BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 4914 of 2025
Date of Decision : 19.05.2026

Ekta
R/o - House no. 1076, Sector 38, Near Medanta Hospital, Gurugram, Haryana- 122003 **Complainant**

Versus

M/s Green Heights Projects Pvt. Ltd
Registered office address: - 271, Phase-II, Udyog Vihar, Gurugram, Haryana- 122016 **Respondent**

CORAM:
Shri Arun Kumar **Member**

APPEARANCE:
Shri Garvit Gupta and Ms. Harshita Setia (Advocates) **Complainant**
Ms. Tanya (Advocate) **Respondent**

ORDER

1. The present complaint dated 18.09.2025 has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project-related details

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

S. No.	Particulars	Details
1.	Name of the project	"Banni Centre Point"
2.	Location of the project	Sector-M1D, Urban Complex, Village-Nakhnaula, Sector-M-1D, Tehsil-Manesar, Gurugram.
3.	Nature of the project	Commercial Colony
4.	Project area	2.681 acres
5.	DTCP license no.	59 of 2009 dated 26.10.2009 Valid up to 12.09.2020
6.	Name of licensee	Paradise System
7.	Registered/not registered	Registered Vide registration no. 187 of 2017 dated 14.09.2017 Valid up to 13.09.2019
8.	Allotment letter	01.04.2019 (Page no. 25 of complaint)
9.	Commercial Space no.	L-23A, Second Floor (Page no. 25 of complaint)
10.	Area of the unit	269 sq. ft.[Super Area] (Page no. 25 of complaint)
11	MoU	20.05.2019 (page 27 of complaint)
12	Assured Return Clause	2. *That First Party shall pay to the Second Party an Assured Return-cum guaranteed Lease Rent at the rate of 34/- per Sq.Ft (Super Area ie. 9,146/- (Rupees Nine Thousand One Hundred Forty Six Only) 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 67/- per Sq.Ft (Super Area ie. R.18,023/- (Rupees Eighteen Thousand Twenty-Three Only) per month as guaranteed Lease Rent.* Assured Return-cum-guaranteed Lease Rent shall be paid by the First Party to the Second Party for a total period of 36 months starting from 01.04.2019. *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, then any higher rent realized above the Assured Return-cum-guaranteed Lease Rent shall accrue and be paid to the First Party by the Second Party and if the same is below the Assured Return-cum-guaranteed Lease Rent, the differential shortfall shall be paid by the First Party to the Second Party. However, the First Party also reserves the right to pay/settle/discount the balance unpaid Assured Return-cum-guaranteed Lease Rent payable to the Second Party at its sole discretion at one go by calculating the NPV on the balance unpaid amount of Assured Return-cum-guaranteed Lease Rent at any point of time during the 36month period.
13.	Commercial Space Buyer's Agreement	Not executed
14.	Possession clause	NA
15.	Due date of possession	20.05.2022 *Fortune Infrastructure and Ors. vs. Trevor D' Lima and Ors. (12.03.2018-SC): MANU/SC/0253/2018*
16.	Sale consideration	Rs. 20,83,943/-
17.	Total amount paid by the complainant	Rs.7,74,423/-
18.	Occupation certificate	Not obtained
19	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions:

i. That the respondent offered for sale units in a commercial complex known as 'Baani Centre Point' which claimed to comprise of commercial units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Sector M1D, Gurugram, Haryana. The respondent also claimed that the DTCP, Haryana had granted license bearing no. 59 of 2009 on a land area of about 2.681 acres in Village Lakhnaula, Tehsil Manesar, Gurugram to its associates companies for development of a commercial colony in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.

ii. That the complainant received a marketing call from the office of respondent in the month of January, 2019 for booking in commercial project of the respondent, 'Baani Centre Point', situated at Sector M1D, Gurugram. The complainant had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. The complainant visited the sales gallery and consulted with the marketing staff of the respondent. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in their project. The marketing staff of the respondent also assured that either the unit would be rented by the respondent itself within 3 years or that the respondent would hand over the possession of the unit on timely basis.

iii. That the complainant, induced by the assurances and representations made by the respondent, decided to book a commercial unit in the project of the respondent as the complainant required the same in a time bound manner. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the commercial unit to be allotted to the complainant would be either positively handed over within the agreed time frame or the unit would be leased by the respondent.

iv. That the complainant accordingly at the time of booking made the payments of Rs.6,56,560/- and Rs.1,00,000/- as per the payment demands raised by the respondent. The respondent issued the receipts dated 01.04.2019 confirming the payment of Rs.7,56,560/- received by it from the complainant. The respondent upon receipt of the said consideration sent an allotment letter to the complainant on 01.04.2019 and accordingly allotted unit no. L-23A on second floor having super area of 269 sq. ft. @7,000 per sq. ft. to the complainant.

v. That a copy of the memorandum of understanding was shared by the respondent with the complainant. Vide the said memorandum of understanding, it was proposed that the total sale consideration was Rs. 20,83,943/-. Moreover, as per clause 2 of the said MoU, the respondent promised to pay an assured return of Rs 9,146/- per month to the complainant on the amount received until offer of possession and Rs. 18,023/- per month as Guaranteed Lease Return. The said assured return/guaranteed lease return were payable for a period of 36 months starting from 01.04.2019. 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.34/- per Sq.Ft (Super Area) i.e. .9146/- (Rupees Nine Thousand One Hundred Forty Six Only) 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. 67/- per Sq.Ft (Super Area) i.e. .18,023/- (.....) per month as guaranteed Lease Rent. Assured Return-cum-guaranteed Lease Rent shall be paid by the First Party to the Second Party for a total period of 36 months starting from 01.04.2019."*

vi. The respondent categorically assured the complainant that they need not worry and that the respondent would complete the project on time and would keep on making payments towards the committed returns and thereafter the lease returns, after the unit was leased out. The Complainant was also assured by the respondent that as per Clause 2 of the MoU, it was specifically observed that the offer of possession was to be made by the respondent to the complainant and only thereafter, the respondent would either lease the unit in question or would hand over the possession, subject to the stopping of payment of the assured return amount, if the said offer was made within 3 years period from 01.04.2019. Relevant para of the said MOU is reproduced hereunder: -

> *"...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..."*

vii. Since the complainant had already parted with a huge amount, they were left with no other option but to accept the terms of the memorandum. The complainant felt trapped and had no other option but to sign the dotted lines.

viii. That as per clause 12 of the MOU, an agreement to sell was to be executed between the complainant and the respondent. It was agreed vide the said clause that both the parties would be bound by the terms of the agreement. Clause 12 of the MOU is reproduced hereunder: -

> *"12. That other terms and conditions are detailed in the agreement to sell and/or buyer's agreement to be executed between the parties hereto, and both the parties shall be bound by the same."*

ix. The complainant vide several telephonic conversations and meetings requested the respondent for execution of the commercial space buyer's agreement in respect of the said unit. However, no satisfactory response was ever received from the respondent. No commercial space buyer's agreement was ever shared by the respondent with the complainant.

x. That despite having made the MOU containing terms very much favourable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter even failed to perform the most fundamental obligation of the agreement which was to complete the construction of the unit within the promised time frame, make payment towards the guaranteed return and to either offer the possession or to lease the unit to a Third party which in the present case is delayed for an extremely long period of time.

xi. That as per clause 7 of a similar commercial space buyer's agreement signed between the respondent and other allottees, the possession was to be handed over by the respondent to the complainant as per the timeline disclosed by the respondent at the time of registration of the project.

xii. As per the information disclosed at the time of registration by the respondent, the due date of the completion of the project was 30.06.2020. Therefore, the due date of handing over of possession lapsed on the aforesaid date.

xiii. Furthermore, it was agreed vide Clause 9 of the agreement that the timely delivery of possession of the unit was the essence of the Agreement and that the Respondent was to handover the possession of the unit as per the agreed terms and conditions.

xiv. That since the time period to handover the possession stated by the respondent had lapsed, the complainant requested the respondent telephonically, and by visiting the office of the respondent to update her about the status of the project. The representatives of the respondent assured the complainant that the respondent would keep on making the payment towards the assured return amount and would take all possible efforts to complete the construction and lease the unit in question. It was also categorically informed that if the respondent fails to lease the unit, then the respondent would hand over the possession as per the terms of the Agreement. The respondent has continuously been misleading the allottees including the complainant by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainant. The respondent/promoter had represented and warranted at the time of booking that it would deliver the commercial unit of the complainant to her in a timely manner. However, the failure of the respondent company has resulted in serious consequences being borne by the complainant.

xv. That thereafter, the respondent further demanded registration fees from the complainant and the complainant had no other option but to make the said payment. Vide the demand raised by email dated 17.08.2019, the complainant demanded registration fees of Rs. 5503/- and stamp duty/paper value of Rs. 2,360/-. The complainant paid the said demand and the same is evident from the receipts issued by the cyber treasury and the respondent.

xvi. That, in addition, the respondent miserably failed to make the payments towards the assured returns as promised under Clause 2 of the MOU from April 2021. That the complainant vide telephonic conversations and by visiting the office of the respondent enquired about the sudden stopping of the payment of assured returns. The respondent tried to cover up its laches by further assuring the complainant that the said unpaid amounts against the assured returns would be adjusted in the further payments. The respondent further categorically assured the complainant that the respondent would comply with its obligations of paying assured returns without any delay or defaults in the future.

xvii. That the complainant believed the assurances and representations of the respondent to be true. However, to the complete dismay of the complainant the respondent vide its letter dated 13.05.2021 intimated the complainant about the discontinuation of the assured returns which were to be paid by the respondent to the complainant. It is pertinent to mention here that the said discontinuation of the Assured Returns was arbitrary and unilateral and no valid reasoning was ever given by the respondent behind the said discontinuation of the assured returns. The respondent deliberately, mischievously, fraudulently and with malafide motives cheated the complainant. When the complainant confronted the respondent about the illegal stopping of the payments which reflected nothing but deliberate lethargy, negligence and unfair trade practice by the respondent, its representatives started making excuses for non-disbursal of the amount. It is pertinent to mention here that the complainant confronted the respondent in respect of the said discontinuation letter and timely delivery of the possession the said unit. Thereafter, yet again the representatives of respondent assured the complainant that the possession of the unit would be handed over to her very shortly as the construction was almost over and that it would keep on making payment towards the monthly assured return as per its obligations as stated in the MoU. It was also assured that respondent would make the payment towards the delayed possession interest as per the prescribed rate as stipulated in the then newly enacted Real Estate (Regulation and Development) Act, 2016. Interestingly, it was mentioned by the complainant in the said letter that the construction of the superstructure of the project was completed and only finishing work was left. Although, the complainant was reluctant to believe the representations made by the respondent, it decided to give one more chance to respondent. The high headedness of the respondent is an illustration of how the respondent conducts its business which was only to maximize the profits with no concern towards the buyers including the complainant.

xviii. The respondent has miserably failed to disburse any other amount for the period of last 4 years from the date of disbursal of last amount in April, 2021. Moreover, the respondent has not raised construction within the agreed time frame. There has been virtually no progress and the construction activity are lying suspended since long. The complainant has a strong apprehension that the false claim of completion of the project made by the respondent in its letter dated 13.05.2021 was nothing but a dishonest attempt of the respondent to stop making payment towards the committed returns. It is reasserted that the complainant has made the payment towards the full sale consideration as demanded by the respondent and the respondent has done nothing but has only utilized the hard-earned amount of the complainant for its own use and purposes. The fact that no intimation regarding the application for the grant of the Occupation Certificate was given by the respondent to the complainant speaks about the volume of illegalities and deficiencies on the part of the respondent/promoter. There is an inordinate delay in developing the project well beyond what was promised and assured to the complainant.

xix. 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 60 months calculated upto September, 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 complainant. The noncompletion of the project is not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by the respondent/promoter. The respondent has been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainant and are unconcerned about the possession of the unit despite repeated assurances.

xx. That the respondent has misused and converted to its own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about the timely finishing of the project and delivery of possession of the unit in question to the complainant as per the terms of the Commercial Space Buyer's Agreement. The respondent has deliberately, mischievously, dishonestly and with malafide motives cheated and defrauded the complainant. It is unambiguously lucid that no force majeure was involved and that the project has been at standstill since several years. The high headedness of the respondent is an illustration of how the respondent conducts its business which is only to maximize the profits with no concern to the buyers.

xxi. That the complainant has been duped of her hard-earned money paid to the respondent regarding the commercial unit in question. The complainant requested the respondent to hand over the possession of the allotted unit to her but the respondent has been dilly-dallying the matter. The complainant has been running from pillar to post and have been mentally and financially harassed by the conduct of the respondent. It is pertinent to mention here that the respondent has unilaterally discontinued the payments of assured returns without any proper reasoning and has deprived the complainant of her right of assured returns as per Clause 2 of the MOU.

xxii. That the respondent has even failed to renew registration certificate of the project from this Hon'ble Authority and has acted in blatant violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016. The respondent was bound to comply with provisions of the Act and the Rules and Regulations made thereunder. It is, thus clear that the respondent/promoter has been acting not only in contrary to the terms of the agreement which were drafted by the respondent itself but has also on account of its own acts and has reduced the complainant at its mercy wherein and the complainant's questions have been left un-answered and the respondent/promoter is continuing with its illegal acts acting strictly in violation of the provisions of the RERA Act, 2016 and Haryana Rules, 2017. It is thus, also clear, that without getting the renewal of the registration certificate done, the respondent cannot raise or collect any further amount from the complainant.

xxiii. That the respondent has violated several provisions of RERA 2016 and Haryana RERA Rules 2017 and is liable for the same. As per section 18 of RERA 2016 and Rules 15(1) and 15(3) of Haryana RERA Rules, 2017, the respondent/promoter is liable to pay interest for every month of delay till handing over of possession.

xxiv. That the above-mentioned acts of the respondent are also in violation of Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. That the complainant hereby makes a submission before the Authority under Section 34(f) of RERA Act, 2016 to ensure compliance/obligations cast upon the promoter/ respondent as mentioned above.

xxv. That the respondent is enjoying the valuable amount of consideration paid by the complainant out of her hard-earned money and the complainant realizing the same demanded delayed possession charges from the respondent/promoter. But a week ago, the respondent has in complete defiance of its obligations refused to hand over the possession to the complainant along with delayed possession charges leaving her with no other option but to file the present complaint. Since respondent miserably failed in its obligations, hence the complainant is entitled to delayed possession charges at the rate prescribed as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.

xxvi. That the respondent by adopting unfair trade practices, misusage of funds, failed to execute the conveyance deed of the unit allotted to the complainant 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. 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 allotee.

xxvii. That the project is an ongoing project and hence falls under the first proviso to Section 3(1) of RERA 2016. The complainant believes that no occupation and completion certificate has been issued for the project in question till date and hence this project falls clearly under the jurisdiction of the Authority. The respondent in utter disregard of its responsibilities has left the complainant in the lurch and the complainant has been forced to chase the respondent for seeking relief.

xxviii. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to hand over the possession, pay the amount of assured returns and compensation for delay on its part and finally about a week ago when the respondent refused to compensate the complainant with the delayed possession interest amount and compensation

xxix. Thus, the complainant vide this present complaint is seeking the payment of assured returns from the date of discontinuation of Assured Returns i.e., April 2021 till the date of handing over of possession. Without prejudice to the rights of the complainant, in case the Authority is of the opinion that the payment of Assured Returns is to be paid by the respondent to the complainant till the date as specified in the MOU i.e., till 01.04.2022, then complainant seeks the relief of payment of assured returns from April 2021 till 01.04.2022 along with delayed possession charges to be payable from 02.04.2022 till the date of actual handing over of possession as per Section 18 of the RERA Act, 2016. The complainant reserves her right to approach the appropriate Forum to seek compensation.

C. Relief sought by the complainant:

4. The complainant has sought the following relief(s):

I. Direct the respondent to pay the amount of assured return from the date of discontinuation of assured returns i.e., April, 2021 till the date of handing over of possession.

II. Without prejudice to the rights of the complainant, in case the Authority is of the opinion that the payment of assured returns is to be paid by the respondent to the complainant till the date as specified in the MOU i.e., till 01.04.2022, then complainant seeks the relief of payment of assured returns from April 2021 till 01.04.2022 along with Delayed possession charges to be payable from 02.04.2022 till the date of actual handing over of possession as per Section 18 of the RERA Act, 2016.

III. To handover the possession of the unit, in a habitable state, after obtaining the Occupation Certificate from the concerned authorities.

IV. To execute the Conveyance deed of the allotted unit in favour of the complainant.

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

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

5. On the date of hearing, the authority explained to the respondent-promoter about the contraventions as alleged to have been committed in relation to Section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. That respondent has filed a reply dated 29.01.2026 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 complainant being an investor, sought to apply for a provisional unit in the project by submitting an application form dated 01.04.2019. 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 L-23A tentatively admeasuring 269 sq. ft. was allotted.

c. That thereafter, a Memorandum of Understanding (MOU) was executed between the parties on 02.05.2019. As per the MOU, the assured return was payable for the period of 36 months.

d. 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	After the removal of the stay by the Hon'ble Supreme Court, continuous

	14.03.2018 and 12.10.2020	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.

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

S. No.	CATEGORY	DATE	EVENTS
1	**CATEGORY I:** The events that transpired prior to the effect of the	06.04.2004 07.04.2024	Paradise Systems Pvt. Ltd. purchased 2.681 acres of land in the village Lakhnaula by registered sale deeds, hence Paradise Systems Pvt. Ltd. is the landowner of the project in

	Hon'ble Supreme Court's orders over the Project. This shows the required permissions for the project were obtained in a timely fashion.		question (hereinafter referred to as "**Paradise**")
2		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 Lakhnaula Manesar M1D, 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 *bonafide* 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	The said Land became the subject of the proceedings before the Hon'ble Supreme Court in a case titled *Rameshwar & Ors. vs. State* of Haryana & Ors. bearing Civil Appeal No. 8788 of 2015. The Hon'ble Apex Court, vide its order dated 24.04.2015 in the *Rameshwar* Case, stayed the construction on the said land with effect from 24.04.2015, which was eventually affected till 12.03.2018. Notably, on 24.04.2015, the Project land, *inter alia*, became the subject land in the legal proceedings in the Rameshwar Case.
14	ZERO PERIOD I Due to the pendency of	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

	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.		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 *bonafide* 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	**CATEGORY III:** 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	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.

34	the Hon'ble Supreme Court due to an application filed by HSIIDC	21.07.2022	Through the judgment dated 21.07.2022 in *Rameshwar Case*, 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: • Renewal of license no. 59 of 2009;

	delays due to no fault whatsoever on part of the Respondent.		• Application dated 07.09.2020 with request to consider the period between 23.07.2018 till 21.07.2022 as cooling / zero period as no approvals were granted; • BR-III for revised building plans which were approved on 22.02.2017 • Grant of approval of transfer of license and change of developer
36		04.08.2022	Green Heights filed an application for extension of the RERA registration under section 7 sub clause 3 dated 04.08.2022 which is awaited.
37		16.11.2022 14.12.2022	In complete compliance of the order passed by the Hon'ble Supreme Court, and with an intent to complete the development of the Project, Green Heights projects Pvt. Ltd. paid the amount ₹ 13,40,50,000/- from its own resources on 16.11.2022 and requested for confirmation of such compliance. HSIIDC wrote to Green Heights confirming the amount 13,40,50,000/- received in HSIIDC account and that Green Heights has complied with the orders of Hon'ble Supreme Court.
38		15.12.2022 (Receiving dated 16.12.2023)	Paradise approached DTCP to issue BR-III for revised building plans as the sum of 13,40,50,000/- was deposited by Green Heights to HSIIDC and

			now the land was excluded from the deemed award.
39		05.01.2023 (Receiving dated 11.01.2023)	Paradise approached DTCP to process the pending applications for transfer of license.
40		02.09.2023 (Receiving dated 04.09.2023)	Paradise again approached DTCP to process the pending applications for renewal and transfer of license and issuance of BR-III.
41		03.10.2023	Paradise vide letter dated 03.10.2023 again approached for renewal of license no. 59 of 2009 and grant of approval for transfer of license and change of developer.
42		17.10.2023 23.10.2023	DTCP renewed the license no.59. of 2009 up to 21.01.2025. DTCP granted Zero Period from 23.07.2018 to 21.07.2022. BR III was also issued.
43		31.10.2023	Paradise vide letter dated 31.10.2023 again approached DTCP for grant of pending approval of transfer of license no. 59 of 2009 and change of developer.
44		20.02.2024 04.04.2024	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.

f. 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.

g. That the complainant has prayed for the relief of "assured returns", inter alia, on the basis of a Memorandum of Understanding, which is beyond the jurisdiction that the 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.

h. That it is germane to note that the non-payment of assured return, as alleged by the complainant 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 complainant is barred under Section 3 of BUDS Act from making any payment towards assured return in pursuance to an "Unregulated Deposit Scheme" and the competent authority to adjudicate such issue has to be notified under section 7 of the BUDS Act.

i. 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.

j. 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.

k. 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.

l. 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.

m. That in accordance with the above stated events, directly affecting the respondent, the respondent informed the complainant vide letter dated 13.05.2021 about the discontinuance of the assured return.

n. That at the outset, as per the contents of the complaint, the issue at hand arises out of the alleged delayed construction, however, it is most vehemently noted that there has been no effective delay in the present circumstance, the details of which have been noted in the following paragraphs. It is submitted that the entire Project, along with other land parcels, were entangled with the land acquisition proceedings, as noted above. However, at every stage and instant, the respondent had, communicated the complainant, of all the updates of the matter. For instance, reference may be given to the letters dated 26.03.2021, 26.07.2022, and 06.12.2022 which show that the respondent had duly informed the complainant about the injunction over the Project, the resumption of the construction works, and the imposition of additional fee of 13.4 crore upon the respondent.

o. That it was not only through such letters but the respondent Company has always been in touch with the purchasers to keep them updated of the construction status and the status of the pending proceedings. That upon gaining knowledge of the same, and being well aware of the continuation of these proceedings, the complainant had never expressed any disagreement with the same, rather, had been supportive of the diligent efforts being made by the respondent.

p. 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.

q. 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.

r. 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.

s. 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.	**7th of April, 2015 to 6th of May, 2015**	**30 days**	The aforesaid ban affected the supply of raw materials as most of the contractors/ building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped the movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.
2.	19.07.2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.		**30 days**	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	08.11.2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of	8th Nov, 2016 to 15th Nov, 2016	**7 days**	The bar imposed by Tribunal was absolute. The order had completely stopped

		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.			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 7th 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 21st Dec, 19 and 30th Jan, 20.

5.	09.11.2017	National Green Tribunal has passed the said order dated 9th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9th Nov, 17 was vacated vide order dated 17th 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, 26th 2018
8.	01.11.2019	Environment Pollution (Prevention and Control) Authority for National Capital Region vide Direction	**01.11.2019 to 05.11.2019**	**6 days**	Construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida

		bearing no. EPCAR/2019/L—53			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 11th of Oct 2019 whereby the construction activity has been prohibited from 11th Oct/ 2019 to	**11th Oct 2019 to 31st 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,

		31st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.			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 as per the direction issued by the chairman of EPCA vide letter EPCA-R/2019/L-42 dated October 09, 2019.	**11.10.2019 to 31.12.2019**	**81 days**	
13.	02.11.2023 and 05.11.2023	Commission for Air Quality Management in NCR and Adjoining Areas vide Order No. 120017/27/GRAP/2021/CAQM	**02.11.2023 to 18.11.2023**	**17 days**	The commission for Air Quality Management in NCR and adjoining areas, vide Direction No. 77 dated 6th

					October,2023, issued statutory direction for implementation of the revised schedule of the Graded Response Action Plan (GRAP) with immediate effect as and when orders under GRAP are invoked. The Sub-Committee constituted for invoking actions under the GRAP in its meeting held on 2nd November,2023 comprehensively reviewed the air quality scenario in the region as well as the forecasts for meteorological conditions and air quality index made available by IMD/IITM. Keeping in view the prevailing trend of air quality, in an effort to prevent further deterioration of the air quality, the sub-committee decided that ALL actions as envisaged under stage III of the GRAP -'Severe' Air Quality (DELHIAQI ranging between 401-450) be implemented in 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	

t. 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 complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I. Objection regarding delay due to force majeure circumstances ad zero period to be taken into consideration.

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

F.II Objection regarding the clause of assured returns stands novated by clause 37 of the Buyer's Agreement and thereby, the complainant does not have any vested rights to seek payment of assured return.

16. The respondent submitted that the Builder Buyer Agreement had expressly supersede/novated/substituted the Memorandum of Understanding (MOU) by virtue of Clause 37 of the Buyer's Agreement. Section-62 of the Indian Contract Act, 1872 expressly recognizes the principle of novation, under which the parties to a contract may by mutual agreement, either substitute a new contract in place of the old one, or rescind, or alter the terms of the subsisting contract. The legal effect of such novation is that the original contract stands discharged in its entirety,

and all the rights, obligations and liabilities comes to an end. Thereafter, the substituted contract assumes full legal force and effect, operating independently as a fresh and binding agreement between the parties. Thus, the Builder Buyer Agreement has novated the MOU, and with the execution of the Builder Buyer Agreement, the MOU ceases to exist.

17. The Authority after examining the record of the case, observes that though there is no assured return clause in the BBA executed between the parties and the document relating to the payment of the assured return was the MOU, the respondent made the payment of assured returns for some time, even after the execution of the BBA, but discontinued the payment of the assured returns in the month April 2021. As per the record, the complainants have paid an amount of Rs. 42,75,000/- against the sale consideration of Rs. 37,02,420/-. The Authority observes that though Section 62 of Indian Contract Act, 1872 provides for novation of contract but the same is not applicable in the present case. The respondent had continued making the payments of the Assured Returns post the execution of the Buyer's Agreement and it was only vide letter dated 01.04.2021, the respondent intimated the complainant regarding the "*Discontinuation of the Assured Returns*". Thus, implying that even post execution of the Buyer's Agreement, the obligations undertaken by the respondent of payment of the Assured Returns were fulfilled by the respondent and the complainant and the respondent was duly performing the separate agreement (the MOU dated 25.06.2019) and it was only on 01.04.2021 that the respondent sent the letter dated 01.04.2021 regarding "Intimation for Discontinuation of Assured Returns". In the said letter, it is nowhere stated implicitly/explicitly that the Assured Returns are being stopped due to the "Novation of the previous agreement/understanding". The conduct of the

respondent itself questions the contention raised by the respondent regarding the novation of the contract.

18. Thus, the objection of the respondent regarding the clause of assured returns stands novated by clause 37 of the Buyer's Agreement and thereby, the complainant does not have any vested rights to seek payment of assured return is hereby denied.

G. Findings on relief sought by the complainant.

G.I Direct the respondent to pay the amount of assured return from the date of discontinuation i.e., April 2021 till date of handing over of possession.

G.II Without prejudice to the rights of the complainant, in case the Authority is of the opinion that the payment of assured returns is to be paid by the respondent to the complainant till the date as specified in the MOU i.e. till 10.06.2022, then complainant seeks the relief of payment of assured returns from 01.04.2021 till 10.06.2022 along with Delayed possession charges to be payable from 10.06.2022 till the date of actual handing over of possession as per Section 18 of the RERA Act, 2016.

19. The above-mentioned reliefs no. G.I to G.II as sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

(I) Assured returns

20. The complainant is seeking unpaid assured returns on monthly basis as per the MOU dated 20.05.2019 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said MOU. 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), citing earlier decision of the authority (Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018) whereby relief of assured return was declined by the authority. The authority has rejected the

aforesaid objections raised by the respondent in ***CR/8001/2022*** titled as ***"Gaurav Kaushik and Anr. Vs. Vatika Ltd."*** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

21. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the complainant-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

22. Further, the agreement defines the builder buyer relationship. It can be said that the agreement for assured returns between the promoter and allotee arises out of the same relationship. It is not disputed that the respondent is a real estate developer and had obtained registration under the Act of 2016 for the project in question. Thus, the said project would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottees later on.

23. In the present complaint, the assured return was payable to the complainant-allottee as per clause 2 of MoU dated 20.05.2019, which is reproduced below for the ready reference:

> *"2. That First Party shall pay to the Second Party an Assured Return-cum guaranteed Lease Rent at the rate of 34/- per Sq.Ft (Super Area ie. 9,146/-(Rupees Nine Thousand One Hundred Forty Six Only) 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 67/- per Sq.Ft (Super Area ie. R.18,023/-(Rupees Eighteen Thousand Twenty-Three Only) per month as guaranteed Lease Rent. Assured Return-cum-guaranteed Lease Rent shall be paid by the First Party to the Second Party for a total period of 36 months starting from 01.04.2019. 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, then any higher rent realized above the Assured Return-cum-guaranteed Lease Rent shall accrue and be paid to the First Party by the Second Party and if the same is below the Assured Return-cum-guaranteed Lease Rent, the differential shortfall shall be paid by the First Party to the Second Party. However, the First Party also reserves the right to pay/settle/discount the balance unpaid Assured Return-cum-guaranteed Lease Rent payable to the Second Party at its sole discretion at one go by calculating the NPV on the balance unpaid amount of Assured Return-cum-guaranteed Lease Rent at any point of time during the 36month period."*

24. In light of the reasons mentioned above, the Authority is of the view that as per memorandum of understanding dated 20.05.2019, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 20.05.2019. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per MoU is still continuing. The respondent has paid assured return to the complainant till March 2021. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return in terms of clause 2 of memorandum of understanding dated 20.05.2019 at the agreed rate i.e., @ Rs. 67/-per sq. ft. per month from the date the payment of assured return has not been paid i.e., April

2021 to April 2022 and thereafter at Rs. 9,146/- per month till the offer of possession in terms of the clause 2 of MoU.

II. Delay possession charges.

25. In the present complaint, the complainant intends to continue with the project and is 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."*

26. The subject unit was allotted to the complainant vide allotment dated 01.04.2019. 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 20.05.2019 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 20.05.2019. As per MoU, the respondent was under

an obligation to further lease out the unit of the complainant's post completion.

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant 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."*

28. 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., 19.05.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

29. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the

promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> ***"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.***
> ***Explanation.*** *—For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

30. The Authority further observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of the due date of possession, is entitled to both the assured return as well as delayed possession interest?

31. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of provisions in the memorandum of understanding. The assured return in this case is payable as per clause 2 of the MoU dated 20.05.2019. The respondent agreed to pay an amount of Rs.34/- per sq. ft. per month from 01.04.2019 for a period of 36 months i.e., till 01.04.2022. The rate at which assured return has been committed by the promoter is Rs. 34/- per sq. ft. of the super area per month till the offer of possession which is more reasonable in the present circumstances. 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 i.e., assured return in this case is payable at Rs. 9,146/- per month till offer of possession whereas the delayed possession is payable approximately Rs. 6,969/- per month. By way of assured return, the promoter has assured the allottee that they would be entitled for the specific amount i.e., Rs. 9,146/- till offer of

possession. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

32. 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 the 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.

33. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the MOU executed between the parties. The promoter had agreed to pay to the complainant-allottees Rs.34/- per sq. ft. on monthly basis from 01.04.2019 till offer of possession and thereafter the lease rent is paid in terms of MoU dated 20.05.2019. 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 amount of assured return was paid by the respondent promoter till March 2021 but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that 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.

34. Therefore, considering the facts of the present case, the respondent is obligated to pay the amount of assured return at the agreed Rs. 18,023/- per month from the date the payment of assured return has not been made i.e., April 2021 till April 2022 and thereafter, at the agreed Rs. 9,146/- per month till offer of possession in terms of the clause 2 of MoU.

35. The respondent is obligated to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.

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

36. It is a matter of fact that till no Occupation Certificate has been obtained by the respondent. Therefore, the respondent is directed to handover the possession of the subject unit after obtaining occupation certificate from the competent Authority.

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

37. Under Section-17(1) proviso of the Act, 2016, the respondent/promoter is under an obligation to execute the registered conveyance deed in favour of the allottee/complainant within three months from the date of issue of occupancy certificate. The relevant provision is reproduced below:

> "***Section 17 . Transfer of title***
> (1) *the promoter shall execute a registered conveyance deed ....local laws:*
> *Provided that, in absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from the date of issue of occupancy certificate.*
>
> *[Emphasis supplied]*

38. The Authority hereby directs the respondent to execute the conveyance deed in favour of the complainants within 3 months after obtaining the occupation certificate from the competent authorities.

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

39. The respondent is directed not to charge anything, which is not part of MoU.

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

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

H. Directions issued by the Authority:

41. 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 amount of assured return at the agreed Rs. i.e., 18,023/- per month from the date the payment of assured return has not been made i.e., April 2021 till April 2022 and thereafter, at Rs. 9,146/- per month till the offer of possession in terms of the clause 2 of MoU.

II. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.90% p.a. till the date of actual realization.

III. The respondent is obligated to handover the possession of allotted unit to the complainant as per specifications of memorandum of understanding entered between the parties on 20.05.2019.

IV. The respondent is directed to execute the registered conveyance deed in favour of the complainant within 3 months from the date of obtaining the occupation certificate.

V. The respondent shall not charge anything from the complainant which is not the part of the agreement of sale.

42. Complaint as well as applications, if any, stands disposed of. Accordingly.

43. File be consigned to registry.

Arun Kumar
(Member)
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 19.05.2026