

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

Complaint no. : 2302 of 2025
Date of first hearing : 18.09.2025
Date of Decision : 12.02.2026

1. Lokendra Singh Yadav

2. Savita Yadav

Both R/o – 1102, GH-9, Friends Apartment,
Sector-52, Gurugram-122003

Complainants

Versus

Green Heights Projects Pvt. Ltd.

Registered office: Corporate one, GF, Plot no.5,
District Centre Jasola, New Delhi-110025

Also, at: 271, Phase-2, Udyog Vihar, Gurugram-
122016

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Gaurav Rawat (Advocate)

Shri Nikhil Kumar (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint dated 15.05.2025 has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all



obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. NO.	Particulars	Details
1.	Name of the project	"Baani Centre Point", Sector - M1D, 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 upto 12.09.2020
5.	Name of licensee	M/s Paradise System Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide registration no. 187 of 2017 dated 14.09.2017, valid upto 13.09.2019
7.	Unit No.	LG-054, Lower Ground Floor [Page 32 of complaint]
8.	Unit area admeasuring	468 sq. ft. [Page 32 of complaint]
9.	Date of allotment	07.02.2018 [Page 32 of complaint]
10.	Date of MoU	20.03.2018 [Page 39 of complaint]
11.	BBA	Not executed.
12.	Receiving on Allotment Letter of submitting/handing over of 2 sets of complainants signed copy of BBA to respondent.	31.07.2019 [Page 46 of complaint]
13.	Payment Plan	25% on booking 25% within 21 days of booking



		50% on application for occupation [Pg.33 of complaint]
14.	Assured return as per clause 2 of MoU dt.20.03.2018	<p><i>That First Party shall pay to the Second Party Rs.81.37 per sq. ft. (super area) i.e., Rs.38,081/- per month for 36 Months as guaranteed Lease Rent on Basic Sale Price, from the date of its filing an application for obtaining Occupation Certificate and upon Receipt of 100% Basic Sale Price and other applicable Charges from the Second Party. After the offer of Final Possession upon receipt of Occupation Certificate, the First Party shall make all efforts to Lease out the allotted Commercial Space(s) of the Second Party and if the same is below the guaranteed lease rent, the differential shortfall shall be paid by the First Party to the Second Party. The Second Party under this Plan shall pay 100% of the Basic Sale Price along with other charges to the First Party at the time of First Party filing an application for obtaining Occupation Certificate. If the Second Party wishes to occupy the Commercial Spaces(s) UPON THE OFFER OF Final Possession, then the First Party will stop the payment of guaranteed Lease Rent. The payment of Assured Return/Lease Guarantee Rent is subject to deduction of TDS as applicable.</i></p> <p>[Page 41 of complaint]</p>
15.	Possession clause	Not available
16.	Due date of possession	<p>07.02.2021</p> <p><i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018 Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to</i></p>



		<p><i>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></p> <p><i>In view of the above-mentioned reasoning, the date of the execution of agreement dated 07.02.2018 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 07.02.2021</i></p>
17.	Total sale consideration [including BSP, PLC, EDC & Additional charges as per payment plan]	Rs.59,35,176/- [As per MoU at page 41 of complaint]
18.	Amount paid by the complainants	Rs.28,71,749/- [as per SOA dt.18.03.2025 at pg.53 of complaint]
19.	Occupation certificate /Completion certificate	Not obtained
20.	Notice of possession	Not offered.
21.	Amount of Assured Return Paid	Not available

B. Facts of the complaint:

3. The complainants have made following submissions by filing the present complaint: -

- i. Complainants are joint buyers of unit no. LG-054. Unit was allotted after taking approx. 50% of BSP on 07.02.2018 with a payment plan of 25:25:50. Complainants paid promoter/builder as under:



Sr. No.	Amount Paid	Bank Cheque	Date of Transfer	Bank Statement
1.	12,00,000/-	ICIC, 66396	19.12.2017	Attached
2.	3,50,000/-	Kotak M.0005	29.12.2017	Attached
3.	12,94,000/-	Kotak M.0006	13.03.2018	Attached
4.	25,389/-	1% TDS	24.05.2018	Attached

