BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**2825 of 2025**
Date of complaint	:	**26.06.2025**
Date of order	:	**13.10.2026**

Pawan Kumar and Krishan Kumar,
Both R/o: - House No. 1817, Sector-6,
Bahadurgarh-124507. **Complainants**

Versus

M/s Green Heights Projects Pvt. Ltd.
Regd. Office at: - 271, Phase-II, Udyog Vihar,
Gurugram-122016. **Respondent**

CORAM:
Arun Kumar **Chairman**

APPEARANCE:
Garvit Gupta (Advocate) Complainants
Harshit Batra (Advocate) Respondent

ORDER

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

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, 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 reg. no. 187 of 2017 dated 14.09.2017
7.	Unit no.	GF-083, Ground floor (Page 45 of complaint)
8.	Unit area admeasuring	437 sq. ft. (super area) (Page 42 of complaint)
10.	Date of provisional allotment letter	01.12.2014 (Page 27 of complaint)
11.	Commercial Space Buyer agreement	11.01.2017 (Page 42 of complaint)
12.	Possession clause	**2.1 Possession** *The possession of the said premises shall be endeavored to be delivered by the intending purchaser by tentative date of 30.09.2017 with a grace period of 6 months beyond this date subject to clause 9 and completion of construction...*
13.	Due date of possession	30.03.2018 (including grace period being unqualified)
14.	Sale consideration	Rs.43,48,751.95/- (Page 63 of complaint)
15.	Amount paid by the complainant	Rs.37,67,048/- (Page 23 of complaint)
16.	Occupation certificate /Completion certificate	Not obtained
17	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That the respondent offered for sale units in a commercial colony 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.

II. That the complainants received a marketing call from the office of respondent in the month of Dec, 2012 for booking in commercial project of the respondent, 'Baani Center 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 timely delivery of the unit.

III. 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 for their own use. 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 positively handed over within the agreed time frame. It was confirmed by the representatives of the respondent that the payment plan for the booking would be construction linked and the payments would be raised by the respondent in compliance of the said payment plan.

IV. That the complainant had made the payment of Rs.3,00,000/- at the time of booking on 17.02.2013 and accordingly, the respondent had issued an acknowledgement receipt dated 11.04.2013. It is pertinent to mention

more time. Since, the complainants had made payment of a substantial sum, the complainants had no other option but to believe the said representations of the respondent.

VIII. That finally, after more than three long years, the respondent intimated the complainants regarding the execution of the buyer's agreement. A copy of the buyer's agreement was sent to the complainants, which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favoring the respondent and was totally against the interest of the purchaser, including the complainants. Since the complainants had duly paid a huge amount out of their hard-earned money, they felt trapped and had no other option but to sign the dotted lines. Hence the buyer's agreement dated 11.01.2017 was executed.

IX. That it is pertinent to mention here that despite having made the buyer's agreement dated 11.01.2017 containing terms very much favorable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter has even failed to perform the most fundamental obligation of the agreement which was to handover the possession of the commercial within the promised time frame, which in the present case has been delayed for an extremely long period of time.

X. That as per clause 2.1 of the agreement, the possession of the unit was to be handed over by the respondent by 30.09.2017 with a grace period of six months. Thus, as per the terms and conditions of the commercial space buyer's agreement, the due date to handover the possession of the allotted unit elapsed on 30.03.2018.

XI. That since the time period to handover the possession stated by the respondent in the buyer's agreement had lapsed, the complainants requested the respondent telephonically, and by visiting the office of the

here that the respondent vide the said acknowledgment receipt allotted a shop no. BG-082 admeasuring 437 sq. ft. It is pertinent to mention herein that the said allotted unit was located at a prime location. Moreover, at the time of booking, it was promised and assured by the respondent to the complainants that the agreement would be executed in a short span of time and the said unit would be handed over to the complainants by 30.09.2017.

V. That a provisional allotment letter dated 01.12.2014 was sent to the complainants. The complainants were in complete shock and dismay when it was informed to them vide the said provisional allotment letter that the unit number of the commercial space allotted to them was changed from BG-082 to GF-083. it is pertinent to mention that the respondent had unilaterally and without any consent from the complainants had changed the layout of the project in question and allotted an entirely different unit without taking prior consent of the complainants or even intimating the complainants about the said fact.

