

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

Order pronounced on: 07.04.2026

NAME OF THE BUILDER			M/s Green Heights Pvt. Ltd.
PROJECT NAME: <b>Bani City Centre</b>			<b>APPEARANCE</b>
1	CR/4960/2024	Renu Nagpal Vs. Green Height Projects Private Limited	Advocate Garvit Gupta <b>(Complainant)</b> Advocate Harshit Batra <b>(Respondent)</b>
2	CR/4961/2024	Kamal Nagpal Vs. Green Height Projects	Advocate Garvit Gupta <b>(Complainant)</b> Advocate Harshit Batra <b>(Respondent)</b>
3	CR/5098/2024	Mamta Yadav and Hemendra Prasad Yadav Vs. Green Height Projects Private Limited	Advocate Garvit Gupta <b>(Complainant)</b> Advocate Harshit Batra <b>(Respondent)</b>

**CORAM:**Shri Arun Kumar  
Shri Phool Singh SainiChairman  
Member**ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects,

namely, 'Bani Centre Point' being developed by the same respondent-promoter i.e., M/s Green Heights Pvt. Ltd. The terms and conditions of the builder-buyer's agreements that had been executed between the parties inter se are also almost similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking award for delayed possession charges and other reliefs.

3. The details of the complaints, reply status, unit no., date of agreement, plans, due date of possession, offer of possession and relief sought are given in the table below:

Assured Return Clause	2. "That First Party shall pay to the Second Party an Assured Return-cum-guaranteed Lease Rent at the rate of Rs.95.47/- per Sq. Ft. (Super Area) i.e. Rs.45,730/- (per month on 95% of the basic sale price i.e., on the amount received by the First Party w.e.f. 08.12.2017 against the Commercial Space(s) allotted to the Second Party for the period up to the date on which an application for obtaining occupation certificate is submitted by the first party, and thereafter Rs.97.87/- per sq. ft. (Super Area) i.e., Rs.46,880/- per month for 36 months upon offer of final possession and from the date of receipt of 100% basic sale price along with other charges, shall be paid as guaranteed lease rent.
Possession Clause	7. <b>TIME IS ESSENCE</b> "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." 9. <b>POSSESSION</b> "9.1 <b>SCHEDULE FOR POSSESSION OF THE COMMERCIAL UNIT:</b> (A) The Promoter agrees and understands that timely delivery of possession of the Commercial unit along with parking (if applicable) to the Allottee(s) and the common areas of the association of allottees or the competent authority, as the case may be, is the essence of the Agreement. The Promoter assures to hand over possession of the Commercial Unit along with parking (if applicable) as per agreed terms and conditions

<i>unless there is delay due to 'force majeure', Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project."</i>								
Sr. No	Complaint No./Title/ Date of filing	Reply Status	Unit no. & Area adm easuring	Date of MoU	Date of execution of builder buyer's agreement	Due of possession	Offer of possession	Relief Sought
1	CR/4960/2024  Renu Nagpal VS Green Heights Projects Private Limited  25.10.2024	06.03.2025	LG-072, Lower ground floor  (Page no. 42 of complaint)	15.12.2017 (Page no. 28 of the complaint)	01.08.2019 (As per stamp paper at page no. 36 of complaint and the same is admitted by the respondent in its reply at page no. 28 of reply)	01.02.2023	OC - Not obtained  OP- Not offered  TSC- Rs.63,02,250/  AP - Rs.55,07,099/  AR Paid: Rs.18,18,874/-	1. Direct the respondent to pay the amount of <b>assured returns of Rs.45,730/- per month</b> from the date of discontinuation i.e., 01.04.2021 till filing of application for obtaining Occupation Certificate along with interest at the applicable rate and <b>guaranteed amount of Rs.46,880/- per month</b> from final offer of possession till 36 months from the said offer of possession along with interest at the applicable rate on the due amount.  2. The respondent is also liable to pay to the complainant <b>delayed possession charges</b> from 30.06.2020 till the date of actual handing over of possession as per section 18 of the Act, 2016 at the interest rate as specified in the Act, 2016 and the Rules, 2017.  3. Direct the respondent to <b>handover the possession of the unit</b> , in a habitable state, after obtaining the occupation certificate from the concerned authorities.  4. Direct the respondent to <b>execute the conveyance deed of</b>

								<p>the allotted unit in favour of the complainants.</p> <p>5. Direct the respondent to not raise any payment demand, in violation of the provisions of the Act, 2016 and/or contrary to the terms of the agreement.</p> <p>6. Pass an order imposing penalty on the builder on account of various defaults and illegalities under the Act, 2016 and the same be ordered to be paid to the complainants</p>
2.	CR/4961/2024  Kamal Naggal VS Green Heights Projects Private Limited  D.O.F 25.10.2024	06.03.2025	LG-012A, Lower ground floor (Page no. 43 of complaint)	15.12.2017 (Page no. 29 of the complaint)	01.08.2019 (As per stamp paper at page no. 37 of complaint)	01.02.2023	<p>O.P- Not offered</p> <p>OC - Not obtained</p> <p>TC - Rs. 54,57,83.38/-</p> <p>AP - Rs. 47,04,651/-</p> <p>AR Paid: Rs.15,57,478/-</p>	<p>1. Direct the respondent to pay the amount of assured returns of Rs.39,150/- per month from the date of discontinuation i.e., 01.04.2021 till filing of application for obtaining Occupation Certificate along with interest at the applicable rate and guaranteed amount of Rs.41,220/- per month from final offer of possession till 36 months from the said offer of possession along with interest at the applicable rate on the due amount.</p> <p>2. The respondent is also liable to pay to the complainant delayed possession charges from 30.06.2020 till the date of actual handing over of possession as per section 18 of the Act, 2016 at the interest rate as specified in the Act, 2016 and the Rules, 2017.</p> <p>3. Direct the respondent to</p>

