1D, Gurugram
2.	Nature of the project	Commercial Colony
3.	RERA Registered/ not registered	187 of 2017, dated 14.09.2017, valid upto 13.09.2019 (Lapsed project)
4.	License no. and validity	59 of 2009 dated 26.10.2009
	Licensed area	2.681 acres
	License name	M/s Paradise System Private Limited
5.	Unit no.	LG-020, Lower Ground floor [page 34 of complaint]
6.	Unit area admeasuring	479 sq. ft. super area
8.	Date of allotment	01.12.2014 [page 60 of reply]
9.	Date of space buyer's agreement	14.12.2016 [page 29 of complaint]
10	Possession clause	<b>2. Possession</b> <i>THE Possession of the said premises shall be endeavoured to be delivered by the intending seller by 30.09.2017 with a grace period of 6 months beyond this date.</i>
11	Due date of possession	30.03.2018 [as per possession clause]
12	Total sale consideration	Rs.59,83,989/- [as per SOA at page 301 of reply]
13	Amount paid by the complainant	Rs.37,46,000/- [as per SOA at page 301 of reply]
14	Occupation certificate	Not received
15	Offer of possession	Not offered

#### B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint: -
- i. 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. The respondent now does not enjoy good reputation at all and has cheated many innocent people like the complainant.
  - ii. That as per Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the respondent falls under the category of 'promoter' and is bound by the duties and obligations mentioned in the said act and is under territorial jurisdiction Hon'ble Authority.
  - iii. That as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016, the complainant falls under the category of 'allottee' and have rights under the Act.
  - iv. That the respondent offered for sale units in a commercial colony known as 'Bani 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 MID, Gurugram, Haryana. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 59 of 2009 on a land area of about 2.681 acres in Village Lakhnaula, Tehsil Manesar, Gurugram to its associates companies for development of a Commercial Colony in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.
  - v. That the complainant received a marketing call from the office of respondent in the month of February, 2015 for booking in residential project of the respondent, 'Bani Centre Point', situated at Sector MID, Gurugram. The complainant 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. The complainant visited the sales gallery and consulted with the marketing staff of the respondent. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in their project. The marketing staff of the respondent also assured timely delivery of the unit.

- vi. That the complainant, induced by the assurances and representations made by the respondent, decided to book a commercial unit in the project of the respondent as the complainant required the same in a time bound manner for his 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 complainant would be positively handed over within the agreed time frame. The complainant signed several blank and printed papers at the instance of the respondent who obtained the same the ground that the same were required for completing the booking formalities. The complainant was not given chance to read or understand the said documents and he signed and completed the formalities as desired by the respondent. Furthermore, the respondent at the time of booking duly informed the complainant that the payment plan would be 'possession linked'.
- vii. That the complainant had made the payment of Rs. 4,40,000/- at the time of booking on 20.05.2015 and the respondent accordingly had issued an acknowledgment receipt dated 16.07.2015. Vide the said receipt dated 16.07.2015, the Respondent confirmed the allotment of a Shop bearing no. LG-020, admeasuring 479 sq. ft. The unit was sold at the rate of Rs. 8750/- per sq. ft. Hence, the total sale consideration as per the receipt issued by the Respondent was Rs. 52,40,295/-. It is pertinent to mention herein that

- the said allotted unit was located at a prime location and that at the time of booking, it was promised and assured by the respondent to the complainant that the agreement would be executed in a short span of time and the said unit would be handed over to the complainant by 30.09.2017.
- viii. That after the allotment of the unit by the respondent, the respondent raised the demand dated 26.08.2015 towards the instalment against 'within 60 days from the date of booking'. The complainant believing they said payment demand to be correct, paid the demanded amount without any delay paid the said amount. The respondent thereafter raised another payment demand dated 23.10.2015 towards the instalments against 'within 120 days from the date of booking'. The complainant accordingly paid the demanded amount and the respondent accordingly issued receipt dated 08.12.2015 acknowledging the payment of Rs.8,71,000/-.
- ix. Since, the respondent had failed to execute the buyer's agreement with the complainant despite lapse of more than one year from the date of booking, the complainant visited the office of the respondent in the month of January, 2016 to enquire about the construction status and execution of the agreement in question. The complainant was surprised and anguished with the response of respondent who informed the complainant that the execution of the buyer's agreement would take some more time. Since, the complainant had made payment of a substantial amount, the complainant had no other option but to believe the said representations of the respondent.
- x. That after several reminders sent by the complainant in respect of the execution of the buyer's agreement, the respondent intimated the complainant that the construction of the said project was going on in full swing and that the buyer's agreement would be executed by 30th May, 2016.