VI. That the complainants enquired about the said change in the layout plan of the project and the location of the newly allotted unit but to no avail as the complainants never received any satisfactory answer. However, it was assured by the respondent that the location of the unit has not been compromised and that the unit would remain at the same location as it was.

VII. That since, the respondent had failed to execute the buyer's agreement with the complainants despite lapse of two years from the date of booking, the complainants visited the office of the respondent in the month of November 2015 to enquire about the construction status and execution of the agreement in question. The complainants were surprised and anguished with the response of respondent who informed the complainants that the execution of the buyer's agreement would take some

respondent to update them about the date of handing over of the possession. The representatives of the respondent assured the complainants that the possession of the unit would be handed over to them very shortly as the construction was almost over. The respondent has continuously been misleading the allottees including the complainants by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainant.

XII. That the complainants have till date paid a sum of Rs.37,67,048/- out of the total sale consideration of Rs.43,48,751/-. The said fact is evident from the receipts attached along with the present complaint. It is pertinent to mention here that the next payment demand is to be raised at the stage of 'Offer of Possession' as per the Construction Linked Payment Plan and the same has thus not been paid by the complainants yet.

XIII. That the Respondent has miserably failed to send any other legal payment demand for the period of 7 years from the date of issuance of last payment demand for the simple reason that the respondent has not completed the construction within the agreed time frame. There has been virtually no progress, and the construction activity are lying suspended since long.

C. Relief sought by the complainants:

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

   i. Direct the respondent to handover possession of the unit, to execute conveyance deed and to pay delay possession charges as per the Act.

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

D. Reply by the respondent:

6. The respondent vide its reply dated 14.01.2026 has made the following submissions:

i. That the commercial relationship between the parties revolves around a commercial unit in the project. That upon gaining knowledge of the project, the complainants being an investor, sought to apply for a provisional unit in the project by submitting an application form. That the terms of the booking were categorically, willingly and voluntarily agreed by the complainants.

ii. That the complainant while submitting the application form dated 16.04.2013 had applied for unit no. BG-082. However, the said unit was only provisional in nature, subject to availability and did not amount to final allotment.

iii. 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 provisional unit bearing tentative number GF-083 was allotted to the complainant.

iv. That thereafter, the respondent requested for details of allottees for execution of the buyer's agreement and upon the same being provided, the buyer's agreement was willing and voluntarily executed between the parties on 11.01.2017. That the terms of the agreement are binding on the parties.

v. That from the beginning of the implementation of the project, there have been various intervening circumstances, beyond the control and apprehension of the respondent that have affected this commercial relationship between the parties. For ease of reference all the factors and events having a direct effect on the project have been delineated hereinbelow. 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 this ld. Authority. The entire list of events ex facie show that the Respondent has been left at the mercy of the competent department and has been entangled in the procedural requirements and departmental delays due to no fault whatsoever on part of the Respondent.

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

S. No.	CATEGORY	DATE	EVENTS

1	**CATEGORY I:** The events that transpired prior to the effect of the Hon'ble Supreme Court's orders over the Project. This shows the required permissions for the project were obtained in a timely fashion.	06.04.2004 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		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:** 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.	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		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 *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 herein is seeking the grace of this period as the entire time was utilised in following up with the concerned departments	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		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 the Hon'ble Supreme Court due to an application filed by HSIIDC	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		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 this ld. Authority. The entire list of events ex facie show that the Respondent has been left at the mercy of the competent department	25.07.2022 (Receiving dated 26.07.2022) 04.08.2022 (Receiving dated	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

	and has been entangled in the procedural requirements and departmental delays due to no fault whatsoever on part of the Respondent.	05.08.2022)	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; • 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.

vii. That a glimpse of the aforementioned facts and circumstances have shown the various events that have affected the project and the jural relationship between the parties. That the same needs to be duly considered, before reaching to any determination in the present complaint. That on the basis of the aforementioned facts and circumstances, the respondent most humbly submits that the present complaint should be dismissed on the basis of the grounds, as mentioned hereinunder.

