

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

Complaint no. : 2266 of 2025
Date of Decision : 12.02.2026

1. Sonia Vashist

2. Hemant Vashist

Both R/o: Flat No.-40, DDA Flats, Pocket-2, Sector-9,
Dwarka, Delhi-110077

Complainants

Versus

M/s Green Heights Projects Pvt. Ltd

Registered office address:- 271, Phase-II, Udyog
Vihar, Gurugram, Haryana- 122016

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Garvit Gupta (Advocate)

Shri Harshit Batra (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 the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S. N.	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.	L-21B, 2 nd floor [Page 30 of complaint]
8.	Unit area admeasuring	357 sq. ft. [Page 30 of complaint]
9.	Date of allotment	01.08.2018 [Page 30 of complaint]
10.	Date of MoU [As per clause 12 of MoU Agreement to sell was to be executed.]	13.08.2018 [Page 32 of complaint]
11.	Addendum to MoU	31.05.2019 [Page 40 of complaint]
12.	Payment Plan	50:50 50% on booking 50% on notice of possession [Page 31 of complaint]
13.	Assured return as per clause 2 of MoU dt.13.08.2018	<i>That First Party shall pay to the Second Party an Assured Return-cum-guaranteed Lease Rent at the rate of Rs.44/- per Sq. Ft.(super area) i.e. Rs.15,708/- per month on the amount received by the first party against the commercial space(S) allotted to the second party until offer of possession as Assured Return on investment and</i>



		<p>thereafter Rs.70/- per sq. ft. (super area) i.e., Rs.24,990/- per month as guaranteed Lease Rent upon receipt of balance Basic Sale Price (BSP) along with other charges. Assured Return-cum-guaranteed Lease Rent shall be paid by the First Party to the second Party for a total period of 36 months starting from 04.08.2018. Upon receipt of Occupation Certificate, the first party shall make all efforts to Lease out the allotted commercial space(s) of the second party to any Third party and if the same is leased than any higher rent realized above the guaranteed Assured return shall accrue and be paid to the First Party to any Third Party and if the same is leased then any higher rent realized above the guaranteed Assured Rent shall accrue and be paid to the First Party by the Second Party and if the same is below the guaranteed Assured Rent, the differential shortfall shall be paid by the First Party to the second party. The Second Party under this Plan shall pay 50% of Basic Sale Price (BSP) along with other charges will be paid by the Second Party to the First Party upon offer of final Possession by the First Party. If the second party wishes to occupy the Commercial Space(s) upon offer of final Possession during the above said 3 year period, then the First Party will stop the payment of guaranteed Assured Rent during balance of the committed period of 36 months. The payment of Assured Rent is subjected to deduction of TDS as applicable. [Page 34 of complaint]</p>
14.	Assured return as per addendum dt.31.05.2019 of MoU dt. 13.08.2018	3. However, the Second Party has given the balance amount of Basic Sale Price (B.S.P.) Before offer of Possession and thus it is agreed between the Parties that the Assured Return-cum-Guaranteed Lease Rent of Rs.24,990/- per month will be paid to the Second Party by the First Party for the remaining period out of the agreed period of 36 months



		starting from 08.05.2019, subject to deduction of applicable taxes. [Page 41 of complaint]
15.	Possession clause	Not available
16.	Due date of possession	13.08.2021 <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 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> <i>In view of the above-mentioned reasoning, the date of the execution of MoU dated 13.08.2018 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 13.08.2021.</i>
17.	Total sale consideration	Rs.22,30,179/- [As per MoU at page 34 of complaint]
18.	Amount paid by the complainant	Rs.24,99,560/- [as alleged in pleadings at page 13 of complaint and not denied by the respondent]
19.	Occupation certificate /Completion certificate	Not obtained
20.	Notice of possession	Not offered.
21.	Amount of Assured Return Paid till 31.03.2021 by the respondent	Not available
22.	Intimation of discontinuation of assured return	of 13.05.2021 of [Page 43 of complaint]



B. Facts of the complaint:

3. The complainants have made the following submissions:

- a. That the complainants received a marketing call from the office of respondent in the month of February 2018 for booking in commercial project of the respondent, 'Baani Centre Point', situated at Sector M1D, Gurugram. The complainants had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. The complainants 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 hand over the possession of the unit on timely basis.
- b. That the complainants, induced by the assurances and representations made by the respondent, decided to book a commercial unit in the project of the respondent as the complainants 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 complainants would be either positively handed over within the agreed time frame or the unit would be leased by the respondent.
- c. That as per payment plan sent by the respondent, the total sale consideration was to be paid in two instalments, i.e., at the time of

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booking (50%) and on notice of possession (50%). The complainants accordingly at the time of booking made the payment of Rs.2,50,000/- on 25.05.2018 and Rs.8,49,560/- on 01.08.2018. The respondent issued the receipts dated 01.08.2018 confirming the said payments received by it from the complainants. Thereafter, the respondent vide its allotment letter dated 01.08.2018 intimated the complainants of the fact that a unit bearing no. L-21B on second floor admeasuring super area of 357 sq. ft. has been allotted to the complainants in the said project of the respondent.