- xi. That on account of a delay of more than a year in execution of the buyer's agreement, the complainant again sent several reminders and even visited the office of the respondent to enquire about the execution of the said agreement. The representatives of the respondent again assured the complainant that the agreement would be duly executed and further promised the complainant that the possession of the unit would be delivered timely to the complainant. The complainant had paid a substantial sum towards the said unit already and thus had no other option but to believe the representations and promises of the respondent.
- xii. That finally a copy of the buyer's agreement was sent to the complainant which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favoring the respondent and was totally against the interest of the purchaser, including the complainant herein.
- xiii. That it is pertinent to mention herein that while in the case of the complainant making the delay in the payment of instalments, the respondent company is shown to be entitled to charge interest @ 15% per annum, the complainant is shown to be only entitled to an amount calculated at 9% p.a for the period of delay in offering the possession of the unit beyond the period stated by the respondent.
- xiv. That furthermore, the respondent had given itself unlimited and arbitrary powers to amend and modify the plans of the project/unit as per its own whims, fancies and convenience without giving any justification to the complainant or without even seeking any consent from them.
- xv. That the complainant made vocal his objections to the arbitrary and unilateral clauses of the buyer's agreement to the respondent. The complainant repeatedly requested the respondent for execution of the buyer's agreement with balanced terms. However, during such

discussions, the respondent summarily rejected the bonafide request of the complainant and stated that the agreement terms were non-negotiable and would remain as they were. The respondent/ promoter refused to amend or change any term of the pre-printed buyer's agreement and further threatened the complainant to forfeit the previous amounts paid by them if further payments are not made. It is pertinent to mention herein that the complainant had made substantial payment before the execution of the agreement. Since the complainant had already parted with a considerable amount of the sale consideration, he was left with no other option but to accept the lopsided and one-sided terms of the buyer's agreement. Since the complainant had duly paid a huge amount out of his hard-earned money, he felt trapped and had no other option but to sign the dotted lines. hence the buyer's agreement dated 14.12.2016 was executed.

- xvi. That it is pertinent to mention here that despite having made the buyer's agreement dated 14.12.2016 containing terms very much favourable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter has even failed to perform the most fundamental obligation of the agreement which was to handover the possession of the commercial within the promised time frame, which in the present case has been delayed for an extremely long period of time.
- xvii. That the complainant has till date made the payment of Rs.37,46,000/- out of Rs.52,40,295/-strictly as per the terms of the allotment and the possession linked payment plan and no default in making timely payment towards the instalment demands has been committed by the complainant. It is submitted that the respondent/promoter used to only provide a short

time span to make the payment of all the payment demands. Yet, all the payments were made by the complainant without any delay.

- xviii. That since the time period to handover the possession stated by the respondent in the buyer's agreement had lapsed, the complainant requested the respondent telephonically, and by visiting the office of the respondent to update him about the date of handing over of the possession. The representatives of the respondent assured the complainant that the possession of the unit would be handed over to him very shortly as the construction was almost over. The respondent has continuously been misleading the allottees including the complainant by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainant. The respondent/promoter had represented and warranted at the time of booking that it would deliver the commercial unit of the complainant to them in a timely manner. However, the failure of the respondent company has resulted in serious consequences being borne by the complainant.
- xix. There has been virtually no progress and the construction activity are lying suspended since long. It is pertinent to mention herein that the last payment demand 'completion of super structure' was sent by the respondent to the complainant in the year 2018 and the same was paid by the complainant within the time period. The next payment demand as per the terms of the allotment and the construction linked payment plan which was to be raised at the stage of 'on notice of possession' has till date not been issued by the respondent to the complainant because the respondent failed to complete the structure till that stage. It is very important to note that since all the payment demands except the demand to be raised at the time of offer of possession were sent by the respondent to the complainant, then the respondent/promoter should have been in the

condition even otherwise to apply for the grant of the occupation certificate in the year 2018 itself. The fact that no intimation regarding the application for the grant of the occupation certificate was given by the respondent to the complainant speaks about the volume of illegalities and deficiencies on the part of the respondent/promoter. There is inordinate delay in developing the project well beyond what was promised and assured to the complainant. This further shows that the demands which were raised by the respondent didn't correspond to the actual construction status on the site.