							<p>handover the possession of the unit in a habitable state, after obtaining the occupation certificate from the concerned authorities.</p> <p>4. Direct the respondent to execute the conveyance deed of the allotted unit in favour of the complainants.</p> <p>5. Direct the respondent to not raise any payment demand, in violation of the provisions of the Act, 2016 and/or contrary to the terms of the agreement.</p> <p>6. Pass an order imposing penalty on the builder on account of various defaults and illegalities under the Act, 2016 and the same be ordered to be paid to the complainants.</p>	
3.	CR/5098 /2024- Case titled as Mamta Yadav and Hemendra Prasad Yadav VS Green Heights Projects Private Limited. 21.10.2024	27.02.2025	1-06, 2 <sup>nd</sup> floor (Page no. 39 of complaint)	30.10.2018 (Page no. 30 of the complaint)	29.07.2019 (Page no. 41 of complaint)	29.01.2023	<p>OP: Not offered</p> <p>OC - Not obtained</p> <p>TC - Rs. 41,26,507.82 /-</p> <p>AP - Rs. 10,85,684 /-</p> <p>AR Paid: Rs. 2,96,736.50 /-</p>	<p>1. Direct the respondent to pay the amount of assured returns of Rs.20,195/- per month from the date of discontinuation i.e., 01.04.2021 till filing of application for obtaining Occupation Certificate</p> <p>2. Without prejudice to the rights of the complainants, in case the Authority is of the opinion that the payment of Assured Returns is to be paid by the respondent to the complainants till the date as specified in the MOU i.e. till 20.10.2021, then complainants seeks the relief of payment of assured returns from</p>

							<p>01.04.2021 till 20.10.2021 along with delayed possession charges to be payable from 21.11.2021 till the date of actual handing over of possession as per Section 18 of the Act, 2016.</p> <p>3. The respondent is also liable to pay to the complainant delayed possession charges from 30.06.2020 till the date of actual handing over of possession as per section 18 of the Act, 2016 at the interest rate as specified in the Act, 2016 and the Rules, 2017</p> <p>4. Direct the respondent to handover the possession of the unit, in a habitable state, after obtaining the occupation certificate from the concerned authorities.</p> <p>5. Direct the respondent to execute the conveyance deed of the allotted unit in favour of the complainants.</p> <p>6. Direct the respondent to not raise any payment demand, in violation of the provisions of the Act, 2016 and/or contrary to the terms of the agreement.</p>
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4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties inter se in respect of said units for not handing over the possession by the due date. In some of the complaints, issues other than delay possession

charges in addition or independent issues have been raised and consequential reliefs have been sought.

5. The delay possession charges to be paid by the promoter is positive obligation under proviso to section 18(1) of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement.
6. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
7. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/4960/2024** at serial no. 1 titled as **Renu Nagpal Vs. M/s Green Heights Pvt. Ltd.** are being taken into consideration for determining the rights of the allottees qua delay possession charges, and other reliefs sought by the complainants.

**A. Unit and project related details.**

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

**CR/4960/2024**

S. No.	Particulars	Details
1.	Name of the project	"Baani Centre Point", Sector - MID, Urban Complex, Manesar, Gurugram
2.	Project area	2.681 acres
3.	Nature of the project	Commercial
4.	DTCP license no. and validity status	59 of 2009 dated 26.10.2009 valid up to 12.09.2020

5.	Name of licensee	M/s Paradise System Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide regd. no. 187 of 2017 dated 14.09.2017 Valid up to 13.09.2019
7.	Unit no.	LG-072, Lower ground floor (Page no. 42 of complaint)
8.	Unit area admeasuring	217 sq. ft. (Carpet area) 479 sq. ft. (Super area) (Page no. 42 of complaint)
9.	Date of allotment letter	07.12.2017 (Page no. 68 of the reply)
10.	Date of execution of memorandum of understanding	15.12.2017 (Page no. 28 of the complaint)
11.	Date of execution of commercial space buyer's agreement	01.08.2019 (As per stamp paper at page no. 36 of complaint and the same is admitted by the respondent in its reply at page no. 78 of reply)
12.	Assured return clause	<i>2. "That First Party shall pay to the Second Party an Assured Return-cum-guaranteed Lease Rent at the rate of Rs.95.47/- per Sq. Ft. (Super Area) i.e. Rs.45,730/- (per month on 95% of the basic sale price i.e., on the amount received by the First Party w.e.f. 08.12.2017 against the Commercial Space(s) allotted to the Second Party for the period up to the date on which an application for obtaining occupation certificate is submitted by the first party, and thereafter Rs.97.87/- per sq. ft. (Super Area) i.e., Rs.46,880/- per month for 36 months upon offer of final possession and from the date of receipt of 100% basic sale price along with other charges, shall be paid as guaranteed lease rent. (Page no. 31 of the complaint)</i>
13.	Possession clause	<b>7. TIME IS ESSENCE</b> <i>"The promoter shall abide by the time schedule for completing the project as</i>

		<p><i>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></p> <p><b>9. POSSESSION</b></p> <p><b>"9.1 SCHEDULE FOR POSSESSION OF THE COMMERCIAL UNIT:</b></p> <p><i>(A) The Promoter agrees and understands that timely delivery of possession of the Commercial unit along with parking (if applicable) to the Allottee(s) and the common areas of the association of allottees or the competent authority, as the case may be, is the essence of the Agreement.</i></p> <p><i>The Promoter assures to hand over possession of the Commercial Unit along with parking (if applicable) as per agreed terms and conditions unless there is delay due to 'force majeure', Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project."</i></p> <p><i>(Page no. 47 of the complaint)</i></p>
14.	Due date of possession	01.02.2023
15.	Total sale consideration	Rs.63,02,250/- (As per Schedule-C, (payment plan) at page no. 65 of complaint)
16.	Amount paid by the complainants	Rs.55,87,099/- (As alleged by the complainant at page no. 23 of complaint and as per receipt information at page no. 26 & 27 of complaint)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Assured return paid	Rs. 18,18,874/-

## **B. Facts of the complaint**

The complainants have submitted as under:

9. That the respondent offered for sale units in a commercial complex known as 'Baani Centre Point' which claimed to comprise of commercial units, car parking spaces, recreational facilities, gardens etc. On a piece and parcel of land situated in sector M1D, Gurugram, Haryana. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 59 of 2009 on a land area of about 2.681 acres in village Lakhnaula, Tehsil Manesar, Gurugram to its associates companies for development of a commercial colony in accordance with the provisions of the Haryana development and regulation of urban areas act, 1975 and rules made thereunder in 1976.
10. That the complainant received a marketing call from the office of respondent in the month of august, 2017 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 be rented by the respondent itself within 3 years or that the respondent would handover the possession of the unit on timely basis.
11. 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 possession of the commercial unit to be allotted to the complainant would be either positively handed over within the agreed time frame or the unit would be leased by the respondent.