d. That a copy of the memorandum of understanding was shared by the respondent with the complainants. Vide the said memorandum of understanding, it was proposed that the total sale consideration of the unit was Rs.22,30,179/-. Moreover, as per Clause 2 of the said MoU, the respondent promised to pay an assured return of Rs.15,708/- per month to the complainants on the amount received until the offer of possession and thereafter an amount of Rs.24,990/- per month was to be paid as guaranteed lease rent. The said guaranteed amount were payable as stated hereinbefore starting from 04.08.2018. The relevant part of Clause 2 is reproduced hereunder:

"That First Party shall pay to the Second Party an Assured Return-cum-guaranteed Lease Rent at the rate of Rs.44/- per Sq.Ft (Super Area) i.e. .15,708/- (Rupees Fifteen Thousand Seven Hundred and Eight) per month on the amount received by the First Party against the Commercial Space(s) allotted to the Second Party until offer of possession as Assured Return on investment and thereafter Rs.70/- per sq ft (Super Area) i.e., Rs.24,990/- (Rupees Twenty Four Thousand Nine Hundred Ninety) per month as guaranteed Lease Rent."

Eventually, a Memorandum of Understanding was executed between the parties on 13.08.2018.

e. That as per Clause 2 of the said memorandum of understanding, the said unit is to be leased out by the respondent after receiving the



occupation certificate and the amount of the guaranteed lease rent is to be paid by the respondent to the complainants upon such lease. As per the said clause of the memorandum of understanding, the minimum guaranteed lease rent of Rs.24,990/- would be paid by the respondent to the complainant. Moreover, in case of the unit being leased out for an amount lower than the guaranteed assured rent, the differential shortfall amount would be paid by the respondent to the complainants. Similarly, in case of a higher lease rent, the difference amount realized above the guaranteed assured rent shall accrue and be paid to the respondent by the complainants.

- f. That as per Clause 12 of the MOU, an agreement to sell was to be executed between the complainants and the respondent. It was agreed vide the said clause that both the parties would be bound by the terms of the agreement.
- g. The complainants 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. The representatives of the respondent again assured the complainants that the agreement would be duly executed and further promised the complainants that the possession of the unit would be delivered timely to the complainants. The complainants had paid a substantial sum towards the said unit already and thus had no other option but to believe the representations and promises of the respondent. However, the assurances of the respondent turned out to be false as the respondent has till date not executed the buyer's agreement with the complainants despite the representations.



- h. That the complainants visited the project site of the respondent in the month of January 2019 to enquire about the construction status and execution of the agreement in question. It is very important and pertinent to mention herein that the complainants always wanted to inspect the location of the allotted unit and had requested the representatives of the respondent several times in meetings and through telephonic conversations to allow them to do the same. However, the respondent kept on making excuses and did not allow the complainants to inspect the location of the unit in question. However, the respondent assured the complainants that the respondent would continue to make the payments towards the assured returns. The complainants had no other option but to believe the assurances of the respondent.
- i. That the respondent approached the complainants and requested the complainants to make advance payments for the upcoming payment stage i.e., at the time of offer of possession, prior to receiving the offer of possession. The respondent further assured the complainants that the respondent would continue to make the payments towards the assured returns at an amount of Rs.24,990/- per month i.e., the amount of assured returns which was to be paid by the respondent. The complainants based on the assurances of the respondent paid a sum of Rs.14,00,000/- on 02.05.2019 and the said payment was acknowledged by the respondent on 07.05.2019.
- j. Subsequently, an addendum to the memorandum of understanding was executed between the complainants and the respondent on 31.05.2019. Vide the said addendum to the MOU, it was agreed upon between the parties that the complainants have agreed to make the balance payments towards the sale consideration before the offer of



possession and in lieu of the same, the respondent would pay a sum of Rs.24,990/- per month to the complainants as assured return-cum-guaranteed lease rent.

- k. The complainants came to know that the respondent has deliberately for the reasons known best to it, failed to execute the agreement only with the complainants as the respondent had otherwise executed the agreements with other allottees of the project. Despite having made the MOU and amended MOU containing terms very much favourable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder.
- l. That as per Clause 2 of the MOU and Clause 7 of the commercial space buyer's agreement executed between the respondent and similarly situated allottees, the possession was to be offered by the respondent to the complainants as per the timeline disclosed by the respondent at the time of registration of the project.
- m. That, the respondent miserably failed to make the payments towards the assured return-cum-guaranteed lease rent as promised under Clause 2 of the MOU from April 2021. It is pertinent to mention here that the complainants vide telephonic conversations and by visiting the office of the respondent enquired about the sudden stopping of the payment of assured return-cum-guaranteed lease rent. The respondent tried to cover up its laches by further assuring the complainants that the said unpaid amounts against the assured return-cum-guaranteed lease rent would be adjusted in the further payments. The respondent further categorically assured the complainants that the respondent would comply with its obligations of paying assured return-cum-guaranteed lease rent without any delay or defaults in the future. The fact that the assured return-cum-



guaranteed lease rent has not been paid by the respondent to the complainants after 31st March 2021 is evident from the letter dated 13.05.2021 sent by the respondent.