- xx. That the respondent has committed various acts of omission and commission by making incorrect and false statements at the time of booking. There is an inordinate delay of 79 months calculated up to November, 2024 and till date the possession of the allotted unit has not been offered by the respondent to the complainant. The non-completion of the project is not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by the respondent/promoter. The respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainant and are unconcerned about the possession of the unit despite repeated assurances.
- xxi. That the respondent has misused and converted to its own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about the timely finishing of the project and delivery of possession of the unit in question to the complainant as per the terms of the buyer's agreement. The respondent has deliberately, mischievously, dishonestly and with malafide motives cheated and

defrauded the complainant. It is unambiguously lucid that no force majeure was involved and that the project has been at standstill since several years. The high headedness of the respondent is an illustration of how the respondent conducts its business which is only to maximize the profits with no concern to the buyers.

- xxii. That the complainant has been duped of his hard-earned money paid to the respondent regarding the commercial unit in question. The complainant requested the respondent to hand over the possession of the allotted unit to him but the respondent has been dilly-dallying the matter. The complainant has been running from pillar to post and has been mentally and financially harassed by the conduct of the respondent.
- xxiii. That the respondent has even failed to renew registration certificate of the project from this Hon'ble Authority and has acted in blatant violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016. The respondent was bound to comply with provisions of the Act and the Rules and Regulations made thereunder. It is, thus clear that the respondent/promoter has been acting not only in contrary to the terms of the agreement which were drafted by the respondent itself but has also on account of its own acts and has reduced the complainant at its mercy wherein and the complainant questions have been left un-answered and the respondent/promoter is continuing with its illegal acts acting strictly in violation of the provisions of the RERA Act, 2016 and Haryana Rules, 2017. It is thus, also clear, that without getting the renewal of the registration certificate done, the Respondent cannot raise or collect any further amount from the Complainant.
- xxiv. That the respondent has violated several provisions of RERA 2016 and Haryana RERA Rules 2017 and is liable for the same. It is submitted that as per Section 18 of the RERA Act, 2016, the respondent/ promoter is liable

to return the amount and to pay compensation to the complainant for delay and failure in handing over of such possession as per the terms and agreement of sale.

- xxv. Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act: Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act."
- xxvi. That the respondent has taken undue advantage of the helplessness of the complainant and has further exploited its dominant position. It would not be out of place to mention that the complainant was always ready and willing to perform their part of the contract. Therefore, it is evident from the entire sequence of events that no illegality or acts can be attributed to the complainant. The Respondent cannot be permitted to take advantage of its own illegal acts.
- xxvii. That the Respondent is enjoying the valuable amount of consideration paid by the Complainant out of her hard-earned money and the Complainant realizing the same demanded refund of the total amount along with interest from the respondent/promoter. But a week ago, the respondent has in complete defiance of its obligations refused to remit the refund of the principal amount along with interest leaving her with no other option but to file the present complaint. Since respondent miserably

failed in its obligations, hence the Complainant is entitled to refund of the amount paid, along with interest at the rate prescribed as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.

- xxviii. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to hand over the possession and finally about a week ago when the respondent refused to refund the amount paid with interest amount and compensation. The complainant reserve her right to approach the appropriate forum to seek compensation.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- i. To Direct the respondent to refund the total amount paid by the complainant along with interest.
  - ii. To Direct the respondent not to terminate the allotment and create third party rights till the time.
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 present complaint has been filed in respect to the real estate project known under the name and style of "Baani Center Point" raising false and frivolous allegations and without considering the peculiar facts and circumstances at hand, the respondent denies each and every allegation raised by the complainant in his complaint, save as otherwise accepted hereunder. That a bare perusal of the complaint shows that the complainant has miserably failed in bringing all the details of the litigation concerning the real estate project in question and affecting the substantive part of the