12. That as per payment plan sent by the respondent, the total sale consideration was to be paid in three instalments, i.e., at the time of booking; within 21 days from the date of booking and on offer of possession. The complainant accordingly at the time of booking made the payment of Rs.10,00,000/- on 30.11.2017. The respondent issued the receipt dated 07.12.2017 confirming the payment of rs.10,00,000/- received by it from the complainant. The complainant thereafter based on the requests of the respondent made another payment of Rs.45,87,099/- on 07.12.2017. The said payment was acknowledged by the respondent vide its receipt dated 07.12.2017. The respondent vide the said issued receipts intimated the complainant of the fact that a unit bearing no. L.G-072 on lower ground floor admeasuring super area of 479 sq. ft. Has been allotted to the complainant in the said project of the respondent.
13. 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 of the unit was Rs.56,08,611/-. Moreover, as per clause 2 of the said mou, the respondent promised to pay an assured return of Rs.45,730/- per month to the complainant on the amount received until the application for obtaining occupation certificate is made by the respondent and thereafter an amount of Rs.46,880/- per month was to be paid for 36 months upon offer of final possession.

14. That it was specifically made known to the complainant that the possession of the unit would be offered/handed over to the complainant by 30.06.2020. The complainant was also assured by the respondent that as per clause 2 of the MOU, it was specifically observed that the offer of possession was to be made by the respondent to the complainant and only thereafter, the respondent would either lease the unit in question or would hand over the possession, subject to the stopping of payment of the assured return amount. Since the complainant had already parted with a huge amount, she was left with no other option but to accept the terms of the memorandum. The complainant felt trapped and had no other option but to sign the dotted lines.
15. That as per clause 12 of the MOU, an agreement to sell was to be executed between the complainant and the respondent. It was agreed vide the said clause that both the parties would be bound by the terms of the agreement.
16. The complainant vide several telephonic conversations and meetings requested the respondent for execution of the commercial space buyer's agreement in respect of the said unit. However, no satisfactory response was ever received from the respondent. Thereafter, upon receiving several reminders from the complainant, the respondent finally agreed to execute the commercial space buyer's agreement. A copy of the commercial space buyer's agreement was shared with the complainant, 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.
17. That the complainant made vocal her objections to the arbitrary and unilateral clauses of the commercial space buyer's agreement to the respondent. The complainant repeatedly requested the respondent for execution of the commercial space buyer's agreement with balanced terms. However, during such discussions, the respondent summarily rejected the bonafide request of

the complainant and stated that the agreement terms were non-negotiable and would remain as they were. The respondent/promoter refused to amend or change any term of the pre-printed buyer's agreement and further threatened the complainant to forfeit the previous amounts paid by. The complainant had made complete payment before the execution of the agreement. Since the complainant had already parted with a complete amount of the sale consideration, she was left with no other option but to accept the lopsided and one-sided terms of the commercial space buyer's agreement. Hence the commercial space buyer's agreement dated 01.08.2019 was executed.

18. That despite having made the MOU and the agreement containing terms very much favorable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter even failed to perform the most fundamental obligation of the agreement which was to complete the construction of the unit within the promised time frame, make payment towards the guaranteed return.
19. That as per clause 7 of the commercial space buyer's agreement, the possession was to be handed over by the respondent to the complainant as per the timeline disclosed by the respondent at the time of registration of the project. As per the information disclosed at the time of registration by the respondent, the due date of the completion of the project was 30.06.2020. Therefore, the due date of handing over of possession lapsed on the aforesaid date.
20. Furthermore, it was agreed vide clause 9 of the agreement that the timely delivery of possession of the unit was the essence of the agreement and that the respondent was to handover the possession of the unit as per the agreed terms and conditions.

21. That since the time period to handover the possession stated by the respondent in the commercial space buyer's agreement had lapsed, the complainant requested the respondent telephonically, and by visiting the office of the respondent to update her about the status of the project. The representatives of the respondent assured the complainant that the respondent would keep on making the payment towards the assured return amount and would take all possible efforts to complete the construction. 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 her in a timely manner. However, the failure of the respondent company has resulted in serious consequences being borne by the complainant.
22. That, in addition, the respondent miserably failed to make the payments towards the assured returns as promised under clause 2 of the MOU from April, 2021. It is pertinent to mention here that the complainant vide telephonic conversations and by visiting the office of the respondent enquired about the sudden stopping of the payment of assured returns. The respondent tried to cover up its laches by further assuring the complainant that the said unpaid amounts against the assured returns would be adjusted in the further payments. The respondent further categorically assured the complainant that the respondent would comply with its obligations of paying assured returns without any delay or defaults in the future.
23. That the complainant believed the assurances and representations of the respondent to be true. However, to the complete dismay of the complainant, the assurances of the respondent turned out to be false. The said discontinuation of the assured returns was arbitrary and unilateral and no

valid reasoning was ever given by the respondent behind the said discontinuation of the assured returns. The respondent deliberately, mischievously, fraudulently and with malafide motives cheated the complainant. When the complainant confronted the respondent about the illegal stopping of the payments which reflected nothing but deliberate lethargy, negligence and unfair trade practice by the respondent, its representatives started making excuses for non-disbursal of the amount. The complainant confronted the respondent in respect of the said discontinuation letter and timely delivery of the possession the said unit. Thereafter, yet again the representatives of respondent assured the complainant that the possession of the unit would be handed over to her very shortly as the construction was almost over and that it would keep on making payment towards the monthly assured return as per its obligations as stated in the mou. It was also assured that respondent would make the payment towards the delayed possession interest as per the prescribed rate as stipulated in the then newly enacted Act, 2016. Although, the complainant was reluctant to believe the representations made by the respondent, it decided to give one more chance to respondent. The high headedness of the respondent is an illustration of how the respondent conducts its business which was only to maximize the profits with no concern towards the buyers including the complainant.