- n. That the 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. When the complainants 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. It is pertinent to mention here that the complainants 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 complainants that the possession of the unit would be offered to them very shortly as the construction was almost over and that it would keep on making payment towards the monthly assured return-cum-guaranteed lease rent as per its obligations as stated in the MOU.
- o. That the complainants have paid a sum of Rs.24,99,560/- out of the total sale consideration of Rs.22,30,179/- (inclusive of taxes). The said fact is evident from the receipts attached by the complainants along-with the present complaint. It is pertinent to mention here that the complainants had paid more than the entire sale consideration amount based on the demands raised by the respondent. The complainants based on the representations of the respondent made payments towards the payment stage of offer of possession despite not receiving the offer of possession from the respondent and thus prior to the said payment demand becoming due. However, the



respondent failed to complete the construction of the said project and offer the possession of the said allotted unit to the complainants.

- p. The respondent has miserably failed to disburse any other amount for the period of last 4 years from the date of disbursement of last amount in March, 2021 and has failed to pay any lease rental to the complainants as guaranteed by the respondent as per the signed MOU. Moreover, the respondent has not raised construction within the agreed time frame and thus, has utilized the amount of the complainants for the long period of time. There has been virtually no progress, and the construction activity is lying suspended since long. It is reasserted that the complainants have 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 complainants 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 complainants 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 complainants.
- q. 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 58 months calculated upto May, 2025 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 complainants. 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 complainants and are unconcerned about the possession of the unit despite repeated assurances.

- r. That the respondent has even failed to renew registration certificate of the project from the Authority and has acted in blatant violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016. The respondent was bound to comply with provisions of the Act and the Rules and Regulations made thereunder. It is, thus clear that the respondent/promoter has been acting not only in contrary to the terms of the agreement which were drafted by the respondent itself but has also on account of its own acts and has reduced the complainants at its mercy wherein and the complainants' questions have been left un-answered and the respondent/promoter is continuing with its illegal acts acting strictly in violation of the provisions of the RERA Act, 2016 and Haryana Rules, 2017. It is thus, also clear, that without getting the renewal of the registration certificate done, the respondent cannot raise or collect any further amount from the complainants.
- s. That the respondent has violated several provisions of RERA 2016 and Rules 2017 and is liable for the same. As per section 18 of RERA 2016 and Rules 15(1) and 15(3) Rules, 2017, the respondent/promoter is liable to pay interest for every month of delay till handing over of possession. That the above-mentioned acts of the respondent are also in violation of Section 11(4)(a) of Act, 2016.
- t. That the respondent by adopting unfair trade practices, misuse of funds, failed to execute the conveyance deed of the unit allotted to the



complainants as well as the other similarly placed allottees. Moreover, the obligation to execute the conveyance deed has been detailed in provisions of Real Estate (Regulation and Development) Act, 2016 as well. It is submitted that as per Section 11(4)(f) and Section 17 of the Real Estate (Regulation and Development) Act, 2016, the promoter is duty bound to execute a registered conveyance deed in favour of an allottee.

- u. That the project is an ongoing project and hence falls under the first proviso to Section 3(1) of RERA 2016. The complainants believes that no occupation and completion certificate has been issued for the project in question till date and hence this project falls clearly under the jurisdiction of the Authority. The respondent in utter disregard of its responsibilities has left the complainants in the lurch and the complainants have been forced to chase the respondent for seeking relief. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to offer the possession, pay the amount of assured return-cum-guaranteed lease rent and compensation for delay on its part and finally about a week ago when the respondent refused to compensate the complainants with the delayed possession interest amount and compensation.
- v. Thus, the complainants vide this present complaint are seeking leasing of the unit along with payment of assured return-cum-guaranteed lease rent of Rs.24,990/- per month from the date of discontinuation of assured returns i.e., 01.04.2021 till the date of offer of possession. Furthermore, as is evident from a perusal of the MOU in question, the respondent is liable to lease the unit to the



prospective lessee at a minimum rent of Rs.24,990/- per month and the same would be payable to the complainants. The complainants are 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 offer of possession as per Section 18 of the RERA Act, 2016. In case the respondent is unable to lease out the said unit within 3 months from the date of receipt of OC, then the respondent be directed to demarcate the unit and handover the possession for leasing to the complainants. The complainants reserve their right to approach the appropriate Forum to seek compensation.

C. Relief sought by the complainant:

4. The complainants have sought the following relief(s):

- I. Direct the respondent to pay the amount of assured return-cum-guaranteed lease rent of Rs.24,990/- per month from the date of discontinuation of assured returns i.e., 01.04.2021 till the date of offer of possession along with interest at the applicable rate on the due amount
- II. Direct the respondent to lease the unit after obtaining the occupation certificate.
- III. Direct the respondent to pay the amount of minimum lease rent of Rs.24,990/- per month from the date of leasing of the unit.
- IV. Direct the respondent to lease out the said unit within 3 months from the date of receipt of OC, then the respondent be directed to demarcate the unit and handover the possession for leasing to the complainants.
- V. Direct the respondent to pay to the complainants delayed possession charges from 30.06.2020 till the date of actual offering



of possession as per Section 18 of the RERA Act, 2016 at the interest rate as specified in the RERA Act, 2016 and HRERA Rules, 2017.