- ii. Total: - Rs.28,69,389/- was paid against BSP + PLC of (50,77,800/- + Rs.5,07,780/-)
- iii. Complainants have paid more than 50% to promoter during 4Q2018. Builder given a verbal assurance of possession soon, within a year of our payments. Unfortunately, and for the reason best known to the promoter, the project stands without OC with dismal progress since then.
- iv. Promoter has defaulted and kept our money for no return. This adversely impacting us financially and emotionally.
- v. Our investment was from hard earned savings upon retirement.
- vi. In the sales broacher and emails from promoter we have been given rosy picture of project with assured returns on investment of 11%.
- vii. Their agents have been making promise as follows: - Baani Group thrives to provide lifestyle that goes beyond usual by offering centre point with services like: Assured Asset Appreciation:
 - *11% of fixed return with bank guarantee till possession*
 - *11% assured return with lease guarantee*
 - *After possession assured lease*
 - *First Commercial project, which build RERA guidelines*
 - *Pay in Escrow Account*



- viii. We have neither been given 11% return nor the possession of the shop.
- ix. On 06.12.2022 we receive a letter by that Promoter/builder asked us to ne ready for payment of final instalment that was to be so due.
- x. Sadly, we are waiting for approx. 3 years for the offer of Possession.
- xi. Suffering continuous loss on investment without any returns we made repeated attempt to know when can the units be offered for possession. Promoters' CRMs kept informing verbally about 2 major road blocks for last 3 years:
- They are facing delays in changing the name of developer and getting DTCP license in the name of ,/S Green Heights Projects Pvt. Ltd.
 - They are also facing delays in registration revival at RERA, current status is "lapsed".
- xii. We as unit buyer have no role to play in their name change initiative and revival of registration. By RERA.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- I. Direct to respondent to pay delayed possession charges.
 - II. Direct to respondent to execute builder buyer agreement.
 - III. Direct to respondent to pay compensation on account of mental harassment.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.



D. Reply by the respondent

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

- i. That the commercial relationship between the parties revolves around a commercial unit in the Project. That upon gaining knowledge of the project, the complainants being an investor, sought to apply for a provisional unit in the project by submitting an application form dated 17.12.2017. That the terms of the booking were categorically, willingly and voluntarily agreed by the complainant.
- ii. That the said request of allotment was accepted by the respondent, subject to such terms and conditions as came to be agreed between the parties and hence, the aforementioned provisional unit bearing tentative number LG-054 tentatively admeasuring 468 sq. ft. was allotted.
- iii. That thereafter, a Memorandum of Understanding (**MOU**) was executed between the parties on 20.03.2018. As per the MOU, the assured return was payable for the period of 36 months.
- iv. That thereafter, the parties agreed to execute the buyer's agreement to handover the physical possession of the Unit and accordingly, the respondent requested for details of allottees for execution of the buyer's agreement and sent the BBA to the complainant, but the same was never executed.
- v. 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:

Category I:	Period between 06.04.2004 and 23.04.2015	The events that transpired under this category show that there was not one event that could have been pre-conceived by the Respondent and neither was there any event / default on part of the Respondent that has led to the subsequent stay and the departmental delays.
Category II:	Period between 24.04.2015 and 13.03.2018 (hereinafter referred to as Zero Period I)	Due to the pendency of the proceedings before the Hon'ble Supreme Court, a stay was affected over the project land, however, permission was granted to Paradise to approach DTCP to seek clarifications qua the applicability of stay over the project in question. During this time, the company was in constant follow up with DT P (enforcement) with respect to grant of necessary permissions concerning the project.
Category III:	Period Between 14.03.2018 and 12.10.2020	After the removal of the stay by the Hon'ble Supreme Court, continuous follow ups were made by the Respondent regarding the grant of pending permissions. The Respondent herein is seeking the grace of this period as the entire time was utilised in following up with the concerned departments.
Category IV:	Period Between 13.10.2020 - 21.07.2022	The Project was under injunction by the Hon'ble Supreme Court due to an application filed by HSHDC.



	(hereinafter referred to as the Zero Period II)	
Category V:	Period from 22.07.2022 till Date	The Respondent is seeking the benefit of this period as a grace period from the Authority. The entire list of events ex facie show that the Respondent has been left at the mercy of the competent department and has been entangled in the procedural requirements and departmental delays due to no fault whatsoever on part of the Respondent.