- issue involved in the present case. That the true and correct facts and circumstances have been reiterated in the present submissions.
- ii. That the commercial relationship between the parties revolves around a commercial unit in the project. That upon gaining knowledge of the project, Mr. Rahul Sood, sought to apply for a provisional unit in the project by submitting an application form dated 20.05.2015. That the terms of the booking were categorically, willingly and voluntarily agreed by Mr. Rahul Sood.
- iii. That the said request of allotment 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-020 tentatively admeasuring 479 sq. ft. was allotted to Mr Madhusudhan Gupta and Mrs. Sangeeta Gupta.
- iv. That thereafter, after the change in the rights over the unit, the respondent sent a copy of a fresh space buyer's agreement to the complainant, however, due to reasons best known to the complainant, the signed copy of the agreement was never returned to the respondent. In such a circumstance, the commercial relationship qua the unit in question has to be in line with the terms of the booking. 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 hereinbelow. For a detailed comprehension, the events having a direct effect on the jural relationship between the parties has been diving into 4 categories:

<b>Category I:</b>	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
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		have been pre-conceived by the Respondent and neither was there any event / default on part of the Respondent that has led to the subsequent stay and the departmental delays.
<b>Category II:</b>	Period between 24.04.2015 and 13.03.2018 (hereinafter referred to as <b>Zero Period I</b> )	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 DTCP (enforcement) with respect to grant of necessary permissions concerning the project.
<b>Category III:</b>	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.
<b>Category IV:</b>	Period Between 13.10.2020 - 21.07.2022 (hereinafter referred to as the <b>Zero Period II</b> )	The Project was under injunction by the Hon'ble Supreme Court due to an application filed by HSIIDC.

<b>Category V:</b>	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.
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- 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	<b>CATEGORY I:</b>  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  07.04.2024	Paradise Systems Pvt. Ltd. purchased 2.681 acres of land in the village Lakhnaula by registered sale deeds, hence Paradise Systems Pvt. Ltd. is the landowner of the project in question (hereinafter referred to as " <b>Paradise</b> ")
2	(This cell is merged with the previous row's category description)	27.08.2004  24.08.2007	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, Lakhnaula 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
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 Lakhnula Manesar MID, 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 <b>Respondent</b> 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.

<p style="text-align: center;">13</p>	<p style="text-align: center;"><b>CATEGORY II:</b></p>	<p style="text-align: center;">24.04.2015</p>	<p>The said Land became the subject of the proceedings before the Hon'ble Supreme Court in a case titled <i>Rameshwar &amp; Ors. vs. State of Haryana &amp; 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.</p> <p>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.</p> <p><i>A copy of the order dated 24.04.2015 passed by the Hon'ble Supreme Court in a case titled Rameshwar &amp; Ors. vs. State of Haryana &amp; Ors. bearing Civil Appeal No. 8788 of 2015 is annexed and marked as Annexure 5.</i></p>
<p style="text-align: center;">14</p>	<p style="text-align: center;">ZERO PERIOD I</p> <p style="text-align: center;">Due to the pendency of the proceedings before the</p>	<p style="text-align: center;">27.04.2015</p>	<p>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.</p> <p><i>A copy of the letter dated 27.04.2015 issued by DTCP directing to stop the construction is</i></p>

	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 DTCP (enforcement) with respect to grant of necessary permissions concerning the project.		<i>annexed and marked as <b>Annexure 6.</b></i>
15		21.08.2015	<p>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 Rameshwar 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.</p> <p><i>A copy of the order dated 21.08.2015 passed by the Hon'ble Supreme Court directed Paradise to seek clarification from DTCP is annexed and marked as <b>Annexure 7.</b></i></p>
16		25.08.2015 08.01.2016	<p>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.</p> <p><i>A copy of the clarification dated 25.08.2015 sought by Paradise from DTCP regarding Project land</i></p>

			<p><i>not being a part of Rameshwar case is annexed and marked as Annexure 8.</i></p>
17		15.01.2016	<p>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.</p>
18		20.04.2016	<p>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.</p> <p><i>A copy of DTCP's Letter dated 20.04.2016 keeping the permissions pending due to non-receipt of</i></p>

			<i>original files is annexed and marked as <b>Annexure 9.</b></i>
19		13.09.2016 (receiving dated 14.09.2016)  21.10.2016 (receiving dated 25.10.2016)  01.02.2017 (Received on 02.02.2017)	<p>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.</p> <p>Due to the non-action part of DTCP, multiple reminders and representations were written by Paradise with a <i>bonafide</i> attempt towards the completion of the project.</p>
20		27.03.2017	<p>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.</p> <p><i>A copy of the order dated 27.03.2017 passed by Punjab and Haryana High Court qua possession of the original files of the affected land is annexed and marked as <b>Annexure 10.</b></i></p>
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.  <i>A copy of the letter dated 27.11.2017 requesting for the grant</i>