viii. That 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 to 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.

ix. That it was not only through such letters but the respondent 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.

x. That a perusal of the builder buyer agreement dated 11.01.2017 shows that as per as per Clause 2 of the Agreement, the promoter proposed to handover possession of the commercial unit subject to the force majeure circumstances. It was duly agreed between the parties that in case of the project being affected by force majeure circumstances, the due date for handover shall be extended and for this reason, the no specific due date was calculated and is required to be computed on basis of the *force majeure* circumstances.

xi. That at the sake of repetition, it is pertinent to mention herein that the Hon'ble Supreme Court in the matter titled *Rameshwar & Ors. vs. State of Haryana* & Ors. bearing Civil Appeal No. 8788 of 2015 vide its order

dated 24.04.2015 stayed the construction on the project land for the period between 24.04.2015 till 12.03.2018. That in lieu of the same, DTCP on 23.07.2018, exempted the period from 24.04.2015 till 12.03.2018 as 'Zero Period I'. That the said period of Zero Period I amounts to a period of 1054 days.

xii. That although the project land was freed by the Hon'ble Supreme Court in *Rameshwar (Supra),* however, HSIIDC filed an application seeking clarification and inclusion of project land in the Award. During this period, the Hon'ble Supreme Court had again effective an injunction on further construction from 13.10.2020. The said application was dismissed with directions of payment of Rs. 13.405 Cr to HSIIDC vide order dated 21.07.2022. Considering all the facts, the DTCP renewed License No. 59 of 2009 up till 21.01.2025 and granted 'Zero Period II' for the period of 23.07.2018 to 21.07.2022. That the said period of Zero Period II amounts to a period of 1460 days.

xiii. That on the addition of Zero Period I, Zero Period II the total number of days covered under zero period comes out to be 2,514 days i.e. 6 years, 10 months, 3 weeks and 3 days.

xiv. That the booking of the unit was made in April 2013 i.e. between the Zero Period I and Zero Period II, when the matter qua the project land was pending before the Hon'ble Supreme Court. That the factum of such pendency before the Hon'ble Supreme Court was in complete public sphere and well within the knowledge of the complainant. That it was with such knowledge that the booking of the unit was made.

xv. That while the fact of such pendency of matter before the Hon'ble Supreme Court was duly made by the respondent, additionally, the doctrine of constructive notice is applicable in the present case and there is no reason for denial of knowledge of such facts, which the

Complainant is deemed to have the knowledge of. That the said doctrine makes the parties aware of information contained in the publicly available documents. That moreover, the respondent has continued to keep the complainant informed of the status of the project, as is evident from letters dated 26.06.2021, 26.07.2022, and 06.12.2022.

xvi. That in light of the same, it is most vehemently submitted that the complainant was completely aware of the said fact and hence, the effective due date of 15.02.2025 is absolutely applicable in the present case.

xvii. That in the aforementioned categories, while Zero Periods have already been granted as noted under Categories II & IV, however, the period in between the said zero periods and after the Zero Period II is also the term during which, despite the best efforts of the respondent, the respondent has been facing various difficulties in getting the necessary permissions.

xviii. 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.

xix. 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.

xx. 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.

xxi. 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**	**7th of April, 2015 to 6th**	**30 days**	The aforesaid ban affected the supply of raw materials as most of the contractors/

		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.	**of May, 2015**		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 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.	8th Nov, 2016 to 15th 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 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	**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,

		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.			construction activity has been completely stopped during this period.
6.	29.10.2018	Haryana State Pollution Control Board vide Notification HSPCB/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 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 11th of Oct 2019 whereby the construction activity has been prohibited from 11th Oct/ 2019 to 31st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.	**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, 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"*	**04.11.2019 to 14.02.2020**	**102 days**	These bans forced the migrant labourers to return to their native towns/states/villages