- vi. That the Project land had become a part of certain land acquisition proceedings by the State. The following detailed list of dates, shows the detailed events that have transpired relating such land acquisition proceedings, within the period falling in the aforesaid categories:

S. No	CATEGORY	DATE	EVENTS
1	CATEGORY I: The events that transpired prior to the effect of the	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	Hon'ble Supreme Court's orders over the Project. This shows the	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



	required permissions for the project were obtained in a timely fashion.		<p>setting up Chaudhari Devi Lal Industrial Township. Paradise's Land fell under the above mentioned 912 acres.</p> <p>The land acquisition proceedings were withdrawn by the State Government on 24.08.2007</p>
3		09.09.2007	<p>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.</p>
4		20.09.2007	<p>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.</p>
5		26.10.2009	<p>Paradise had obtained license for of land measuring 2.681 acres situated at village Lakhnaula 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.</p>



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 & Ors. vs. State of Haryana & Ors.</i> bearing Civil Appeal No. 8788 of 2015. The Hon'ble Apex Court, vide its order dated 24.04.2015 in the <i>Rameshwar Case</i>, stayed the construction on the said land with effect from 24.04.2015, which was eventually affected till 12.03.2018.</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 Case</i>.</p>
14	CATEGORY II:	27.04.2015	Pursuant to the directions passed by the Apex Court, the DTCP directed all Owners/Developers to stop construction in respect of the entire 912 Acres of land which included our Real Estate Project Baani Center Point vide letter dated 27.04.2015.



15	ZERO PERIOD I Due to the pendency of the proceedings before the Hon'ble Supreme Court, a stay was affected over the project land, however, permission was granted to Paradise to approach DTCP to seek clarifications qua the applicability of stay over the project in question. During this time the company was	21.08.2015	Paradise approached the Hon'ble Supreme Court of India for the clarification of the stay order as to whether order dated 24.04.2015 was applicable to the land and license no. 59 of 2009. Paradise contended that their land was distinct from the land involved in the Rameshwar case. The Hon'ble Supreme Court directed Paradise to seek clarifications from DTCP, designating the DTCP as the appropriate authority to issue orders in the matter.
16		25.08.2015 08.01.2016	Paradise approached DTCP on 25.08.2015 for clarification and stated that the land owned by Paradise doesn't fall within the ambit of the Rameshwar case. Paradise had also issued a reminder dated 08.01.2016 to DTCP for the clarification being sought.
17		15.01.2016	In the meanwhile, the permissions and approvals, previously granted qua the project had expired and hence, Paradise had also requested DTCP for renewal of the permissions. Paradise also submitted an application for transfer of license and change in developer, in favour of Green Heights Projects Pvt. Ltd.
18		20.04.2016	That Paradise approached DTCP vide various representations however DTCP



	in constant follow up with DT P (enforcement) with respect to grant of necessary permissions concerning the project.		did not take any decision as the matter was pending in the Supreme Court. It was further represented by DTCP that the original files in respect of land portions of entire 912 acres have been taken by Central Bureau of Investigation (hereinafter referred to as the "CBI") of all the projects and till original files are returned by CBI, DTCP will not be in a position to provide clarification in respect of various representations.
19		13.09.2016 (receiving dated 14.09.2016) 21.10.2016 (receiving dated 25.10.2016) 01.02.2017 (Received on 02.02 .2017)	Paradise again wrote to DTCP to retrieve the original files from CBI. It was informed that in the writ petition filed seeking retrieval of the original files, directions for handing back of the original files as already passed. It was requested that such retrieval be done and DTCP should process the pending application for renewal and transfer of License and sanction of revised building plans. Due to the non-action part of DTCP, multiple reminders and representations were written by Paradise with a <i>bonafide</i> attempt towards the completion of the project.
20		27.03.2017	Paradise then approached Punjab and Haryana High Court for directions to CBI