			<i>of Zero period is annexed and marked as <b>Annexure 11.</b></i>
27		15.12.2017	<p>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.</p> <p><i>A copy of the letter dated 15.12.2017 by DTCP stating the issuance of BR III only after removal of restrictions by Hon'ble Supreme Court is annexed and marked as <b>Annexure 12.</b></i></p>
28		12.03.2018	<p>The stay of supreme court was lifted and the project Baani Center Point was not included in tainted projects.</p> <p><i>A copy of the order dated 12.03.2018 showing the Baani Center Point is not in tainted projects is annexed and marked as <b>Annexure 13.</b></i></p>
29	<p><b>CATEGORY III:</b></p> <p>After the removal of the stay by the Hon'ble Supreme Court, continuous</p>	14.03.2018	<p>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</p>

	<p>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</p>		<p>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.</p> <p><i>A copy of the letter dated 14.03.2018 by Paradise to DTCP requesting to consider Zero Period I is annexed and marked as <b>Annexure 14.</b></i></p>
30		23.07.2018	<p>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.</p> <p><i>A copy of permission for renewal of license along with grant of zero period between 24.04.2015 till 12.03.2018 is annexed and marked as <b>Annexure 15.</b></i></p>
31		01.07.2019	<p>The HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 in the matter of Rameshwar &amp; Ors. Vs. State of Haryana &amp; 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</p>

			dated 12.03.2018 passed by the Supreme Court.
32		31.08.2019 13.09.2019	<p>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.</p> <p><i>A copy of the cover letter dated 13.09.2019 along with the order dated 31.08.2019 by DTCP noting that pending permissions shall be granted after clarification is given by Supreme Court, is annexed and marked as <b>Annexure 16</b>.</i></p>
33	<p><b>CATEGORY IV:</b></p> <p><b>ZERO PERIOD II</b></p> <p>The Project was under injunction by the Hon'ble Supreme Court due to an application filed by HSIIDC</p>	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		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 Supreme Court of India with directions to Green Heights for payment of Rs. 13,40,50,000/- (Rupees Thirteen crores forty lakhs and fifty

			<p>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.</p> <p><i>A copy of the order dated 21.07.2022 passed by Hon'ble Supreme Court having directions of payment of additional cost of land is annexed and marked as <b>Annexure 17</b>.</i></p>
35	<p><b>CATEGORY V:</b></p> <p>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</p>	<p>25.07.2022 2 (Receiving dated 26.07.2022) 04.08.2022 2 (Receiving dated 05.08.2022)</p>	<p>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:</p> <ul style="list-style-type: none"> <li>• Renewal of license no. 59 of 2009;</li> </ul>

	the procedural requirements and departmental delays due to no fault whatsoever on part of the Respondent.		<ul style="list-style-type: none"> <li>• 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;</li> <li>• BR-III for revised building plans which were approved on 22.02.2017</li> <li>• Grant of approval of transfer of license and change of developer</li> </ul>
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	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.
		14.12.2022	<p>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.</p> <p><i>A copy of the letter dated 16.11.2022 by Green Heights Projects Pvt. Ltd. submitting the payment of 13.4 Cr along with copy of letter dated 14.12.2022 issued by</i></p>

			<i>HSIIDC stating complete compliance by Green Heights Project Pvt. Ltd. of the Hon'ble Supreme Court order are annexed and marked as <b>Annexure 18(Colly)</b></i>
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 HSIIDC 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 04.09.2023)	Paradise again approached DTCP to process the pending applications for renewal and transfer of license and 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.  <i>A copy of the renewed license with the grant of Zero Period II is</i>

			<i>annexed and marked as <b>Annexure 19.</b></i>
43		31.10.2023 3	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 4 04.04.2024 4	<p>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.</p> <p>Taking matters in its own hands, Green Heights Projects Pvt. Ltd. approached the enforcement directorate seeking a closer report.</p> <p><i>Copies of letters dated 20.02.2024 and 04.04.2024 written to the enforcement directorate requesting for a closer report are annexed and marked as <b>Annexure 20.</b></i></p>