24. That the complainant had paid a sum of Rs.55,87,099/- out of the total sale consideration of Rs.56,08,611/-. The said fact is evident from the receipts issued by the respondent upon the payments made by the complainant as attached along with this present complaint. The respondent has miserably failed to disburse any other amount for the period of last 3 years from the date of disbursal of last amount in March, 2021. Moreover, the respondent has not raised construction within the agreed time frame. There has been virtually no

progress, and the construction activity is lying suspended since long. It is reasserted that the complainant has made the payment towards the sale consideration as demanded by the respondent and the respondent has done nothing but has only utilized the hard-earned amount of the complainant for its own use and purposes. The fact that no intimation regarding the application for the grant of the occupation certificate was given by the respondent to the complainant speaks about the volume of illegalities and deficiencies on the part of the respondent/promoter. There is an inordinate delay in developing the project well beyond what was promised and assured to the complainant.

25. 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 51 months calculated upto October 2024 from the date submitted by the respondent during the time of registration and till date the possession of the allotted unit has not been offered by the respondent to the complainant. 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.
26. 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 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.

27. That the complainant has been duped of her 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 her 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. The respondent has unilaterally discontinued the payments of assured returns without any proper reasoning and has deprived the complainant of her right of assured returns as per Clause 2 of the MOU and possession of the unit as per Clause 9 of the agreement.
28. That the respondent has even failed to renew registration certificate of the project from this Authority and has acted in blatant violation of section 3 of the Act, 2016. The respondent was bound to comply with provisions of the act and the rules and regulations made thereunder. 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 Act, 2016 and Haryana Rules, 2017. That without getting the renewal of the registration certificate done, the respondent cannot raise or collect any further amount from the complainant.

29. Thus, the complainant vide this present complaint is seeking the possession of the unit along with payment of assured returns of Rs.45,730/- per month from the date of discontinuation of assured returns i.e., 01.04.2021 till the date of application for grant of occupation certificate and thereafter guaranteed amount of Rs.46,880/- from the date of offer of possession upto three years. The complainant is also entitled to delayed possession charges payable from 30.06.2020 i.e the date as provided by the respondent in the registration certificate till the date of actual handing over of possession as per section 18 of the Act, 2016. The complainant reserves her right to approach the appropriate forum to seek compensation.

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

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

- i. Direct the respondent to pay the amount of **assured returns of Rs.45,730/- per month** from the date of discontinuation i.e., 01.04.2021 till filing of application for obtaining Occupation Certificate along with interest at the applicable rate and **guaranteed amount of Rs.46,880/- per month from final offer of possession till 36 months from the said offer of possession along with interest** at the applicable rate on the due amount.
- ii. The respondent is also liable to pay to the complainant **delayed possession charges from 30.06.2020 till the date of actual handing over of possession** as per section 18 of the Act, 2016 at the interest rate as specified in the Act, 2016 and the Rules, 2017.
- iii. Direct the respondent to **handover the possession of the unit**, in a habitable state, after obtaining the occupation certificate from the concerned authorities.

- iv. Direct the respondent to **execute the conveyance deed** of the allotted unit in favour of the complainants.
- v. Direct the respondent to **not raise any payment demand**, in violation of the provisions of the Act, 2016 and/or contrary to the terms of the agreement.

31. On the date of hearing, the authority explained to the respondents/promoters 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.**

The respondent has contested the complaint on the following grounds:

32. 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 30.11.2017. That the terms of the booking were categorically, willingly and voluntarily agreed by the complainant.
33. 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-072 tentatively admeasuring 217 sq. ft. was allotted.
34. That thereafter, a Memorandum of Understanding (MOU) was executed between the parties on 15.12.2017. As per the MOU, the assured return was payable for the period of 36 months from the date of 08.12.2017.
35. 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 01.08.2019.

36. That furthermore, 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:

<b>Category I:</b>	Period between 05.04.2004 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.
<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 DT P (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 Zero Period II)	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.

37. 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
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1		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 "Paradise")
2	<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.	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 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	<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>

	<b>CATEGORY II:</b>		<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 <b>Annexure 4.</b></i></p>
14	<p><b>ZERO PERIOD I</b></p> <p>Due to the pendency of the proceedings before the Hon'ble Supreme Court, a stay was affected over the project</p>	27.04.2015	<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 annexed and marked as <b>Annexure 5.</b></i></p>
15	<p>land, however, permission was granted to Paradise to approach DTCP to seek clarifications qua the applicability of stay over the project in question.</p>	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</i></p>

	During this time the company was in constant follow up with DT P (enforcement) with respect to		<i>directed Paradise to seek clarification from DTCP is annexed and marked as Annexure 6.</i>
16	grant of necessary permissions concerning the project.	25.08.2015 08.01.2016	Paradise approached DTCP on 25.08.2015 for clarification and stated that the land owned by Paradise doesn't fall within the ambit of the Rameshwar case. Paradise had also issued a reminder dated 08.01.2016 to DTCP for the clarification being sought. <i>A copy of the clarification dated 25.08.2015 sought by Paradise from DTCP regarding Project land not being a part of Rameshwar case is annexed and marked as Annexure 7.</i>
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

		<p>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 original files is annexed and marked as Annexure 8.</i></p>
19	<p>13.09.2016 (receiving dated 14.09.2016)</p> <p>21.10.2016 (receiving dated 25.10.2016)</p> <p>01.02.2017 (Received on 02.02.2017)</p>	<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.</p> <p>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	Paradise then approached Punjab and Haryana High Court for directions to CBI to

		<p>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 Annexure 9.</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

			<p>was also highlighted that the delay in issuance of BR III is also delaying the service plan estimates and fire scheme approvals.</p>
26		27.11.2017	<p>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.</p> <p><i>A copy of the letter dated 27.11.2017 requesting for the grant of Zero period is annexed and marked as Annexure 10.</i></p>
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 Annexure 11.</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 Annexure 12.</i></p>

29	<p><b>CATEGORY III:</b></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. The Respondent herein is seeking the grace of this period as the entire time was utilised in</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> <p><i>A copy of the letter dated 14.03.2018 by Paradise to DTCP requesting to consider Zero Period 1 is annexed and marked as <b>Annexure 13.</b></i></p>
30	<p>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> <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 14.</b></i></p>