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

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



30	grant of pending permissions. The Respondent herein is	23.07.2018	Paradise approached DTCP for renewal of license to begin construction which was granted to them on 23.07.2018. That while renewing the license the entire period of 24.04.2015 till 12.03.2018 was exempted as Zero period by DTCP.
31	seeking the grace of this period as the entire time was utilised in following up with the concerned departments	01.07.2019	The HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 in the matter of Rameshwar & Ors. Vs. State of Haryana & Ors. to include the land of Paradise developed by Green Heights in the award dated 26.08.2007, being Application for Clarification of Final Judgment dated 12.03.2018 passed by the Supreme Court.
32		31.08.2019 13.09.2019	DTCP has passed an order dated 31.08.2019 stating that the renewal and transfer of license of Paradise and approval of revised building plan will be processed only after clarification is given by the Hon'ble Supreme Court on the application filed by HSIIDC. The intimation of this order was received from DTCP vide letter dated 13.09.2019.
33	CATEGORY IV: ZERO PERIOD II The Project	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	was under injunction by the Hon'ble Supreme Court due to an application filed by HSIIDC	21.07.2022	Through the judgment dated 21.07.2022 in <i>Rameshwar Case</i> , the stay on construction was cleared by the Hon'ble Supreme Court of India with directions to Green Heights for payment of Rs. 13,40,50,000/- (Rupees Thirteen crores forty lakhs and fifty thousand only) as additional cost of land payable to HSIIDC @ Rs. 5 crores per acre. This order was passed by the Hon'ble Supreme Court after considering the development status of the project, amount received from the allottees, and to protect the interest of the allottees.
35	<p>CATEGORY V:</p> <p>The Respondent is seeking the benefit of this period as a grace period from the Authority. The entire list of events ex facie show that the Respondent has been left at the mercy of the competent</p>	25.07.2022 (Receiving dated 26.07.2022) 04.08.2022 (Receiving dated 05.08.2022)	Paradise approached DTCP to issue BR-III for revised building plans as the land owned by Paradise shall be excluded from the deemed award after depositing a sum of 13,40,50,000/- to HSIIDC. It was highlighted that DTCP had previously (vide its letter dated 15.12.2017) stated that any application of the Project will be processed only after the restrictions imposed by Hon'ble Supreme Court were removed. Due to such acts of DTCP, there had been many delays in getting the necessary permissions. It was intimated that no such restriction is effective now and hence, DTCP was requested to process the following:



	department and has been entangled in the procedural requirements and departmental delays due to no fault whatsoever on part of the Respondent.		<ul style="list-style-type: none"> • Renewal of license no. 59 of 2009; • Application dated 07.09.2020 with request to consider the period between 23.07.2018 till 21.07.2022 as cooling / zero period as no approvals were granted; • BR-III for revised building plans which were approved on 22.02.2017 • Grant of approval of transfer of license and change of developer
36		04.08.2022	Green Heights filed an application for extension of the RERA registration under section 7 sub clause 3 dated 04.08.2022 which is awaited.
37		16.11.2022 14.12.2022	In complete compliance of the order passed by the Hon'ble Supreme Court, and with an intent to complete the development of the Project, Green Heights projects Pvt. Ltd. paid the amount ₹ 13,40,50,000/- from its own resources on 16.11.2022 and requested for confirmation of such compliance. HSIIDC wrote to Green Heights confirming the amount 13,40,50,000/- received in HSIIDC account and that Green Heights has complied with the orders of Hon'ble Supreme Court.



38	15.12.2022 (Receiving dated 16.12.2023)	Paradise approached DTCP to issue BR-III for revised building plans as the sum of 13,40,50,000/- was deposited by Green Heights to HSIIDC and now the land was excluded from the deemed award.
39	05.01.2023 (Receiving dated 11.01.2023)	Paradise approached DTCP to process the pending applications for transfer of license.
40	02.09.2023 (Receiving dated 04.09.2023)	Paradise again approached DTCP to process the pending applications for renewal and transfer of license and issuance of BR-III.
41	03.10.2023	Paradise vide letter dated 03.10.2023 again approached for renewal of license no. 59 of 2009 and grant of approval for transfer of license and change of developer.
42	17.10.2023 23.10.2023	DTCP renewed the license no.59, of 2009 up to 21.01.2025. DTCP granted Zero Period from 23.07.2018 to 21.07.2022. BR III was also issued.
43	31.10.2023	Paradise vide letter dated 31.10.2023 again approached DTCP for grant of pending approval of transfer of license no. 59 of 2009 and change of developer.