45		15.04.202 4  17.05.202 4 (Receiving dated 20.05.202 4)  03.06.202 4	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		26.11.202 4	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  <i>Copies of reminders, representations and letters issued to DTCP in respect to the Project land not being a part of Rameshwar case and constant follow ups with respect to grant of pending permissions dated 08.01.2016, 13.09.2016, 14.09.2016, 21.10.2016, 01.02.2017, 09.05.2017, 07.08.2017, 23.10.2017, 25.07.2022, 04.08.2022, 15.12.2022,</i>

			05.01.2023, 02.09.2023, 31.10.2023, 15.04.2024, 17.05.2024, 03.06.2024, and 26.11.2024 are annexed and marked as <b>Annexure 21</b> .
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 a glimpse of the aforementioned facts and circumstances have shown the various events that have affected the project and the jural relationship between the parties. That the same needs to be duly considered, before reaching to any determination in the present complaint. That on the basis of the aforementioned facts and circumstances, the Respondent most humbly submits that the present Complaint should be dismissed on the basis of the grounds, as mentioned hereinunder.
- vii. That furthermore, as per the contents of the Complaint, the issue at hand arises out of the alleged delayed construction, however, it is most vehemently noted that there has been no effective delay in the present circumstance, the details of which have been noted in the following paragraphs. It is submitted that the entire Project, along with other land parcels, were entangled with the land acquisition proceedings, as noted above. However, at every stage and instant, the Respondent had, communicated to the Complainant 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 Complainant 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.

- viii. That it was not only through such letters but the Respondent company has always been in touch with the purchasers to keep them updated of the construction status and the status of the pending proceedings. That upon gaining knowledge of the same, and being well aware of the continuation of these proceedings, the Complainant had never expressed any disagreement with the same, rather, had been supportive of the diligent efforts being made by the Respondent company. That such act of acceptance by the Complainant amounts to acquiescence by the Complainant over the entire Project and the construction status. That hence, no refund can be sought at this stage on such a ground, over which, acquiescence of the customer has already been noted.
- ix. That a perusal of the Complaint shows that the Complainant has, *malafidely* referred to a clause of an agreement of another investor to note the alleged due date, which, under no circumstance whatsoever, be accepted. That the parties are bound by such terms and conditions that have been specifically agreed between them. No reference to any such term of any agreement of a separate party can be agreed to be binding upon the parties herein. Rather, in order to calculate the due date, three years have to commence from date of execution of buyer's agreement.
- x. That in the present case, Buyer's Agreement was sent to him for execution, however, the same was never returned. That in such a circumstance where no buyer's agreement has been effectively executed between the parties and no specific date has been agreed under the application form; the tentative due date has to be computed as 3 years from the date when the agreement was sent for execution (02.08.2019).
- xi. That at the sake of repetition, it is pertinent to mention herein 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. That 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 days.
- xii. 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.
- xiii. That 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**.
- xiv. That this Hon'ble Authority is bound to grant the benefit of the zero periods, as mentioned above. Reliance is placed upon order dated 28.09.2021 passed by this Hon'ble Authority in **Complaint No. 5267 of 2019 titled as Shri Surinder Kumar Goel vs. M/s Shree Vardhman Buildprop Pvt. Ltd.**, wherein the Hon'ble Authority has allowed exclusion of Zero Period while computing the due date of possession.
- xv. The concept of force majeure is not codified; however, it is of essence to note that even this Ld. Authority considers the period of force majeure even under the Model RERA Agreement. Clause 7.1 of Annexure A of the Haryana Real Estate (Regulation and Development) Rules, 2017 exempts the

Promoter from such charges in cases of delay attributable to *force majeure* events, court orders, or government policies. The imposition of the aforementioned zero periods by the DTCP and Supreme Court orders unequivocally falls within these exemptions, thereby absolving the Respondent from liability for delayed possession charges. Given the recognition of *force majeure* as a valid exemption under Section 18 and Rule 8, the Respondent maintains that they are not liable for delayed possession charges.