- VI. Direct the respondent to offer the possession of the unit in a habitable condition after receipt of occupation certificate.
 - VII. Direct the respondent not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the agreement.
 - VIII. Pass an order imposing penalty on the builder on account of various defaults and illegalities under RERA Act, 2016 and the same be ordered to be paid to the complainants.
 - IX. Direct the respondent to execute the conveyance deed of the allotted unit in favour of the complainants.
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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. That respondent has filed a reply dated 20.11.2025 and contested the complaint on the following grounds:
 - a. 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.
 - b. 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.

- c. 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.
- d. 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.
- e. 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 (hereinafter referred to as the Zero Period II)	The Project was under injunction by the Hon'ble Supreme Court due to an application filed by HSIIDC.
Category V:	Period from 22.07.2022 till Date	The Respondent is seeking the benefit of this period as a grace period from 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.

- f. 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		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	CATEGORY I: The events that transpired prior to the effect of the Hon'ble Supreme Court's orders over the Project. This shows the required permissions for the project were obtained in a timely fashion.	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	CATEGORY II:	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</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>



14	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.	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		21.08.2015	Paradise approached the Hon'ble Supreme Court of India for the clarification of the stay order as to whether order dated 24.04.2015 was applicable to the land and license no. 59 of 2009. Paradise contended that their land was distinct from the land involved in the Rameshwar case. The Hon'ble Supreme Court directed Paradise to seek clarifications from DTCP, designating the DTCP as the appropriate authority to issue orders in the matter.
16		25.08.2015 08.01.2016	Paradise approached DTCP on 25.08.2015 for clarification and stated that the land owned by Paradise doesn't fall within the ambit of the Rameshwar case. Paradise had also issued a reminder dated 08.01.2016 to DTCP for the clarification being sought.
17		15.01.2016	In the meanwhile, the permissions and approvals, previously granted qua the project had expired and hence, Paradise had also requested DTCP for renewal of the permissions. Paradise also submitted an application for



			transfer of license and change in developer, in favour of Green Heights Projects Pvt. Ltd.
18		20.04.2016	That Paradise approached DTCP vide various representations however DTCP did not take any decision as the matter was pending in the Supreme Court. It was further represented by DTCP that the original files in respect of land portions of entire 912 acres have been taken by Central Bureau of Investigation (hereinafter referred to as the "CBI") of all the projects and till original files are returned by CBI, DTCP will not be in a position to provide clarification in respect of various representations.
19		13.09.2016 (receiving dated 14.09.2016) 21.10.2016 (receiving dated 25.10.2016) 01.02.2017 (Received on 02.02 .2017)	Paradise again wrote to DTCP to retrieve the original files from CBI. It was informed that in the writ petition filed seeking retrieval of the original files, directions for handing back of the original files as already passed. It was requested that such retrieval be done and DTCP should process the pending application for renewal and transfer of License and sanction of revised building plans. Due to the non-action part of DTCP, multiple reminders and representations were written by Paradise with a <i>bonafide</i> attempt towards the completion of the project.



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



26		27.11.2017	Paradise requested DTCP to consider the period during which the no construction order is in frame, as the cooling period and extend the license accordingly.
27		15.12.2017	DTCP wrote to Paradise that the final approval for sanction of building plans on BR-III will be issued only after the Hon'ble Supreme Court of India removes the restrictions imposed for not raising further construction in the area.
28		12.03.2018	The stay of supreme court was lifted and the project Baani Center Point was not included in tainted projects.
29	<p>CATEGORY III:</p> <p>After the removal of the stay by the Hon'ble Supreme Court, continuous follow ups were made by the Respondent regarding the grant of pending permissions. The Respondent</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	herein is seeking the grace of this period as the entire time was utilised in following up with the concerned departments	23.07.2018	Paradise approached DTCP for renewal of license to begin construction which was granted to them on 23.07.2018. That while renewing the license the entire period of 24.04.2015 till 12.03.2018 was exempted as Zero period by DTCP.
31		01.07.2019	The HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 in the matter of Rameshwar & Ors. Vs. State of Haryana & Ors. to include the land of Paradise developed by Green Heights in the award dated 26.08.2007, being Application for Clarification of Final Judgment dated 12.03.2018 passed by the Supreme Court.
32		31.08.2019 13.09.2019	DTCP has passed an order dated 31.08.2019 stating that the renewal and transfer of license of Paradise and approval of revised building plan will be processed only after clarification is given by the Hon'ble Supreme Court on the application filed by HSIIDC. The intimation of this order was received from DTCP vide letter dated 13.09.2019.
33	CATEGORY IV: ZERO PERIOD II The Project was under injunction by	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.



	delays due to no fault whatsoever on part of the Respondent.		<ul style="list-style-type: none"> • 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.
38		15.12.2022 (Receiving dated 16.12.2023)	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. 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



34	the Hon'ble Supreme Court due to an application filed by HSIIDC	21.07.2022	Through the judgment dated 21.07.2022 in <i>Rameshwar Case</i> , the stay on construction was cleared by the Hon'ble Supreme Court of India with directions to Green Heights for payment of Rs. 13,40,50,000/- (Rupees Thirteen crores forty lakhs and fifty thousand only) as additional cost of land payable to HSIIDC @ Rs. 5 crores per acre. This order was passed by the Hon'ble Supreme Court after considering the development status of the project, amount received from the allottees, and to protect the interest of the allottees.
35	CATEGORY V: The Respondent is seeking the benefit of this period as a grace period from 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	25.07.2022 (Receiving dated 26.07.2022) 04.08.2022 (Receiving dated 05.08.2022)	Paradise approached DTCP to issue BR-III for revised building plans as the land owned by Paradise shall be excluded from the deemed award after depositing a sum of 13,40,50,000/- to HSIIDC. It was highlighted that DTCP had previously (vide its letter dated 15.12.2017) stated that any application of the Project will be processed only after the restrictions imposed by Hon'ble Supreme Court were removed. Due to such acts of DTCP, there had been many delays in getting the necessary permissions. It was intimated that no such restriction is effective now and hence, DTCP was requested to process the following: <ul style="list-style-type: none"> • Renewal of license no. 59 of 2009;



		now the land was excluded from the deemed award.
39	05.01.2023 (Receiving dated 11.01.2023)	Paradise approached DTCP to process the pending applications for transfer of license.
40	02.09.2023 (Receiving dated 04.09.2023)	Paradise again approached DTCP to process the pending applications for renewal and transfer of license and issuance of BR-III.
41	03.10.2023	Paradise vide letter dated 03.10.2023 again approached for renewal of license no. 59 of 2009 and grant of approval for transfer of license and change of developer.
42	17.10.2023 23.10.2023	DTCP renewed the license no.59, of 2009 up to 21.01.2025. DTCP granted Zero Period from 23.07.2018 to 21.07.2022. BR III was also issued.
43	31.10.2023	Paradise vide letter dated 31.10.2023 again approached DTCP for grant of pending approval of transfer of license no. 59 of 2009 and change of developer.
44	20.02.2024 04.04.2024	The Hon'ble Supreme Court had directed the enforcement directorate to inquire about the projects falling within the purview of the subject matter. While following up from DTCP, it came within the knowledge of Green Heights Projects Pvt. Ltd. that DTCP is awaiting clearance from the enforcement directorate before proceeding towards the grant of pending



			permissions. Taking matters in its own hands, Green Heights Projects Pvt. Ltd. approached the enforcement directorate seeking a closer report.
45		15.04.2024 17.05.2024 (Receiving dated 20.05.2024) 03.06.2024	Paradise has been approaching DTCP, time and again, seeking the issuance of the pending permission for change of developer and transfer of license. Highlighting the urgency of the matter, it was informed that the project has been completed and around 400 customers are awaiting the possession. As part of the proactive approach of the company, Paradise also conveyed DTCP of the relevant email ids that need to be addressed while seeking clarifications from the enforcement directorate.
46		26.11.2024	Paradise again wrote to DTCP. It was highlighted that while DTCP allowed the BR III on 26.10.2023 and had also renewed the license, no further approvals were granted. It was highlighted that the project is complete and requested for grant of pending approvals.
47		As on date	The approval for transfer of license and change of developer is pending at the department's end, due to no fault of the Respondent or Paradise.

g. 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.

- h. That the complainants have 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.
- i. 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.

- j. 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.
- k. 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.

- l. 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.
- m. 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.
- n. 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.



- o. 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.
- p. 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 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.
- q. 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.

- r. 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.
- s. 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.

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

S. No.	Date of order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped the movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.
2.	19.07.2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the		30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of



		concerned authorities and have the Environment Clearance from the competent Authority.			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 respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the



					alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 st Dec, 19 and 30 th Jan, 20.
5.	09.11.2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.	09.11.2017 to 17.11.2017	9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29.10.2018	Haryana State Pollution Control Board vide Notification HSPC B/MS/2018/2939-52	01.11.2018 to 10.11.2018	11 days	All construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material is used) to remain closed in Delhi and other NCR Districts from November 01.10.2018



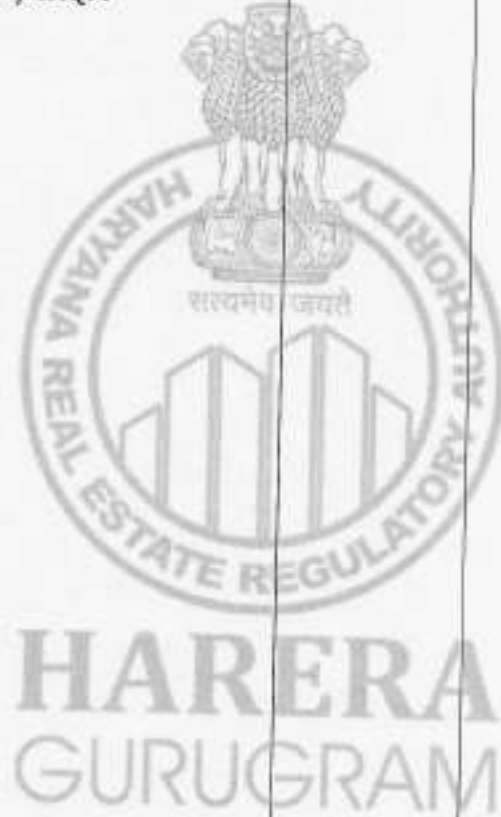
7.	24.12.2018	Delhi Pollution Control Committee vide Notification DPCC/PA to MS/2018/7919-7954	24.12.2018 to 26.12.2018	3 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida to remain closed till December, 26 th 2018
8.	01.11.2019	Environment Pollution (Prevention and Control) Authority for National Capital Region vide Direction bearing no. EPCAR/2019/L-53	01.11.2019 to 05.11.2019	6 days	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida to remain closed till morning of November 5, 2019 (current ban on construction was only 6 PM to 6 AM and this is new extended to be complete banned till Monday, November 5, 2019, morning)
9.	24.07.2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there



					was a sharp increase in prices which consequently affected the pace of construction.
10	11.10.2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct/ 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	11 th Oct 2019 to 31 st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
11	04.11.2019	The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all 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	11.10.2019 to 31.12.2019	81 days	



		as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019.			
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 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: 4. Construction & Demolition activities. In furtherance of the same vide Order dated 05.11.2023 GRAP IV was implemented continuing the ban on construction and demolition activity.
14			497 days	

u. 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, 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.

7. All other averments made in the complaint are 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 based on these undisputed documents and submission made by the complainant.

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.

F. 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 the entire Gurugram District for all purposes 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.

F. 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 the 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.

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 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

F.I. Objection regarding delay due to force majeure circumstances.

13. The respondent took a plea that the project "Baani Centre Point" was under stay orders of the Hon'ble Supreme Court of India for 7 years 3 months (24.04.2015 To 21.07.2022) which was beyond the respondent's reasonable control and because of this no construction in the project could be carried. Hence, there is no fault of the respondent in delayed construction which has been considered by DTCP and the Authority while considering its applications of considering zero period, renewal of license and extension of registration by the Authority.
14. Due to reasons stated hereinabove it became impossible to fulfil contractual obligations due to a particular event that was unforeseeable and unavoidable by the respondent. It is humbly submitted that the stay on construction order by the Hon'ble Supreme Court is clearly a "Force Majeure" event, which automatically extends the timeline for handing over possession of the unit. The intention of the Force Majeure clause is to save



the performing party from consequences of anything over which he has no control. It is no more res integra that force majeure is intended to include risks beyond the reasonable control of 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.

15. The Authority is of the view that the pivotal issue arises from the builder's actions during the period between 24.04.2015 to 01.03.2018 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. 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 relief sought by the complainant.

- G.I** Direct the respondent to pay the amount of assured return-cum-guaranteed lease rent of Rs.24,990/- per month from the date of discontinuation of assured returns i.e., 01.04.2021 till the date of offer of possession along with interest at the applicable rate on the due amount
- G.II** Direct the respondent to pay the amount of minimum lease rent of Rs.24,990/- per month from the date of leasing of the unit.
- G.III** The respondent is also liable to pay to the complainants delayed possession charges from 30.06.2020 till the date of actual offering of possession as per Section 18 of the RERA Act, 2016 at the interest rate as specified in the RERA Act, 2016 and HRERA Rules, 2017.

16. The above-mentioned reliefs no. G.I to G.III 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.

17. 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.



18. 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.
19. 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.
20. 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.



21. 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.
22. 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 allottees, same is reproduced below as:

Receipt of demand Raised	Demand Raised on Account Of
25.05.2018	On Booking
01.08.2018	On Notice of Possession

23. 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.
24. 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.

I. Assured returns

25. The complainants in the present complaint is seeking unpaid assured returns on monthly basis as per MoU dated 13.08.2018 and addendum dated 31.05.2019 of same MoU at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the MoU dated 31.05.2019. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019).
26. It is important to note that as per clause 2 of the MOU, the respondent has promised an amount of Rs.44/- per sq. ft. of super area of premises per month in the form of assured return/pre-possession lease rental until the offer of possession. Clause 2 of the MOU is reproduced herein for ready reference:

That First Party shall pay to the Second Party an Assured Return-cum-guaranteed Lease Rent at the rate of Rs.44/- per Sq. Ft.(super area) i.e. Rs.15,708/- per month on the amount received by the first party against the commercial space(S) allotted to the second party until offer of possession as Assured Return on investment and thereafter Rs.70/- per sq. ft. (super area) i.e., Rs.24,990/- per month as guaranteed Lease Rent upon receipt of balance Basic Sale Price (BSP) along with other charges. Assured Return-cum-guaranteed Lease Rent shall be paid by the First Party to the second Party for a total period of 36 months starting from 04.08.2018. Upon receipt of Occupation