44		<p>20.02.2024 04.04.2024</p>	<p>The Hon'ble Supreme Court had directed the enforcement directorate to inquire about the projects falling within the purview of the subject matter. While following up from DTCP, it came within the knowledge of Green Heights Projects Pvt. Ltd. that DTCP is awaiting clearance from the enforcement directorate before proceeding towards the grant of pending permissions.</p> <p>Taking matters in its own hands, Green Heights Projects Pvt. Ltd. approached the enforcement directorate seeking a closer report.</p>
45		<p>15.04.2024 17.05.2024 (Receiving dated 20.05.2024) 03.06.2024</p>	<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		26.11.2024	Paradise again wrote to DTCP. It was highlighted that while DTCP allowed the BR III on 26.10.2023 and had also renewed the license, no further approvals were granted. It was highlighted that the project is complete and requested for grant of pending approvals.
47		As on date	The approval for transfer of license and change of developer is pending at the department's end, due to no fault of the Respondent or Paradise.

- vii. That 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.
- viii. That the complainants 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 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 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.

- ix. That it is germane to note that the non-payment of assured return, as alleged by the complainants in their complaint is bad in law. It is pertinent to mention herein that the payment of assured return is not maintainable before the Authority upon enactment of the Banning of Unregulated Deposits Schemes Act, 2019 [BUDS Act] wherein, under section 7 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 complainants are 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.

- x. 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.
- xi. 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.
- xii. 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.

- xiii. 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.
- xiv. That in accordance with the above stated events, directly affecting the respondent, the respondent informed the complainants vide letter dated 13.05.2021 about the discontinuance of the assured return.
- xv. 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 complainants about the



injunction over the Project, the resumption of the construction works, and the imposition of additional fee of 13.4 crore upon the Respondent.

- xvi. 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 complainants had never expressed any disagreement with the same, rather, had been supportive of the diligent efforts being made by the Respondent.
- xvii. 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 1st 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.
- xviii. 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.

xix. 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 the Authority.

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

<i>S. No</i>	<i>Date of order</i>	<i>Directions</i>	<i>Period of</i>	<i>Days affected</i>	<i>Comments</i>



			<i>Restriction</i>		
1.	07.04.20 15	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/ building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped the movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.
2.	19.07.20 16	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate		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



		consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.			crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	08.11.2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
4.	07.11.2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 th Nov 2017 till further notice.		90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The



					<p>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 21st Dec, 19 and 30th Jan, 20.</p>
5.	09.11.2017	<p>National Green Tribunal has passed the said order dated 9th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17th of Nov, 2017). By virtue of the</p>	<p>09.11.2017 to 17.11.2017</p>	<p>9 days</p>	<p>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.</p>



		said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.			
6.	29.10.20 18	Haryana State Pollution Control Board vide Notification HSPC B/MS/2018/2939-52	01.11.2018 to 10.11.2018	11 days	All construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material is used) to remain closed in Delhi and other NCR Districts from November 01.10.2018
7.	24.12.20 18	Delhi Pollution Control Committee vide Notification DPCC/PA to MS/2018/7919-7954	24.12.2018 to 26.12.2018	3 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida to remain closed till December, 26 th 2018
8.	01.11.20 19	Environment Pollution (Prevention and Control) Authority for National Capital Region vide Direction bearing no. EPCAR/2019/L-53	01.11.2019 to 05.11.2019	6 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida to remain closed till morning of November 5, 2019 (current ban on



					construction was only 6 PM to 6 AM and this is new extended to be complete banned till Monday, November 5, 2019, morning)
9.	24.07.2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
10	11.10.2019	Commissioner, Municipal Corporation, Gurugram has passed an	11th Oct 2019 to	81 days	On account of the passing of the aforesaid order, no construction activity



		order dated 11 th of Oct. 2019 whereby the construction activity has been prohibited from 11 th Oct/ 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	31st Dec 2019		could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
11	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as " <i>MC Mehta vs. Union of India</i> " completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.	04.11.2019 to 14.02.2020	102 days	These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.



12	11.10.2019	Commissioner of Municipal Corporation Gurugram issued direction to issue Challan for Construction Activities and lodging of FIR from 11th October to 31st December, 2019 as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019.	11.10.2019 to 31.12.2019	81 days	
13	02.11.2023 and 05.11.2023	Commission for Air Quality Management in NCR and Adjoining Areas vide Order No. 120017/27/GRAP/2021/CAQM	02.11.2023 to 18.11.2023	17 days	The commission for Air Quality Management in NCR and adjoining areas, vide Direction No. 77 dated 6 th October, 2023, issued statutory direction for implementation of the revised schedule of the Graded Response Action Plan (GRAP) with immediate effect as and when orders under GRAP are invoked. The Sub-Committee constituted for invoking actions under the GRAP in its