		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.			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*	

xxii. That all these circumstances come within the meaning and ambit of the force majeure circumstances and the benefit of the same need to be rightly given. That from the facts indicated above, it is comprehensively established that a period of 497 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of Orders by the statutory authorities and the Covid-19 pandemic. That the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide Order/Direction dated 26th of May, 2020 on account of 1st wave of COVID-19 Pandemic. It is pertinent to mention herein that the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula had decided to grant extension of 3 months in addition to waiver granted during first wave of COVID Pandemic from 1st of April 2021 to 30th of June 2021 considering the 2nd wave of COVID-19 as a *Force Majeure* event.

xxiii. That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.70.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.17.2019 to 74.02.2020. The Authority was also pleased to consider and provided a benefit of 6 months to the developer on account of effect of covid also.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

F. Findings on the objections raised by the respondent:

F.I Objection regarding maintainability of complaint.

12. The respondent took a plea that as per the Clause 2 - Force Majeure of the builder buyer agreement "the intending seller shall not be held responsible or liable for failure or delay in performing any of its obligation or undertakings as provided for in this agreement, if such performance is prevented, delayed or hindered by "court orders" or any other cause not within the reasonable control of the intending seller". Therefore, as the project "Baani Centre Point" was under stay orders of the Hon'ble Supreme Court of India for 7 years 3 months (24/04/2015 to 21/07/2022) which was beyond the respondent's reasonable control and because of this no construction in the project could be carried during this period. Hence, there is no fault of the respondent in delayed construction which has been considered by DTCP and RERA while considering its applications of considering zero period, renewal of license and extension of registration by RERA. Due to reasons stated hereinabove it has become impossible to fulfil contractual obligations due to a particular event that was unforeseeable and unavoidable by the respondent. The stay on construction order by the Supreme Court is clearly a "Force Majeure" event, which automatically extends the timeline for handing over possession of the unit. The intention of the Force Majeure clause is to save the performing party from consequences of anything over which he has no control. It is no more res integra that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the negligence or malfeasance of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-

performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, it was submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the buyer agreement.

13. The Authority observes that the Hon'ble Supreme Court in its landmark judgement of M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc. has dealt with the rights of the allottees to seek refund and delay possession charges as referred under Section 18(1)(a) of the Act. The Hon'ble Apex Court has laid down as under: -

> *"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the timestipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

14. Thus, the allottee has unqualified right to seek delay possession charge referred to under section 18 of the Act, which is not dependent on any contingencies. The right of delay possession charge has been held to be as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events.

15. Further, the pivotal issue arises from the builder's actions during the period between 24.04.2015 to 1.03.2018 in question that is despite claiming force majeure due to external impediments, the builder continued construction activities unabated thereafter concurrently received payments from the allottees and even executed buyer's agreement during that time. This sustained course of action strongly suggests that the builder possessed the capability to fulfill their contractual obligations despite the purported hindrances. Therefore, the builder cannot invoke Force Majeure to justify the delay and consequently, cannot seek an extension based on circumstances within their control. However, during the period 13.10.2020 to 21.07.2022, there were specific directions for stay on further construction/development works in the said project passed by the Hon'ble Supreme Court of India in M.A No. 50 of 2019 vide order dated 21.07.2022 which was in operation from 13.10.2020 to 21.07.2022 and there is no evidence that the respondent did not comply with such order. The Authority observes that during this period, there was no construction carried out in the project, nor any demands made by the respondent from the allottees. In view of the above, the promoter cannot be held responsible for delay possession interest during this period. Therefore, in the interest of equity, no interest shall be payable by the complainants as well as respondent from 13.10.2020 to 21.07.2022 in view of the stay order of Hon'ble Supreme Court on further construction/development works on the said project.

G. Findings on the reliefs sought by the complainants:

G. I Direct the respondent to handover possession of the unit, execute conveyance deed and to pay delay possession charges as per the Act.

16. 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.