- xvi. That the doctrine of *force majeure* also revolves around the doctrine of frustration of contract which is affected by the impossibility of performance of a contract that is not anticipated at the time of entering of the contract. The doctrine can be traced from section 56 of the Indian Contract Act, 1872. For the purposes of the present situation and has also been time and again held by various courts, such frustration does not mean physical or literal impossibility - rather, it means to include the impracticality in performance. The Supreme Court had interpreted the concept of 'force majeure', in **Satyabrata Ghose v. Mugneeram Bangur & Co. 1954 SCR 310**, under Section 56 of the Contract Act. The Supreme Court in this case held that the word "*impossible*" 'has not been used here in the sense of physical or literal impossibility'. The determination of whether a 'force majeure' event has actually occurred, does not centre around its impossibility alone - a mere 'impracticality of performance', will also suffice. When an 'untoward event' or 'unanticipated change of circumstance' changes the very foundation of the contract between the parties, this event will be considered a 'force majeure' and the contract therefore impossible to perform.
- xvii. That hence, the ambit of *force majeure*, i.e., the unanticipated Zero periods, orders of the Hon'ble Supreme Court and delays by various authorities have

- acted as events of force majeure and hence, the benefit of such periods should be rightly allowed.
- xviii. Hence, adding such time period (2514 days) to the tentative due date (21.02.2023), the date comes out to be **09.07.2029**, that the said date has not been crossed yet and hence the complaint filed by the Complainant is **pre-mature**. That the section 18 (1)(b) of the Act allows that the relief of delayed possession charges or refund arises only in case of failure of the promoter to deliver the Project/Unit in accordance with the promised timelines.
- xix. That the booking of the Unit was made in 2015 and the letter was execution of BBA was send in 2017 and 2019, 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. That the factum of such pendency before the Hon'ble Supreme Court was in complete public sphere and well within the knowledge of the Complainant. That it was with such knowledge that the booking of the Unit was made.
- xx. That while the fact of such pendency of matter before the Hon'ble Supreme Court was duly made by the Respondent, additionally, the doctrine of constructive notice is applicable in the present case and there is no reason for denial of knowledge of such facts, which the Complainant is deemed to have the knowledge of. That the said doctrine makes the parties aware of information contained in the publicly available documents. That moreover, the Respondent has continued to keep the Complainant informed of the status of the Project, as is evident from letters dated 26.06.2021, 26.07.2022, and 06.12.2022.
- xxi. 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:

<i>S. No.</i>	<i>Date of order</i>	<i>Directions</i>	<i>Period of Restriction</i>	<i>Days affected</i>	<i>Comments</i>
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 provide the same to the police and other concerned authorities.	7 <sup>th</sup> of April, 2015 to 6 <sup>th</sup> 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 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.		<b>30 days</b>	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	8 <sup>th</sup> Nov, 2016 to 15 <sup>th</sup> Nov, 2016	<b>7 days</b>	The bar imposed by Tribunal was absolute. The order had completely

		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.		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 from 7 <sup>th</sup> Nov 2017 till further notice.	<b>90 days</b>	The bar for the closure of stone crushers simply put an end to the construction activity as in the 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

					<p>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<sup>st</sup> Dec, 19 and 30<sup>th</sup> Jan, 20.</p>
5.	09.11.2017	National Green Tribunal has passed the said order dated 9 <sup>th</sup> Nov, 2017 completely prohibiting the carrying on of construction by any	<b>09.11.2017 to 17.11.2017</b>	<b>9 days</b>	On account of passing of the aforesaid order, no construction activity could have

		person, private, or government authority in NCR till the next date of hearing. (17 <sup>th</sup> of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 <sup>th</sup> Nov, 17 was vacated vide order dated 17 <sup>th</sup> Nov, 17.			been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during 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 Deihi and other NCR Districts from November 01.10.2018

7.	24.12.2 018	Delhi Pollution Control Committee vide Notification DPCC/PA to MS/2018/7919-7954	24.12.2 018 to 26.12.2 018	3 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida to remain closed till December, 26 <sup>th</sup> 2018
8.	01.11.2 019	Environment Pollution (Prevention and Control) Authority for National Capital Region vide Direction bearing no. EPCAR/2019/L-53	01.11.2 019 to 05.11.2 019	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 relating to the cost of restoration.		<b>30 days</b>	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
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					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 <sup>th</sup> of Oct 2019 whereby the construction activity has been prohibited from 11 <sup>th</sup> Oct/ 2019 to 31 <sup>st</sup> Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 <sup>th</sup> Oct 2019 to 31 <sup>st</sup> 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 "MC Mehta vs. Union of India" completely banned all	04.11.2019 to 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/state s/villages creating an

		<p>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.</p>			<p>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.</p>
12.	11.10.2019	<p>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.</p>	11.10.2019 to 31.12.2019	81 days	