				<p>meeting held on 2nd November, 2023 comprehensively reviewed the air quality scenario in the region as well as the forecasts for meteorological conditions and air quality index made available by IMD/IITM. Keeping in view the prevailing trend of air quality, in an effort to prevent further deterioration of the air quality, the sub-committee decided that ALL actions as envisaged under stage III of the GRAP-'Severe' Air Quality (DELHIAQI ranging between 401-450) be implemented in right earnest by all the agencies concerned in the NCR, with immediate effect, in addition to the stage I and II actions are already in force. These include:</p> <p>4. Construction & Demolition activities.</p>
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					In furtherance of the same vide Order dated 05.11.2023 GRAP IV was implemented continuing the ban on construction and demolition activity.
14				497 days	

- xxi. 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 Authority, Gurugram granted 6 months extension for all ongoing projects vide Order/Direction
- xxii. 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.
7. All other averments made in the complaint were denied in toto.
8. 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

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

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

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

Section 11

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

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.

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

13. 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.

14. The complainants 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 timestipulated 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."

15. 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'.

16. 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 1.03.2018 in question that is despite claiming force majeure due to external impediments, the builder continued construction activities unabated thereafter concurrently received payments from the allottees 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 complainants as well as respondent from 13.10.2020 to 21.07.2022 in view of the stay order of Hon'ble Supreme Court on further construction/development works on the said project.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to pay interest for delayed possession.

G.II Direct the respondent to sign BBA.

17. That the above mentioned reliefs no. G.I and G.II as sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
18. That the complainants have 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 complainants states 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.

19. The complainants 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.
20. 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.
21. 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.

22. 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 complainants were 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.

23. 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 memorandum of understanding during the first period, i.e., 24.04.2015 to 12.03.2018 from various allottees of the same project, 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 from various allottees of the same project, one of them is reproduced below as:

Demand Raised On	Demand Raised ON Account Of
01.12.2014	Commencement of work at site
03.11.2015	On laying of raft
3.02.2016	On casting of 3rd basement roof raft
08.08.2016	VAT
11.04.2016	On casting of 2nd basement roof slab
20.12.2016	On casting of 1st basement roof slab
10.05.2017	On casting of 4th roof slab plus 2nd floor roof
10.10.2017	On start of brick work

24. 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.
25. 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 complainants 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
26. In the present complaint, the allottee 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."

27. In the present case, the buyer's agreement was not executed and there is no possession clause in the MoU dated 20.03.2018. Hence, as per the judgement "*Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018* Hon'ble Apex Court observed that "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." In view of the above-mentioned reasoning, the date of the allotment dated 07.02.2018 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 07.02.2021.
28. **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.

29. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
30. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
31. 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;"

32. 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 *"Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018* three years reasonable time period is taken from the date of allotment i.e., 07.02.2018, the due date of possession comes out to be 07.02.2021 including grace period being unqualified
33. It is pertinent to mention over here that even after a passage of more than 6 years (i.e., from the date of allotment 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 respondent has 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.
34. 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., 07.02.2021 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 complainants 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.

35. After consideration of all the facts and circumstances, the respondent is directed to pay interest to the complainants against the paid-up amount after adjustment of assured return paid to the complainants, 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 07.02.2021 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 complainants 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.
36. 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 the Hon'ble Supreme Court in Civil appeal nos.3864-3889/2020 decided on 14.12.2020.



37. The respondent builder is directed to execute builder buyer agreement within 30 days from the date of this order.

G.III Direct the respondent to pay compensation on account of mental harassment.

38. The complainants in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

H. Directions of the Authority

39. Hence, the Authority hereby passes this order and issue the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

1. The respondent is directed to pay interest to complainants 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 07.02.2021 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 and complainants 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 07.02.2021 till the date of order by the authority shall be paid by the promoter to the allottee 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 the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period or assured return paid to the complainants by the respondent, if any.
- IV. 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.
- 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. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.



- VII. The respondent builder is directed to execute builder buyer agreement within 30 days from the date of this order.
- VIII. 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.
- IX. The respondent is directed to execute the registered conveyance deed in terms of Section 17 (1) of the Act of 2016 within a period of 90 days after payment of requisite stamp duty and administrative charges by the complainants.
- X. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
40. Complaint stands disposed of.
41. File be consigned to registry

Dated: 12.02.2026



Phool Singh Saini
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram