

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

Complaint no. :	2613 of 2021
Date of filing complaint:	06.07.2021
First date of hearing:	06.09.2021
Date of decision :	21.03.2023

Vipul Chaudhary R/o: Flat no. 301, Tower 4, Parsvnath La Tropicana Khyber Pass Civil Lines, Gurgaon.	Complainant
Versus	
M/s Vatika Limited address: Vatika Triangle, 4th floor, Sushant Lok, Phase-i, Block-A, M. G. Road, Gurugram-122 002.	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri. Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Rohit Bansal	Complainant
Sh. Dhurv Dutt Sharma	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 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, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.no	Heads	Information
1.	Project name and location	"Vatika India Next, Sector 81, 82A, 83, 84 and 85 Gurugram.
2.	Project area	393.358 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP License	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	92,FF admeasuring 1094 sq.ft.(Page 14 of complaint)
	Re-allotment vide letter dated 22.10.2010	7, FF, Sector 83E-11, Street no. 83 E
	Finally allotted unit	01, FF, Sector 83 E-11, Street no. 83 E
7.	Date of allotment letter	N/A
8.	Date of builder buyer agreement	24.09.2009 (Page 11 of complaint)



9.	Possession clause	10.1 Schedule for possession of the said residential plot <i>The Company based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the Company contemplates to complete development of the said residential villa within a period of 3 years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other clauses herein..... Emphasis supplied.</i>
10.	Due date of possession	24.09.2012 (due date of possession calculated from the date of execution of agreement)
11.	Total sale consideration	Rs. 30,48,073/- (as alleged by the complainant)
12.	Amount paid by the complainant	Rs. 14,05,271/-
13.	Occupation certificate	Not obtained.
14.	Offer of possession	Not offered
15.	Notice for termination	14.11.2018 (annexure 4, page 55 of complaint)
16.	Legal notice	06.04.2019

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - a. That the complainant booked a unit in the respondent's project namely Vatika India Next. A buyer's agreement was executed between the parties on 24.09.2009 and was allotted a unit no. 92, first floor, Primrose floors, for a total sale consideration of



Rs. 30,48,073/- and the allottee paid a sum of Rs. 3,04,808/- on the date of execution of the buyer's agreement. The agreement so executed was a construction linked payment plan as stated in annexure 3 to the agreement. 10% of the amount was payable at the time of booking, 10% within 60 days, 15% within 60 days from the allotment or commencement of earthwork and 10% on completion of foundation.

- b. That as per clause 10.1 of the agreement, the promoter was to complete the construction of the building within a period of three years from the date of the execution of the agreement. On 22.10.2010, a communication was received from the promoter indicating the re-allotment of unit bearing no. 7, first floor, sector 83 E-11, Street no. 83E.
- c. That a further communication was received on 17.05.2012, informing the allottee that a revision in the master layout of the township had taken place and amendments to the master layout plan necessitated due to architectural and other grounds. Hence, the promoter was re-allotting the unit. A further communication was received on 30.0.2012 informing the allottee that unit no. 01, first floor, sector 83E-11, Street no. 83E had been allotted.
- d. That the promoter had been informing the allottee about the progress of construction and collecting the amounts as per construction linked plan and believing the representations to be true and correct, he paid a sum of Rs. 14,05,271/-. Later on, the allottee came to know that there had been no construction



- for any of the flats that allotted to him either in initial allotment or re-allotment.
- e. That thereafter, the allottee received another, communication dated 03.08.2017 informing again about the change of allotment and to which certain options were offered by the promoter through mail. The allottee insisted upon making the date of delivery of physical possession as part of the re-allotment letter to which the respondent- did not get any positive response. The promoter further demanded an additional amount of Rs. 5,80,328/- for the new allotment in response to which the allottee declined shelling out any more money as despite 8 years of entering into an agreement of a unit, he had seen no construction at the proposed site.
- f. That the allottee again received a communication dated 14.11.2018 wherein he was informed that the promoter had been facing umpteen roadblocks in construction and development works. By the said communication, the promoter terminated the agreement and desired to refund the amount along with interest @6%. On receipt of the said communication, the allottee called upon and informed the promoter that it had withheld the amount for over a period of 10 years and was paying interest only @6% p.a. However, the allottee agreed to take the amount of Rs. 19,86,209/- as communicated by the promoter and confirmed the same vide email dated 14.12.2018.
- g. That the allottee through his advocate sent a legal notice dated 06.04.2019 demanding the payment of the admitted amount but in vain. Therefore, the allottee went before the NCLT,



Chandigarh bench vide CP (IB) No. 462/Chd/Hry/2019 titled "Vipul Chaudhary vs. Vatika Ltd" which was withdrawn vide order dated 05.03.2021.