31		01.07.2019	The HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 in the matter of Rameshwar & Ors. Vs. State of Haryana & Ors. to include the land of Paradise developed by Green Heights in the award dated 26.08.2007, being Application for Clarification of Final Judgment dated 12.03.2018 passed by the Supreme Court.
32		31.08.2019 13.09.2019	<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 Annexure 15.</i></p>
33	<b>CATEGORY IV:</b>  <b>ZERO PERIOD II</b>  The Project was	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	<p>under injunction by the Hon'ble Supreme Court due to an application filed by HSIIDC.</p>	21.07.2022	<p>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.</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 Annexure 16.</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</p>	<p>25.07.2022 (Receiving dated 26.07.2022)</p> <p>04.08.2022 (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</p>

	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.		<p>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> <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 14.12.2022	<p>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.</p> <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</p>

			Supreme Court.  <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 HSIIDC stating complete compliance by Green Heights Project Pvt. Ltd. of the Hon'ble Supreme Court order are annexed and marked as Annexure 17 (Colly)</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	<p>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.</p> <p><i>A copy of the renewed license with the grant of Zero Period II is annexed and marked as Annexure 18.</i></p>
43		31.10.2023	<p>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.</p>
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> <p><i>Copies of letters dated 20.02.2024 and 04.04.2024 written to the enforcement</i></p>

			<i>directorate requesting for a closer report are annexed and marked as Annexure 19.</i>
45		15.04.2024 17.05.2024 (Receiving dated 20.05.2024)  03.06.2024	<p>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.</p> <p>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.</p>
46			<p>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.</p> <p><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</i></p> <p>26.11.2024</p>

			13.09.2016, 21.10.2016, 01.02.2017, 09.05.2017, 07.08.2017, 23.10.2017, 25.07.2022, 04.08.2022, 15.12.2022, 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 20.</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.

38. 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.

39. 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 that the Ld. Authority. That from the bare perusal of the RERA 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 such remedies are provided under Section 18 of the RERA Act, 2016 for violation of any provision of the RERA Act, 2016. That the said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being "interest for delay of every month" in case the allottee wants to continue in the project and the last

one is for compensation for the loss occurred by the Allottee. That it is relevant to mention here that nowhere in the said provision the Ld. Authority has been dressed with jurisdiction to grant "Assured Returns". It is additionally pertinent to note that the RERA Act also does not define a 'Memorandum of Understanding' on the basis of the which, relief has been sought by the Respondent.

40. That it is germane to note that the non-payment of assured return, as alleged by the Complainant in his Complaint is bad in law. It is pertinent to mention herein that the payment of assured return is not maintainable before the Ld. Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019 [BUDS Act] wherein, under section 7 thereof, the Legislature, in its utmost wisdom, has noted that the '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". Thus, the Complainant is barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme" and the competent authority to adjudicate such issue has to be notified under section 7 of the BUDS Act.

41. That it is specifically mentioned under Rule 2(1)(C) what is included in the meaning of deposits along with other transactions which does not constitute deposits. Under **sub rule (1)(c)(xii)(b) of Rule 2 of the Deposit Rules**, an amount shall not be termed as deposit if received in advance, accounted for in any manner whatsoever, in connection with consideration for an immovable property under an agreement or arrangement, provided that such advance is

adjusted against such property in accordance with the terms of the agreement or the arrangement.

42. That **column III of first schedule of the BUDS Act** defines the various kind of deposit along with their regulators under column I. If any deposit as per Schedule I of BUDS Act fall under regulated deposits then company is not in violation of the BUDS Act. However, if deposit is not in compliance with the procedure laid down under the Companies Act, the Company would be not only in violation of the provisions of the Companies Act but also under the BUDS Act and therefore will be exposed to penal actions under Section 76A of the Companies Act and deposit being unregulated will also fall foul and liable to be tried under penal provision of the BUDS.
43. Therefore, if Depositor accepts any deposit, it immediately required to take prior approval from the Regulator as mentioned under Schedule I of the BUDS Act. And therefore, for the present matter, the Regulator shall be Ministry of Corporate Affairs as provided under last entry of **Schedule I**. Therefore, if the Respondent continues paying the Assured Returns which is deposit as per the relevant provisions of the Companies Act and BUDS Act, the same will be contravention of the provisions of the Acts and the Respondent will be exposed to the penal provisions thereunder.
44. it is a matter of fact that the obligations of payment of the Assured Returns as per the MOU have been rightfully completed. That the Respondent diligently fulfilled its obligations and it was only due to unforeseen circumstances of the stay of the Supreme Court (as elaborated in the forgoing paragraphs), the Respondent stopped the payment of the assured return.
45. That in accordance with the above stated events, directly affecting the Respondent, the Respondent informed the Complainant vide letter dated 13.05.2021. The copy of letter dated 13.05.2021 informing the Complainant about the discontinuance of the assured return.

46. 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.
47. 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.
48. That a bare perusal of the list of dates noted hereinabove shows that the complete *bonafide* and diligent manner in which the Respondent has acted throughout the aforementioned periods. That during the 1<sup>st</sup> period (category III), the Respondent had time and again approached the DTCP seeking necessary permissions and approvals, however, DTCP had refused to deal with the same despite the fact that the Hon'ble Supreme court had allowed the Respondent to approach DTCP.
49. That the Respondent has gone over and beyond and filed writ petition before the Punjab and Haryana High Court when as per DTCP the original files of

the land in question were in custody of CBI. This led to the eventual finding that the files had already been returned by CBI to DTCP. Additionally, now that the entire matter has concluded and the amount of Rs. 13.4 Cr stands paid, DTCP is now stating that they need closure from ED. Going beyond its obligations, the Respondent has time and again approached the ED seeking the closure report. The constant and diligent approach taken by the Respondent is evident from the 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, 13.09.2016, 21.10.2016, 01.02.2017, 09.05.2017, 07.08.2017, 23.10.2017, 25.07.2022, 04.08.2022, 15.12.2022, 05.01.2023, 02.09.2023, 31.10.2023, 15.04.2024, 17.05.2024, 03.06.2024, and 26.11.2024.

50. That a perusal of all the documents show that the Respondent has been left at the mercy of the DTCP and other departments and has been entangled with the procedural lacunae when in fact, the project has been completed. That presently, the permission for the transfer of license and the change of developer and approval of service plan estimate is pending before the DTCP, due to which the further process of fire approvals, occupation certificate, etc has been halted. That none of these facts and circumstances point to any default on part of the Respondent in any manner whatsoever. In such a circumstance, the benefit of such periods, as grace, need to be rightly considered by this Ld. Authority.

51. 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 <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		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

		Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.			supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	08.11.2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 <sup>th</sup> Nov, 2016 to 15 <sup>th</sup> Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
4.	07.11.2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 <sup>th</sup> 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 <sup>st</sup> Dec, 19 and 30 <sup>th</sup> Jan, 20.
5.	09.11.20 17	National Green Tribunal has passed the said order dated 9 <sup>th</sup> 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 <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	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.

		9 <sup>th</sup> Nov, 17 was vacated vide order dated 17 <sup>th</sup> Nov, 17.			
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 <sup>th</sup> 2018
8.	01.11.20 19	Environment Pollution (Prevention and Control) Authority for National Capital Region vide Direction bearing no. EPCAR/2019/L-53	01.11.20 19 to 05.11.20 19	6 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida to remain closed till morning of November 5, 2019 (current ban on construction was only 6 PM to 6 AM and this is new extended to be complete banned till Monday, November 5, 2019, morning)



9.	24.07.2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
10	11.10.2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 <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	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.

		construction activity would be completely stopped during this period.			
11	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as " <i>MC Mehta vs. Union of India</i> " completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 to 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.
12	11.10.2019	Commissioner of Municipal Corporation Gurugram issued direction to issue Challan for Construction Activities and lodging of FIR from 11th October to 31st December, 2019 as per the direction issued by the chairman of EPCA	11.10.2019 to 31.12.2019	81 days	



		vide letter EPCA- R/2019/L-42 dated October 09, 2019.			
13	02.11.20 23 and 05.11.20 23	Commission for Air Quality Management in NCR and Adjoining Areas vide Order No. 23 120017/27/GRAP/2021/ CAQM	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. 77 dated 6 <sup>th</sup> 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

					<p>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 (DELHIAQ) 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 demolition activity.</p>
14.				497 days	

52. 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.

53. All other averments made in the complaints were denied in toto.
54. 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**

55. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaints for the reasons given below:

##### **E.I Territorial jurisdiction**

56. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes with office 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 complaints.

##### **E.II Subject matter jurisdiction**

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

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

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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.*

58. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaints regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent**

59. The respondent took a plea that as per the Clause 9 - Force Majeure of the builder buyer agreement "the intending seller shall not be held responsible or liable for failure or delay in performing any of its obligation or undertakings as provided for in this agreement, if such performance is prevented, delayed or hindered by "court orders" or any other cause not within the reasonable control of the intending seller". Therefore, as the project "Baani Centre Point" was under stay orders of the Hon'ble Supreme Court of India for 7 years 3 months (24/04/2015 TO 21/07/2022) which was beyond the respondent's reasonable control and because of this no construction in the project could be carried during this period. Hence, there is no fault of the respondent in delayed

construction which has been considered by DTCP and RERA while considering its applications of considering zero period, renewal of license and extension of registration by RERA. Due to reasons stated hereinabove it became impossible to fulfil contractual obligations due to a particular event that was unforeseeable and unavoidable by the respondent. It is humbly submitted that the Stay on construction order by the Supreme Court is clearly a "Force Majeure" event, which automatically extends the timeline for handing over possession of the unit. The Intention of the Force Majeure clause is to save the performing party from consequences of anything over which he has no control. It is no more res integra that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the negligence or malfeasance of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, it was submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the buyer agreement.

60. The complainant states that in the latest judgment M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. (Supra), which is the authoritative landmark judgment of the Hon'ble Apex Court with respect to the interpretation of the provisions of the Act, the Hon'ble Apex Court has dealt with the rights of the allottees to seek refund and delay possession charges as referred under Section 18(1)(a) of the Act. The Hon'ble Apex Court has laid down as under:-

*"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this*

*right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

Thus, the allottee has unqualified right to seek delay possession charge referred to under section 18 of the Act, which is not dependent on any contingencies. The right of delay possession charge has been held to be as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events. On the contrary, the respondent states that Paragraph 25 of the Newtech judgment is a general observation by the Hon'ble Supreme Court as 'Obiter dictum' and not 'ratio decidendi'.

61. In this regard, the Authority is of view that even though the contents of Para 25 of the order passed by the Hon'ble Supreme Court in the case of M/s M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. does not form part of the directions but it cannot be denied that an interpretation of sections 18(1) and 19(4) has been rendered in the order in para 25 in unequivocal terms with respect to the statutory rights of the allottee. Further, the pivotal issue arises from the builder's actions during the period between 24.04.2015 to 1.032018 in question that is despite claiming force majeure due to external impediments, the builder continued construction activities unabated thereafter concurrently received payments from the allottees and even executed buyer's agreement during that time. This sustained course of

action strongly suggests that the builder possessed the capability to fulfill their contractual obligations despite the purported hindrances. Therefore, the builder cannot invoke Force Majeure to justify the delay and consequently, cannot seek an extension based on circumstances within their control. However, during the period 13.10.2020 to 21.07.2022, there were specific directions for stay on further construction/development works in the said project passed by the Hon'ble Supreme Court of India in M.A No. 50 of 2019 vide order dated 21.07.2022 which was in operation from 13.10.2020 to 21.07.2022 and there is no evidence that the respondent did not comply with such order. The Authority observes that during this period, there was no construction carried out in the project nor any demands made by the respondent from the allottees. In view of the above, the promoter cannot be held responsible for delayed possession interest during this period. Therefore, in the interest of equity, no interest shall be payable by the complainant as well as respondent from 13.10.2020 to 21.07.2022 in view of the stay order of Hon'ble Supreme Court on further construction/development works on the said project.

