

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

Complaint no. : 3944 of 2024
Date of decision : 10.10.2025

Raj Kumar
R/o- Flat-78, Meghdoot apartments,
Sector 10A, Gurgaon-122006.

Complainant

Versus

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

Respondent

CORAM:
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:

Sr. No.	Particulars	Details
1.	Name of the project	"Banni Centre Point"
2.	Location of the project	Sector-M1D, Urban Complex, Village-Nakhnaula, Sector-M-1D, Tehsil-Manesar, Gurugram.
3.	Nature of the project	Commercial Colony
4.	DTCP license no.	59 of 2009 dated-26.10.2009
5.	Registered/not registered	Registered Vide registration no. 187 of 2017 dated-14.09.2017
6.	Allotment letter	22.04.2019 (As on page no. 26 of complaint)
7.	Office/Shop/Commercial space/Food Court no.	FC-12B, Second Floor (As on page no. 26 of complaint)
8.	Area of the unit	316 sq. ft. [Super Area] (As on page no. 29 of complaint)
9.	M.O.U	13.05.2019 (As on page no. 33 of complaint)
10.	Assured return clause	2. <i>The First Party shall pay to the Second party an Assured Return-cum-guaranteed Lease Rent at the rate of Rs.29 per sq. ft (Super Area) i.e., Rs.9,164/- per month on the amount received by the First Party against the Commercial Space allotted to the Second party until offer of possession as Assured Return on investment and thereafter, Rs.61 per sq. ft. (super area) i.e., Rs.19,276/- per month as guaranteed Lease Rent. 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 24.04.2019.</i>

		[Emphasis supplied]
11.	Commercial Space Buyer's Agreement	06.08.2019 (page 42 of complaint)
12.	Possession clause	7. Possession <i>The Promoter shall abide by the time schedule for completing the project as disclosed at the time of registration of the project with the Authority and towards handing over the Premises along with 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.</i>
13.	Due date of possession	13.09.2019 (disclosed at the time of registration)
14.	Sale consideration	Rs.27,52,992/- (As on page no. 35 of complaint)
15.	Total amount paid by the complainant	Rs.14,42,224/- (as per payment plan on page 27 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -
 - i. That the respondent offered for sale units in a commercial complex 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 M1D, Gurugram, Haryana. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 59 of 2009 on a land area of about 2.681 acres in Village Lakhnaula, Tehsil Manesar, Gurugram to its associates companies for development of a commercial colony in accordance

- with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.
- ii. That the complainant received a marketing call from the office of respondent in the month of December, 2018 for booking in commercial project of the respondent, 'Baani Centre Point', situated at Sector M1D, Gurugram. 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 that either the unit would eventually be leased by the respondent itself within 3 years.
 - iii. 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. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the unit would be leased by the respondent after initial payment of assured return by the respondent to the complainant.
 - iv. That the complainant made the payment of advance amount of Rs. 2,00,000/- to the respondent and the respondent issued receipt dated 04.04.2019 acknowledging the receipt of the said amount. The respondent sent an allotment letter along with the payment plan to the complainant on 22.04.2019 and accordingly allotted unit no. FC-12B to the complainant. As per payment plan sent by the respondent,

the total sale consideration was to be paid in two instalments, i.e., at the time of booking and at the time of notice of possession. The complainant accordingly at the time of booking made a payment of Rs 50,000/-, Rs.51,000/-, Rs. 99,000/-, Rs. 7,25,000/- and Rs. 5,17,224/-. The respondent issued the receipts dated 22.04.2019 confirming the payment of the said amount received by it from the complainant.

- v. That a copy of the memorandum of understanding was shared by the respondent with the complainant. Vide the said memorandum of understanding, it was proposed that the total sale consideration was Rs. 27,52,992/-. Moreover, as per clause 2 of the said MOU, the respondent promised to pay an assured return of Rs 9,164/- per month to the complainant on the amount received until offer of possession and Rs. 19,276/- per month as guaranteed lease return upon receipt of balance basic sale price thereafter. The said assured return/guaranteed lease return were payable for a period of 36 months starting from 22.04.2019.
- vi. 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 adhering to the terms of the commercial space 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.

- vii. 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 complete the construction and make payment towards the assured rent, delayed possession charges and the lease rent but the respondent has been dilly-dallying the matter. The complainant has been running from pillar to post and have been mentally and financially harassed by the conduct of the respondent. It is pertinent to mention here that the respondent has unilaterally discontinued the payments of assured returns without any proper reasoning and has deprived the complainant of his right of assured returns and lease rent as per clause 2 of the MOU.
- viii. 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's 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.
- ix. That it is submitted that the project is an ongoing project and hence falls under the first proviso to Section 3(1) of RERA 2016. The

Complainant believes that no occupation and completion certificate has been issued for the project in question till date and hence this project falls clearly under the jurisdiction of this Hon'ble Authority. The respondent in utter disregard of its responsibilities has left the complainant in the lurch and the complainant has been forced to chase the respondent for seeking relief.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. To pay the amount of assured returns from the date of discontinuation i.e. 01.04.2021 till the date of handing over of possession.
 - ii. Without prejudice to the rights of the complainant, in case the Hon'ble Authority is of the opinion that the payment of assured returns is to be paid by the respondent to the complainant till the date as specified in the MOU i.e. till 14.03.2022, then complainant seeks the relief of payment of assured returns from 01.04.2021 till 14.03.2022 along with delayed possession charges to be payable from 14.03.2022 till the date of actual handing over of possession as per Section 18 of the RERA Act, 2016.
 - iii. To handover the possession of the unit, in a habitable state, after obtaining the Occupation Certificate from the concerned authorities.
 - iv. To execute the conveyance deed of the allotted unit in favour of the complainant.
 - v. To not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the agreement.
 - vi. Pass an order imposing penalty on the builder on account of various defaults and illegalities under RERA Act, 2016 and the same be ordered to be paid to the complainant.

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 commercial relationship between the parties revolves around a commercial unit in the project. That upon gaining knowledge of the Project, the complainant being an investor, sought to apply for a provisional unit in the Project by submitting an application form dated 22-04-2019. That the terms of the booking were categorically, willingly and voluntarily agreed by the complainant.
- II. 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 FC-128 tentatively admeasuring 316 sq. ft. was allotted.
- III. That thereafter, a Memorandum of Understanding was executed between the parties on 13-05-2019. As per the MOU, the assured return was payable for the period of 36 months from the date of 22-04-2019.
- IV. That thereafter, 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 then a builder buyer agreement was executed between the parties on 06-08-2019.

V. 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 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	The Project was under injunction by the Hon'ble Supreme Court due to an application filed by HSIIDC.

	referred to as the Zero Period II)	
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.

VI. 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	
		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, 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
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 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 Case</i> , 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 Case</i> .
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 Bani 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 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	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 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.
16		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

	concerning the project.		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 (Received on 02.02 .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, 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	<p>CATEGORY III:</p> <p>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.</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 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>
30	<p>The Respondent herein is seeking the grace of this period as the entire time was utilised in following up with the concerned departments</p>	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>
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 & 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.</p>

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 due to an application filed by HSIIDC	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 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	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



	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.		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. HSIIDC wrote to Green Heights confirming the amount 13,40,50,000/- received in HSIIDC 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 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.
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	<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>

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.

- VII. 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".

- VIII. That the payment of assured return is not maintainable before the Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019 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".
- IX. 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 22-04-2019. Thus, the obligation of the respondent was up till 22.04.2022. 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.
- X. 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.
- XI. That in accordance with the above stated events, directly affecting the respondent, the respondent informed the complainant vide letter dated 13.05.2021. That further, the complainant was again

informed about the discontinuance of the assured return. That once the contract obligations are completed. That there is no inherent power of the Ld. Authority which allows it to re-write the terms of the commercial relationship between the parties.

- XII. That at the outset, 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 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 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.
- XIII. 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, Ms. Poonam Sharma had never expressed any disagreement with the same, rather, had been supportive of the diligent efforts being made by the respondent.
- XIV. 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.

- XV. 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.
- XVI. 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.
- XVII. 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 provide the same to the police and other concerned authorities.	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 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	8 th Nov, 2016 to	7 days	The bar imposed by Tribunal was

		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.	15 th Nov, 2016		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 from 7 th Nov 2017 till further notice.		90 days	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 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.	09.11.20 17	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 of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.	09.11.20 17 to 17.11.20 17	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 this period.
6.	29.10.20 18	Haryana State Pollution Control Board vide Notification HSPC B/MS/2018/2939-52	01.11.20 18 to 10.11.20 18	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.	24.12.20 18	Delhi Pollution Control Committee vide Notification DPCC/PA to MS/2018/7919-7954	24.12.20 18 to 26.12.20 18	3 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida to remain closed till December, 26 th 2018
8.	01.11.20 19	Environment Pollution (Prevention and Control) Authority for National	01.11.20 19 to	6 days	Construction activities in Delhi, Faridabad,

		Capital Region vide Direction bearing no. EPCAR/2019/L-53	05.11.2019		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 now extended to be complete 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	11th Oct 2019 to 31st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction

		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.			activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
11.	04.11.20 19	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 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.	04.11.20 19 to 14.02.20 20	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.	11.10.20 19	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.	11.10.20 19 to 31.12.20 19	81 days	
13.	02.11.20 23 and 05.11.20 23	Commission for Air Quality Management in NCR and Adjoining Areas vide Order No.	02.11.20 23 to 18.11.20 23	17 days	The commission for Air Quality Management in NCR and adjoining areas, vide Direction No.

		120017/27/GRAP/2021/ CAQM	<p>77 dated 6th October,2023, issued statutory direction for implementation 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,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</p>
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				<p>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 & 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 demolition activity.</p>
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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.

G. Findings on the reliefs sought by the complainant:

- G.I To pay the amount of Assured Returns from the date of discontinuation i.e. 01.04.2021 till the date of handing over of possession.**
- G.II Without prejudice to the rights of the Complainant, in case the Hon'ble Authority is of the opinion that the payment of Assured Returns is to be paid by the Respondent to the Complainant till the date as specified in the MOU i.e. till 14.03.2022, then complainant seeks the relief of payment of assured returns from 01.04.2021 till 14.03.2022 along with Delayed possession charges to be payable from 14.03.2022 till the date of actual handing over of possession as per Section 18 of the RERA Act, 2016.**
12. The complainant booked a unit in the project of the respondent and a MOU was executed between the complainant and the respondent on 13.05.2019. The sale consideration of the unit was Rs.27,52,992/- out of which the complainant has paid Rs.14,42,224/-. The complainant 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.19,276/- per month from the final offer of possession along with interest. The complainant is seeking the above said assured return on the basis of the Memorandum of Understanding (MOU) dated 13.05.2019.
13. 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 pay after coming into force of the Act of 2019 as it was declared illegal.

14. The M.O.U dated 13.05.2019 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.
15. 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.*

16. 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;*

17. 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.
18. 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.
 19. 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.
 20. 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 latter from the former against the immovable property to be transferred to the allottee later on.
 21. 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.
22. As per Clause 2 of the Memorandum of Understanding dated 13.05.2019, the respondent undertook to pay Assured Return-cum-**Rs.9,164/-** per month on the amount paid by the complainant **till the offer of possession**. Thereafter, Rs.19,276/- for a total period of **36 months starting from 22.04.2019**.
23. In the present case, the payment of the Assured Return was to be made in two parts:
- Rs.9,164/- per month till the Offer of possession.
 - Rs.19,276/- per month as guaranteed Lease Rent for a total period of 36 months starting 22.04.2019.
24. 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.9,164/- per month is still continuing and the respondent is directed to pay the amount of Rs.9,164/- till the offer of possession, after receiving the Occupation Certificate. Thereafter, the respondent is directed to pay guaranteed lease rent Rs.19,276/- for a period of 36 months as the timeline mentioned in clause 2 of the MOU dated 13.05.2019 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.II Delay possession charge.

25. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

26. Clause 7 of the space buyer's agreement provides for handing over of possession and is reproduced below for ready reference:

7. Possession

The Promoter shall abide by **the time schedule for completing the project as disclosed at the time of registration of the project** with the Authority and towards handing over the Premises along with 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)

27. The due date of possession as per clause 7 of the space buyer's agreement is to be calculated as disclosed at the time of registration of the project. Therefore, the due date of possession comes out to be 13.09.2019.

28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been

prescribed under rule 15 of the rules. Rule 15 has been reproduced as under: -

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

29. 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.
30. 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., 10.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
31. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. — For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is*

refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
33. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be completed within a stipulated time i.e., by 13.09.2019. it is important to note that till date no occupation certificate has been received by the respondent. However, the respondent has failed to pay the assured return and delay possession charge till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement/MoU.
34. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
35. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the BBA or in the MoU. The assured return in this case is payable as per "MoU". The rate at which assured return has been committed by the promoter is Rs.9,164/- .p.m. on the total amount received till possession is offered to the complainant. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the delay possession charges are much better i.e., delayed

possession charges in this case are payable at Rs.13,040/- p.m. on the total amount received till possession is offered to the complainant whereas the assured return is payable Rs.9,164/- per month. The purpose of assured return even after completion of the building is served on payment of delayed possession charges after due date of possession as the same is to safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

36. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. Occupation certificate has not been granted by the concerned authority till date. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the physical possession within the stipulated period.
37. Accordingly, the non-compliance of the mandate contained in in Section 11(4) (a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at prescribed rate of the interest @ 10.85 % p.a. till the date of offer of possession plus 2 months after obtaining the occupation certificate or actual handover, whichever is earlier as per provisions of Section 18(1) of the Act read with rule 15 of the rules.
38. Further, the Authority declines to order payment of any amount on account of assured return as their interest has been protected by

granting delayed possession charges from due date of delivery till date of final offer of possession.

G.III To Handover the possession of the unit, in a habitable state, after obtaining the occupation certificate from the concerned Authority.

39. It is a matter of fact that till not no occupation certificate has been obtained by the respondent. Therefore, the respondent is directed to handover the possession of the subject unit after obtaining occupation certificate from the competent Authority.

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

40. 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]

41. 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.V To not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the Agreement.

42. The respondent is directed not to charge anything, which is not part of commercial space buyer agreement.

G.VI Pass an order imposing penalty on the builder on account of various defaults and illegalities under Rera Act, 2016 and the same be ordered to be paid to the complainant.

43. The above said relief was not pressed by the complainant counsel during the arguments in the course of hearing. Also, the complainant failed to provide or describe any information related to the above-mentioned relief sought. The authority is of the view that the complainant counsel does not intend to peruse the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above-mentioned relief.

H. Directions of the Authority

44. 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/promoter is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 13.09.2019 till expiry of 2 months from the date of offer of possession or actual handover, whichever is earlier as per section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*.
- 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 execute the registered conveyance deed in favour of the complainants within 3 months from the date of obtaining the occupation certificate.
- iv. The respondent shall not charge anything from the complainants which is not the part of the agreement of sale.
45. Complaint stands disposed of.
46. File be consigned to registry.



Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 10.10.2025

HARERA
GURUGRAM