C. Relief sought by the complainant:

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

- i. Refund the entire amount of Rs. 14,05,271/- already paid to the respondent in the form of allotment money and necessary instalments with respect to the purchase of the said unit in the said project.
- ii. Payment of interest on the total amount payable i.e., Rs. 14,05,271/- @18% F.A. from the date of actual payment of the booking amount till the date of realization of the actual final payments.
- iii. Compensation & litigation cost.

D. Reply by respondent:

5. The respondent made the following submissions in its reply:

- (a) That at the outset, respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.
- (b) That the reliefs sought by the complainant appear to be misconceived and an erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.

- (c) That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- (d) That it has been categorically agreed between the parties that subject to the complainant has complied with all the terms and conditions of the buyer's agreement and not being in default under any of the provisions, formalities, documentation etc., and subject to force majeure conditions, the developer contemplates to complete construction of the said plot within 3 years from the date of execution of the agreement unless there shall be delay due to failure of allottee to pay in time the price of the said plot.
- (e) That the delay in completing the project is due to the reasons beyond the control of the developer. In the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same are enumerated below:
- Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project which further constrained the respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the respondent were adversely affected and it was forced to re-evaluate its construction plans which caused a long delay.
 - Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for



connecting the project. The matter has been further embroiled in sundry litigations between HUDA and landowners.

- c. Due to the implementation of MNREGA Schemes by the Central Government, the construction industry as a whole has been facing shortage of labour supply, due to labour regularly travelling away from Delhi-NCR to avail benefits of the scheme. This has directly caused a detrimental impact to the Respondent, as it has been difficult to retain labour for longer and stable periods of time and complete construction in a smooth flow.
- d. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.
- e. Manufacturers of construction material were prevented from making use of close brick kilns, hot mix plants and stone crushers.
- f. Disruptions caused by unusually heavy rains in Gurgaon every year.
- g. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.
- h. Declaration of Gurgaon as a Notified Area for the purpose of Groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- i. Delayed re-routing by DHBVN of a 66KVA high-tension electricity line passing over the project.
- j. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months. Among these measures were bans imposed on construction activities for a total period of 70 days between November 2016 to December 2019.
- k. Additionally, imposition of several partial restrictions from time to time prevented the Respondent from continuing construction work and ensuring fast construction. Some of these partial restrictions are:
 - i. Construction activities could not be carried out between 6 p.m. to 6 a.m. for 174 days.
 - ii. The usage of Diesel Generator Sets was prohibited for 128 days.



- iii. The entries of truck traffic into Delhi were restricted.
 - iv. Manufacturers of construction material were prevented from making use of close brick kilns, Hot Mix plants, and stone crushers.
 - v. Stringently enforced rules for dust control in construction activities and close non-compliant sites.
- (f) The imposition of several total and partial restrictions on construction activities and suppliers as well as manufacturers of necessary material required, has rendered the respondent with no option but to incur delay in completing construction of its projects. This has furthermore led to significant loss of productivity and continuity in construction as the respondent was continuously stopped from dedicatedly completing the project. The several restrictions have also resulted in regular demobilization of labour, as the respondent would have to disband the groups of workers from time to time, which created difficulty in being able to resume construction activities with required momentum and added many additional weeks to the stipulated time of construction.
- (g) The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic. This severely impacted the respondent as it was constrained to shut down all construction activities for the sake of workers' safety, most of the labour workforce migrated back to their villages and home states, leaving the respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the project due to lack of manpower. Furthermore, some suppliers of the respondent, located in Maharashtra, are still unable to process orders which inadvertently have led to more delay.



- (h) The above has resulted in delays in construction of the project, for reasons that essentially are beyond the control of respondent.
- (i) That the respondent had already terminated the buyer's agreement dated 24.09.2009 vide termination letter dated 14.11.2018 due to various reasons but not limited to change in the layout plan due to initiation of the GAIL corridor, non-removal or shifting of the defunct high-tension lines and non-acquisition of sector roads by HUDA. The respondent also offered alternate unit to the complainant. However, he did not accept this alternate option and thus it was constrained to terminate the agreement. As per clause 11.5 of the agreement, it has been agreed that in the event of failure to handover the possession, it would be entitled to terminate the agreement and refund the amount. The respondent also offered to refund the amount to the complainant along with 6% interest p.a. However, it was the complainant who did not come forward to collect the money.
6. Copies of all the relevant documents have been filed and placed on 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. The written submissions made by both the parties along with documents have also been perused by the authority.

E. Jurisdiction of the authority:

7. 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

8. 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

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** ***SCC Online SC 1044*** decided on 11.11.2021 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

F. Findings on the objections raised by the respondent.

F.I Objection w.r.t. force majeure

12. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 24.09.2009 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 24.09.2012. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent-builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

13. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

14. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 24.09.2012 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants:

G.I. Direct the respondent to refund the paid amount along with interest.

15. The complainant booked a unit in the above said project and was allotted a unit no. 92, first floor admeasuring 1094 sq. ft. Vide re-allotment letter dated 22.10.2010, the unit was changed to no. 7, first floor, sector 83E-11, street no. 83E. Thereafter, the unit was



further changed and finally allotted a unit no. 01, first floor, sector 83E-11, street no. 83E. The sale consideration of the unit is Rs. 30,48,073/- against which the complainant paid an amount of Rs. 14,05,271/-.

16. It is pertinent to mention here that the respondent has terminated the builder buyer agreement dated 24.09.2009 vide termination letter dated 14.11.2018 due to various reasons but not limited to change in the layout plan, initiation of the GAIL corridor, non-acquisition of sector roads by HUDA. Moreover, it has been overserved vide termination letter dated 14.11.2018, the respondent offered refund the amount to the complainant along with 6% interest p.a. but the same was not collected by him. The relevant portion of the letter dated 14.11.2018 is reproduced below:

"5- Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the Company, it is unable to execute and carry out all the necessary work for the completion of your unit in the above said project. These subsequent developments have repeatedly marred and adversely impacted the progress of the Company's projects. To further add to the woes of the Company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forceful unauthorized occupation of certain parcels by some farmers coupled with other regular constructions an impediments beyond the control of the Company have resulted in the Company being unable to deliver. Therefore, in the backdrop of the uncertainties involved as detailed hereinabove and keeping in mind your interest, the Company offered in various discussions to you an alternate unit in the same Project, however, you did not accept this alternate option despite our subsequent numerous discussions with you. Thus, the Company is constrained and left with no choice but to terminate the Agreement.

6- We take this opportunity to state that as per terms of the Agreement, the Company is required to pay interest @⁵ p.a. on the refund amount. As such, in furtherance of our obligations under the Agreement and in order to make up for our inability to deliver in view of the extraordinary circumstances attending upon this unfortunate event, as a bonafide measure we are hereby willing to return the principal amount(paid by you from your own resources) in respect of the booking alongwith an interest @6% per annum calculated tereon till 14-Nov-2018

You are requested to visit our office at INXT City center Vatika Limited, Sector 83, Ground floor, block A, Gurgaon 122012, Haryana, India after 30 days from the receipt of this letter and collect the refund cheque(s).

17. Upon perusal of the above-mentioned paragraphs, the authority observes that the subject unit has already been cancelled and builder buyer agreement has been terminated on 14.11.2018, narrating the detailed reasons for cancellation of the unit and termination of builder buyer agreement on account of inability of the promoter to make available the said unit. The promoter has failed to develop the unit and cancelled it on account of his own fault/omissions, accordingly. So, he is duty bound to refund the amount along with interest at the prescribed rate (i.e., 10.70%) on each amount received till date of payment without any deduction.
18. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or

duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.

19. The due date of possession as per agreement for sale as mentioned in the table above is 24.09.2012 and there is delay of 8 years 9 months 12 days on the date of filing of the complaint. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019***, decided on 11.01.2021.

“.... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”

20. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022***, it was observed as under:

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

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

21. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
22. This is without prejudice to any other remedy available to the allottee including compensation for which he may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
23. The authority hereby directs the promoter to return to the complainant the amount received by him i.e., Rs. 14,05,271/- with interest at the rate of 10.70% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as

prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

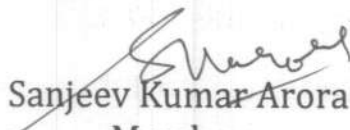
H. Directions of the Authority:

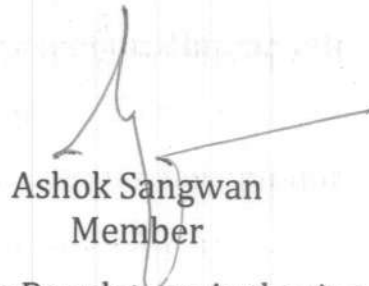
24. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to refund to the complainant the entire amount of Rs.14,05,271/- paid by him along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017 from the date of each payment till the date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

25. Complaint stands disposed of.

26. File be consigned to the registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 21.03.2023