17. Later on, the HSIIDC filed an application in the Hon'ble Supreme Court of India dated 01.07.2019 through M.A. No. 50 of 2019 in the matter of Rameshwar Vs. State of Haryana & Ors. CA 8788 of 2015 being "Application for Clarification of Final Judgment dated 12.03.2018 passed by this Hon'ble Court". It is submitted that the Hon'ble Supreme Court through its order dated 13.10.2020 again granted an injunction on further construction of projects of the parties to the said case including M/s. Paradise Systems Pvt. Ltd. project of Baani Center Point. The relevant portion of the said order stated that: - *"Pending further considerations, no third-party rights shall be created and no fresh development in respect of the entire 268 acres of land shall be undertaken. All three aforesaid developers are injuncted from creating any fresh third-party rights and going ahead with development of unfinished works at the Site except those related to maintenance and upkeep of the site".* That finally through the recent judgment on 21.07.2022, the stay on construction was cleared by the Hon'ble Supreme Court of India in M.A. 50 of 2019 in the matter of Rameshwar Vs. State of Haryana & Ors. CA 8788 of 2015. vide letter dated 26.07.2022 the complainant was informed that the project has been cleared from stay on construction and creation of third-party interests, by Supreme Court vide order dated 21.07.2022. The respondent vide letter dated 25.07.2022 has also applied for renewal of license and other permissions from DTCP which is awaited. It is also important to mention that the project was registered with RERA vide registration no. 187 of 2017 and after the judgment of Supreme Court the respondent has filed an application for extension of the registration under section 7 sub clause 3 dated 04.08.2022.

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

Demand Raised On	Demand raised on account of
02.02.2016	On casting of 3rd basement roof slab
11.04.2016	On casting of 2nd basement roof slab
05.08.2016	VAT
10.05.2017	On casting of 4th Floor Roof Slab VAT
10.10.2017	On start of Brick work VAT
25.01.2018	On completion of super structure

19. 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.

20. 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 delay possession charges 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.

21. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

22. Clause 2.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

> ***2.1 Possession***
> *The possession of the said premises shall be endeavored to be delivered by the intending purchaser by tentative date of 30.09.2017 with a grace period of 6 months beyond this date subject to clause 9 and completion of construction."*

23. **Due date of handing over of possession:** As per clause 2.1 of the buyer agreement dated 11.01.2017, the respondent/promoter undertook to handover possession of the unit to the complainant by 30.09.2017, with an extension of six months due to force majeure conditions. The said grace period of 6 months being unqualified, is allowed to the respondent. Thus, the due date of possession, including the grace period of 6 months comes out to be 30.03.2018.

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

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

25. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

26. 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., 13.10.2026 is **8.80%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%.**

27. 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;"

28. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

29. On consideration of the documents available on record and submissions made by both the parties, the Authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. As per Clause 2.1 of the buyer's agreement, the due date of handing over of possession was 30.03.2018. However, the respondent has failed to handover possession of the subject unit to the complainants till the date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Moreover, the Authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

30. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with proviso to Section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.03.2018 till valid offer of possession plus 2 months after obtaining

occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules. It is clarified that no interest shall be payable by the respondent as well as complainants from 13.10.2020 to 21.07.2022 in view of judgement of Hon'ble Supreme Court dated 21.07.2022, wherein this was explicitly instructed to cease any further development in the project.

31. The complainants in the present complaint is seeking further relief with respect to handover of possession and execution of conveyance deed. The Authority observes that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to handover possession of the unit and to get the conveyance deed executed in favour of the allottee. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the respondent has applied for occupation certificate or what is the status of the development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the unit and to execute conveyance deed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

H. Directions of the authority

32. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 30.03.2018 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules. Further, no delay possession charges and delay payment charges shall be payable by the respondent and complainants respectively from 13.10.2020 to 21.07.2022 in view of judgement of Hon'ble Supreme Court dated 21.07.2022, wherein this was explicitly instructed to cease any further development in the project.

ii. The arrears of such interest accrued from 30.03.2018 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules.

iii. The respondent is directed to supply a copy of the updated statement of account after adjusting delay possession charges within a period of 30 days to the complainant.

iv. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 60 days from the date of receipt of updated statement of account.

v. The respondent shall handover possession of the unit and execute conveyance deed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

vi. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

vii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. Further, the respondent shall not charge holding charges from the complainants at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020.

33. The complaints stand disposed of.

34. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.10.2026

HARERA
GURUGRAM