Certificate, the first party shall make all efforts to Lease out the allotted commercial space(s) of the second party to any Third party and if the same is leased than any higher rent realized above the guaranteed Assured return shall accrue and be paid to the First Party to any Third Party and if the same is leased then any higher rent realized above the guaranteed Assured Rent shall accrue and be paid to the First Party by the Second Party and if the same is below the guaranteed Assured Rent, the differential shortfall shall be paid by the First Party to the second party. The Second Party under this Plan shall pay 50% of Basic Sale Price (BSP) along with other charges will be paid by the Second Party to the First Party upon offer of final Possession by the First Party. If the second party wishes to occupy the Commercial Space(s) upon offer of final Possession during the above said 3 year period, then the First Party will stop the payment of guaranteed Assured Rent during balance of the committed period of 36 months. The payment of Assured Rent is subjected to deduction of TDS as applicable.

The said clause clearly casts a binding obligation upon the respondent to make the agreed payment for the stipulated period.

27. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
28. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee



arises out of the same relationship and is marked by the MoU dated 13.08.2018 and addendum to MoU dated 31.05.2019.

29. It is not disputed that the respondent is a real estate developer, and it had obtained registration under the Act of 2016 for the project in question. The Authority under this Act has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant-allottee in terms of the addendum to MoU dated 31.05.2019 @24,990/- per month from the date of discontinuance till offer of possession and thereafter upon receipt of occupation certificate, respondent-promoter is under obligation to make all efforts to lease out the allotted commercial space(s) of the second party to any third party.

II. Delay possession charges.

30. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges with respect to the subject unit as provided under the provisions of Section 18(1) of the Act which 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."

31. The subject unit was allotted to the complainants vide allotment dated 01.08.2018. In the present case, there is no possession clause in the



allotment letter and MoU. 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 MoU dated 13.08.2018 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 13.08.2021. As per MoU, the respondent was under an obligation to further lease out the unit of the complainant's post completion.

32. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants is 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. *ibid.* 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]

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."

33. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid has determined the prescribed rate of interest. 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%.
34. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The construction of the project was to be completed within a stipulated time i.e., by 31.08.2021.
35. **However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?**
36. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of provisions in the Memorandum of understanding dated 13.08.2018. The assured return in this case is payable as per clause 2 of the "Memorandum of understanding" wherein the promoter had agreed to pay to the complainant-allottee Rs.44/- per sq. ft. on monthly basis till offer of possession after the completion of the building and thereafter Rs.70/- per sq. ft. i.e., Rs.24,990/- per month as guaranteed lease rent upon receipt of balance basic sale price along with other charges. However, an addendum dated



31.05.2019 was signed by complainants of MoU dated 13.08.2018. As per clause 3, it was agreed that assured return of Rs.24,990/- per month will be paid to the second party by the first party for the remaining period out of agreed period of 36 months starting form 08.05.2019. Clause 3 of the addendum to the MOU is reproduced herein for ready reference:

3. However, the Second Party has given the balance amount of Basic Sale Price (B.S.P.) Before offer of Possession and thus it is agreed between the Parties that the Assured Return-cum-Guaranteed Lease Rent of Rs.24,990/- per month will be paid to the Second Party by the First Party for the remaining period out of the agreed period of 36 months starting from 08.05.2019, subject to deduction of applicable taxes.

37. If we compare this assured return with delayed possession charges payable under proviso to Section 18(1) of the Act, 2016, the assured return is much better as is encapsulated in the following table for all the complaints:

Assured return payable per month as per addendum agreement	Delay possession charges payable per month as per the RERA Act
₹24,990/-	₹22,496/-

38. By way of assured return, the promoter has promised that the allottee would be entitled for the specific amount of assured return till the said unit is put on lease and thereafter he shall be entitled for committed returns and lease rentals as agreed. The purpose of delayed possession charges under Section 18 of the Act after due date of completion of project is served on payment of assured return. The same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges, whichever is higher.



39. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
40. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the memorandum of understanding. As per the memorandum of understanding dated 13.08.2018, the promoter had agreed to pay to the complainants allottee Rs.15,708/- per sq. ft. on monthly basis till offer of possession as assured return and thereafter Rs.24,990/- per month as guaranteed lease rent upon receipt of balance basic sale price (BSP) along with other charges for a period of 36 months starting from 04.08.2018. However, an addendum of MoU was signed wherein it was agreed that the assured return-cum-guaranteed lease rent of Rs.24,990/- per month will be paid to the second party for the remaining period out of the agreed period of 36 months starting from 08.05.2019, subject to deduction of applicable taxes. The said clause further provides that it is the obligation of the respondent promoter to lease the premises. It is matter of record that the assured return was paid by the respondent-promoter till 31.03.2021, but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. However, Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per Section 2(4)(iii) of the above-mentioned Act.
41. In the present complaint, Occupation Certificate for the block in which unit of complainants is situated has not been received by the promoter till date.