13.	02.11.2 023 and 05.11.2 023	Commission for Air Quality Management in NCR and Adjoining Areas vide Order No. 120017/27/GRAP/20 21/CAQM	<b>02.11.2</b> <b>023 to</b> <b>18.11.2</b> <b>023</b>	<b>17</b> <b>days</b>	The commission for Air Quality Managemen t in NCR and adjoining areas, vide Direction No. 77 dated 6 <sup>th</sup> October 202 3, issued statutory direction for implementat ion of the revised schedule of the Graded Response Action Plan (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, 2 023
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					<p>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</p>
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				<p>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 actions are already in force. These include:</p> <p>4. Construction &amp; Demolition activities.</p> <p>In furtherance of the same vide Order dated 05.11.2023 GRAP IV was implemented continuing the ban on construction and</p>
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					demolition activity.
14.				497 days	

- xxii. That all these circumstances come within the meaning and ambit of the force majeure circumstances and the benefit of the same need to be rightly given. That from the facts indicated above, it is comprehensively established that a period of 497 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of Orders by the statutory authorities and the Covid-19 pandemic. That the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide Order/Direction dated 26th of May, 2020 on account of 1st wave of COVID-19 Pandemic. It is pertinent to mention herein that the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula had decided to grant extension of 3 months in addition to waiver granted during first wave of COVID Pandemic from 1st of April 2021 to 30th of June 2021 considering the 2nd wave of COVID-19 as a Force Majeure event.
- xxiii. Without prejudice it is stated that since the Complaint is pre-mature refund, if any, should only be allowed post-deduction of Earnest Money plus, statutory dues, taxes, and brokerage, if any due as per the terms of the Buyer's Agreement, RERA Act, 2017 r/w HRERA Rules, 2017. That as per Model Agreement provided in the HRERA Rules, 2017 in event the allottee proposes to cancel or withdraw from the project without any fault of the promoter, the promoter shall be entitled to forfeit the booking amount and interest component on delayed payment. Hence, on the basis of the above, no case of refund can be made out and the Complaint needs to be dismissed.

xxiv. That it is a well-established principle of contractual interpretation that not all failures to perform obligations under a contract amount to a 'default' warranting the imposition of penalties such as interest, especially when such failure is attributable to force majeure events. In this case the Respondent asserts that the inability to meet the contractual obligations was directly caused by a force majeure event, referred to as the Zero Periods.

7. 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:**

8. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection 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**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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

**Section 11(4)(a)**

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

**Section 34-Functions of the Authority:**

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

**F. Findings on the relief sought by the complainant.**

**F.I. To Direct the respondent to refund the total amount paid by the complainant along with interest.**

**F.II. To Direct the respondent not to terminate the allotment and create third party rights till the time.**

12. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

13. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest from the date of payment until realization under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference:

***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 to 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."*

*(Emphasis supplied)*

14. Admissibility of refund along with prescribed rate of interest: The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottees intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate 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 subsections (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.*

15. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
16. 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., 14.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
17. On consideration of documents available on record as well as submissions made by the parties, the authority is satisfied that in terms of the buyer's agreement executed between the parties on 14.12.2016, the possession of the subject flat was to be delivered by 30.09.2017 with grace period of 6 months.

Therefore, the due date of handing over of possession was 30.03.2018. Now the complainant after lapse of due date of possession has filed the present complaint seeking refund of the paid-up amount along with interest.

18. It is pertinent to mention over here that even after a passage of more than 8 years neither the occupation certificate is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that till date the respondent has not obtained occupation certificate/part occupation certificate from the competent authority. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

19. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019**, decided on 11.01.2021.

*"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

20. Further, the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.** (supra) reiterated in case of **M/s Sana Realtors Private Limited & other Vs**

**Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. observed 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."*

21. 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). The promoter has failed to complete or is 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.

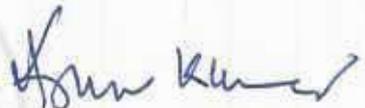
**G. Directions of the authority**

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

- i. The respondent is directed to refund the paid-up amount i.e. Rs. 37,46,000/- received by it from the complainant against the allotted unit along with interest at the prescribed rate of 10.85% per annum from the date of deposit till its realization.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is directed not to create third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.
23. Complaint stands disposed of.
24. File be consigned to registry.

**Dated: 14.11.2025**



**(Arun Kumar)**  
Chairman  
Haryana Real Estate  
Regulatory Authority,  
Gurugram