#### **G. Findings on the relief sought by the complainants**

**G.I Direct the respondent to pay the amount of assured returns of Rs.45,730/- per month from the date of discontinuation i.e., 01.04.2021 till filing of application for obtaining Occupation Certificate along with interest at the applicable rate and guaranteed amount of Rs.46,880/- per month from final offer of possession till 36 months from the said offer of possession along with interest at the applicable rate on the due amount.**

**G.II The respondent is also liable to pay to the complainant delayed possession charges from 30.06.2020 till the date of actual handing over of possession as per section 18 of the Act, 2016 at the interest rate as specified in the Act, 2016 and the Rules, 2017.**

62. The above mentioned reliefs no. G.I & G.II as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected
63. That the complainant has stated that the stay on Construction was on Paradise Systems Pvt. Ltd. and not on Green Heights Pvt. Ltd. as the agreement was executed between the later one and nowhere the name of Green Heights is mentioned in the alleged stay order. It further states that payment was collected by respondent in the mode of construction linked plan and respondent was sending demand letters even when the alleged stay was there and hence no relief of zero period may be extended to the respondent. The counsel for the complainant that zero period allowed by Directorate of Town and Country Planning (DTCP) is for limited purpose of renewal of license and Directorate of Town and Country Planning (DTCP) orders cannot dilute the builder buyer agreement.
64. The complainant further states that during the stay period the respondent-builder had collected the payment in the mode of construction linked plan from the allottees and even executed the buyer's agreement during that period. He further submits that the respondent-builder sent construction updates to the allottees and also revised the building plans during the said stay period. Moreover, the 912 acres of the project land would be acquired by the HSIIDC if it falls under section 4 and section 6 of Land Acquisition Act, 1894 which is not the case.
65. On the contrary, the counsel for the respondent states that the land on which Baani Center Point Project is constructed was notified in Section 4 Notice dated 27 August 2004 and the details of this land are mentioned on Page No. 05 of the Section 4 notice of the Land Acquisition Act, 1894, Notification. This land was not in Section 6 Notification dated 25 August 2005. vide judgement dated 21 July 2022, the Supreme Court in para 32, specifically passed

directions that the lands which were not notified in Section 6 notification and there was no transfer during the period 27 August 2004 to 29 January 2010 and were not part of the deemed award. HSIIDC filed an application for clarification on 01 July 2019, for inclusion of this land parcel also in the deemed award, however, subject to payment of penalty this land parcel was exempted from deemed award.

66. Further, the respondent states that a collaboration agreement dated 30.03.2013 was entered into M/s Paradise Systems Pvt. Ltd. being the original landholder and Green Heights Projects Pvt. Ltd., being the Developer for the project namely "Baani Center Point". Thereafter, the construction was initiated in the project and during that process a letter was received from Directorate of Town and Country Planning directing to stop the construction in compliance of the Injunction Order from the Hon'ble Supreme Court of India dated 24.04.2015. Thereafter the respondent builder approached the Hon'ble Supreme Court of India for the clarification of the stay order as to whether it is applicable to the land and license however Supreme Court directed it to approach DTCP for clarifications. The respondent builder approached DTCP vide various representations however DTCP did not take any decision as the matter was pending in the Supreme Court. It was further represented by DTCP that the original files in respect of land portions of entire 912 acres have been taken by Central Bureau of Investigation of all the projects and till original files are returned by CBI, DTCP will not be in a position to provide clarification in respect of various representations. The Landowner then approached Punjab and Haryana high court for directions to CBI to handover original files in respect of the project of respondent and the High Court by order dated 27.03.2017 passed appropriate directions. It is pertinent to mention here that between the periods of 24.04.2015 till 12.03.2018, the Hon'ble Supreme Court of India had passed directions in respect of 912 Acres of land in 3 Villages

including the land where the present project (Baani Center Point) is constructed. That vide judgement dated 12.03.2018, the project of Respondent was not included in tainted projects which clearly meant that respondent could commence construction subject to renewal of licenses and other permissions. Shortly after the stay was lifted on 12.03.2018, M/s Paradise Systems Pvt. Ltd. approached DTCP for renewal of license to begin construction which was granted to them on 23.07.2018 and thereafter the respondent has developed the said project which is almost complete and was left for some finishing works and interiors. It shall be pertinent to mention that while renewing the license the entire period of 24.04.2015 till 12.03.2018 was exempted as Zero period by DTCP.

67. later on, the HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 through M.A. No. 50 of 2019 in the matter of Rameshwar Vs. State of Haryana & Ors. CA 8788 of 2015 being "Application for Clarification of Final Judgment dated 12.03.2018 passed by this Hon'ble Court". It is submitted that the Hon'ble Supreme Court through its order dated 13.10.2020 again granted an injunction on further construction of projects of the parties to the said case including M/s. Paradise Systems Pvt. Ltd. project of Baani Center Point. The relevant portion of the said order stated that: - "Pending further considerations, no third-party rights shall be created and no fresh development in respect of the entire 268 acres of land shall be undertaken. All three aforesaid developers are injuncted from creating any fresh third-party rights and going ahead with development of unfinished works at the Site except those related to maintenance and upkeep of the site". That finally through the recent judgment on 21.07.2022, the stay on construction was cleared by the Hon'ble Supreme Court of India in M.A. 50 of 2019 in the matter of Rameshwar

Vs. State of Haryana & Ors. CA 8788 of 2015, vide letter dated 26.07.2022 the complainant was informed that the project has been cleared from stay on construction and creation of third-party interests, by Supreme Court vide order dated 21.07.2022. The respondent vide letter dated 25.07.2022 has also applied for renewal of license and other permissions from DTCP which is awaited. It is also important to mention that the project was registered with RERA vide registration no. 187 of 2017 and after the judgment of Supreme Court the respondent has filed an application for extension of the registration under section 7 sub clause 3 dated 04.08.2022.

68. After consideration of all the facts and circumstances, authority is of view that the matter concerns two distinct periods: from 24.04.2015 to 12.03.2018 and from 13.10.2020 to 21.07.2022. The respondent collected payments and executed buyer's agreements during the first period, i.e. 24.04.2015 to 12.03.2018, which indicates their active involvement in real estate transactions. Further, it is important to note that during the "stay period", the respondent -builder raised demands which are reproduced below as:

Demand Raised On	Demand Raised ON Account Of
07.12.2017	On booking

69. As per aforementioned details, the respondent has raised the demands during the period in which 'stay' was imposed. Also, the builder continued construction activities unabated thereafter concurrently received payments from the allottees and even executed buyer's agreement during that time. This sustained course of action strongly suggests that the builder possessed the capability to fulfill their contractual obligations despite the purported hindrances. Hence, granting them a zero period for the purpose of completion of the project would essentially negate their involvement and the actions they took during that time. Therefore, it is justifiable to conclude that the

respondent is not entitled to a zero period and should be held accountable for their actions during the stay period.

70. However, during the period 13.10.2020 to 21.07.2022, there were specific directions for stay on further construction/development works in the said project passed by the Hon'ble Supreme Court of India in M.A No. 50 of 2019 vide order dated 21.07.2022 which was in operation from 13.10.2020 to 21.07.2022 and there is no evidence that the respondent did not comply with such order. The Authority observes that During this period, there was no construction carried out in the project nor any demands made by the respondent from the allottees. In view of the above, the promoter cannot be held responsible for delayed possession interest during this period. Therefore, in the interest of equity, no interest shall be payable by the complainant as well as respondent from 13.10.2020 to 21.07.2022 in view of the stay order Hon'ble Supreme Court on further construction/development works on the said project.

71. In above mentioned cases, after some time of execution of MOU, the BBA was executed. As per clause 37 of the BBA, the space buyer agreement constitutes the entire agreement between the parties and supersedes all previous agreement or application, which reproduced below as:

**37. This Agreement, along with its schedules, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and all the terms and conditions of the Allotment Letter, Mou or any other Agreement, executed between the Parties in respect of the 'Said Premises' shall be deemed to have been incorporated in this Agreement save & except those terms and conditions which are neither relevant nor applicable in the present context or are at variance with**

the clauses contained in this Agreement in which case the clauses of this Agreement shall prevail.

72. Further, this is also supported by Section 62 of the Indian Contract Act, 1872 (If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed), which reproduced below as:

**Section 62. Effect of novation, rescission, and alteration of contract.**

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

73. After consideration of all facts and circumstances, Authority is of view that as per buyer agreement, delay possession charge is to be given. Since BBA is the effective and legally enforceable agreement here, so DPC should be allowed. MOU is not legally enforceable after the execution of buyer agreement.
74. In all the complaints, the allottees intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 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.”*

75. Clause 7 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

***“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)

**9.1 SCHEDULE FOR POSSESSION OF THE COMMERCIAL UNIT:**

*(A) The Promoter agrees and understands that timely delivery of possession of the Commercial unit along with parking (if applicable) to the Allottee(s) and the common areas of the association of allottees or the competent authority, as the case may be, is the essence of the Agreement.*

*The Promoter assures to hand over possession of the Commercial Unit along with parking (if applicable) as per agreed terms and conditions unless there is delay due to "force majeure", Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project."*

**76. Due date of handing over possession:** As per the documents available on record, there is no due date of possession mentioned in the buyers agreement. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter *Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442: (2018) 3 SCC (civ) 1* and then was reiterated in *Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:*

*"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."*

**77.** In the instant case, the promoter has allotted unit in its project vide buyer agreement dated 01.08.2019. In view of the above-mentioned reasoning, the date of buyer agreement ought to be taken as the date for calculating the due

date of possession. Therefore, the due date of handing over of the possession of the plot comes out to be 01.08.2022. Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to 01.02.2023.

**78. Admissibility of delay possession charges at prescribed rate of interest:**

The complainants are seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

(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.

79. 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.

80. 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., 07.04.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

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

82. On consideration of the documents available on record and submissions made by both the parties regarding contravention of 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 as per the agreement. By virtue of clause 7 of the agreement executed between the parties on 01.08.2019, the due date of possession comes out to be 01.02.2023 including grace period in lieu of Covid-19.

83. It is pertinent to mention over here that even after a passage of more than 3 years (i.e., from the date of buyer agreement till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoters. 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 there is no document placed on record from which it can be ascertained that whether the respondents have applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

84. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 01.02.2023 till valid offer of possession after obtaining occupation certificate from the competent Authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules. No interest shall be payable by the respondent as well as complainant from 13.10.2020 to 21.07.2022 in view of judgement of Hon'ble Supreme Court wherein this was explicitly instructed to cease any further development in the project.

85. After consideration of all the facts and circumstances, the respondent is directed to pay interest to each of the complainant(s) against the paid-up amount after adjustment of assured return paid to the complainant, if any, at the prescribed rate of interest i.e., 10.80% p.a. for every month of delay from the due date of possession 01.02.2023 till valid offer of possession after obtaining occupation certificate, plus two months or actual handing over of possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules. No interest shall be payable by the respondent as well as complainant from 13.10.2020 to 21.07.2022 in view of judgement of Hon'ble Supreme Court wherein this was explicitly instructed to cease any

further development in the project. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and assured return if any.

**G.III Direct the respondent to handover the possession of the unit, in a habitable state, after obtaining the occupation certificate from the concerned authorities.**

86. The respondent builder is directed to handover the possession after obtaining occupation certificate from the competent Authority.

**G.IV Direct the respondent to execute the conveyance deed of the allotted unit in favour of the complainants:**

87. 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 deed .....local 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]**

88. The Authority hereby directs the respondent to execute the conveyance deed in favour of the complainants after obtaining occupation certificate from the Authority.

**G.V Direct the respondent to not raise any payment demand, in violation of the provisions of the Act, 2016 and/or contrary to the terms of the agreement.**

89. The respondent is directed no to charge anything which is not part of buyer agreement.

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

90. It is important to note that 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 reliefs.


#### **H. Directions of the authority**

91. 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 pay interest to each of the complainant(s) against the paid-up amount at the prescribed rate of interest i.e., 10.80% p.a. for every month of delay from the due date of possession 01.02.2023 till valid offer of possession after obtaining occupation certificate, plus two months or actual handing over of possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules after adjustment of assured returns

- already paid by the respondents. No interest shall be payable by the respondent and complainant from 13.10.2020 to 21.07.2022 in view of the stay order Hon'ble Supreme Court on further construction/development works on the said project.
- ii. The arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
  - iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iv. The amount of assured returns already paid by the respondent shall be adjusted from delay possession charge.
  - v. The respondent-builder is directed not to charge anything which is not part of buyer agreement.
  - vi. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority.
  - vii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. No interest shall be payable by the respondent and complainant from 13.10.2020 to 21.07.2022 in view of the stay order Hon'ble Supreme Court on further construction/development works on the said project.

- viii. The respondents are directed handover possession of the plot in question within three months after obtaining completion/part completion certificate from the competent authority. Further, the respondents are directed to get the conveyance deed of the allotted unit executed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- ix. **Holding charges:** The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
92. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
93. The complaints as well as applications, if any, stand disposed of
94. Complaints stands disposed off. True certified copy of this order shall be placed in the case file of each matter.
95. Files be consigned to registry.



**(Phool Singh Saini)**  
Member



**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2026