The Authority is of the view that the construction is yet to be completed and occupation certificate need to be obtained from the concerned authority by the respondent promoter for the said project. Admittedly, the respondent has paid assured returns to the complainants till 31.03.2021. Therefore, in the interest of equity, no interest/assured return 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.

42. Accordingly, the respondent is directed to pay the pending amount of assured return at the agreed rate @24,990/- as per the MoU dated 13.08.2018 and addendum dated 31.05.2019 from the date the payment of assured return has not been made i.e., from April,2021 till the date of offer of possession.

G.IV Direct the respondent to lease the unit after obtaining the occupation certificate.

G.V In case the respondent is unable to lease out the said unit within 3 months from the date of receipt of OC, then the respondent be directed to demarcate the unit and handover the possession for leasing to the complainants

G.VI Direct the respondent to offer the possession of the unit in a habitable condition after receipt of occupation certificate.

43. The above-mentioned reliefs 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.

44. The complainants in the present complaint are seeking additional relief w.r.t leasing of unit after obtaining occupation certificate. The relevant clause of MoU dated 13.08.2018 is reproduce for ready reference:

"...Upon receipt of Occupation Certificate, the first party shall make all efforts to Lease out the allotted commercial space(s) of the second party to any Third party and if the same is leased than any higher rent realized above the guaranteed Assured return shall accrue and be paid to the First Party to any Third Party and if the same is leased then any higher



rent realized above the guaranteed Assured Rent shall accrue and be paid to the First Party by the Second Party and if the same is below the guaranteed Assured Rent, the differential shortfall shall be paid by the First Party to the second party. The Second Party under this Plan shall pay 50% of Basic Sale Price (BSP) along with other charges will be paid by the Second Party to the First Party upon offer of final Possession by the First Party. If the second party wishes to occupy the Commercial Space(s) upon offer of final Possession during the above said 3 year period, then the First Party will stop the payment of guaranteed Assured Rent during balance of the committed period of 36 months. The payment of Assured Rent is subjected to deduction of TDS as applicable."

[Emphasis Applied]

45. In terms of Clause 2 of the MoU dated 13.08.2018, the respondent was under an obligation to make all reasonable efforts to lease out the subject unit to a third party upon receipt of the Occupation Certificate. The said clause further states that, in the event the complainants want to occupy the commercial space upon offer of final possession during the committed period, the respondent shall discontinue payment of the guaranteed assured return for the remainder of the committed period of 36 months. In the present case, the complainants have expressed willingness to occupy the subject unit in the eventuality of the respondent failing to lease out the same within a period of three months from the date of receipt of the Occupation Certificate, whereupon the complainants shall be entitled to occupy and use the said premises.
46. In view of the aforesaid clause, the respondent is hereby directed to hand over possession of the subject unit to the complainant, in the event of failure to lease out the same, in accordance with the terms and conditions of the MoU dated 13.08.2018, subject to discontinuation of payment of the guaranteed assured return for the balance committed period. The respondent is further directed to offer possession of the unit in a complete, habitable, and occupiable condition after obtaining the Occupation Certificate.

G.VII To not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the agreement.

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

47. The above-mentioned reliefs 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.

48. The respondent shall not charge anything from the complainants which is not the part of the MoU dated 13.08.2018. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the MoU as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

49. The complainants have not produced any document on record or pressed on the relief of penalty with regard to any defaults and illegalities. Hence, the same can not be granted.

G.IX To execute the conveyance deed of the allotted unit in favour of the complainants

50. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority,



as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

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

51. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter from the competent Authority. The respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of 30 days from the date of obtaining occupation certificate.

H. Directions issued by the Authority:

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

- I. The respondent is directed to pay the pending amount of assured return at the agreed rate @24,990/- as per the MoU dated 13.08.2018 and addendum dated 31.05.2019 from the date the payment of assured return has not been made i.e., from April, 2021 till the date of offer of possession.



- II. The respondent is directed to pay lease rental to complainants in terms of clause addendum MoU dated 13.08.2018 and addendum dated 31.05.2019. Further, in case the unit in question is leased out by the respondent at the rate lower/higher than as is fixed by the respondent, the respondent is obligated to settle the same in terms of clause 2 MoU dated 13.08.2018 and clause 3 of addendum agreement dated 31.05.2019.
- III. The respondent is directed to pay the outstanding accrued assured return amount along with lease rentals till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.
- IV. The respondent shall not charge anything from the complainants which is not part of the MoU dated 13.08.2018. The respondent is also not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
- V. The respondent builder is directed to execute builder buyer agreement within 30 days from the date of this order.
- VI. The respondent is directed to hand over possession of the subject unit to the complainant, in the event of failure to lease out the same, in accordance with the terms and conditions of



the MoU dated 13.08.2018, subject to discontinuation of payment of the guaranteed assured return for the balance committed period. The respondent is further directed to offer possession of the unit in a complete, habitable, and occupiable condition after obtaining the Occupation Certificate.

VII. 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.

VIII. 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.

53. Complaint as well as applications, if any, stands disposed off accordingly.

54. File be consigned to registry.


Phool Singh Saini
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.02.2026