

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

Date of decision: 19.04.2023

NAME OF THE BUILDER		JMD Ltd.	
PROJECT NAME		Imperial Suite, JMD Suburbio	
S. No.	Case No.	Case title	APPEARANCE
1	CR/6333/2019	Ashok Kumar V/s JMD Ltd.	Shri Anand Verma Shri Ajit Singh Thakur
2	CR/6377/2019	Ashok Kumar V/s JMD Ltd.	Shri Anand Verma Shri Ajit Singh Thakur
3.	CR/6422/2019	Ashok Kumar V/s JMD Ltd.	Shri Anand Verma Shri Ajit Singh Thakur

CORAM:

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Imperial Suite, JMD Suburbio" being developed by the same respondent/promoter i.e., **M/s JMD Ltd.**



3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	JMD LTD "Imperial Suite, JMD Suburbio " Sector-67, Gurugram.
<p>Clause 15</p> <p><i>"That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within three years from the date of sanction of revised building plan from the competent authorities or further extended period of six (6) months after the expiry of 36 months as agreed above except the force majeure circumstances. The company shall not incur any liability if it is unable to deliver possession of the said premises by the time aforementioned, if the completion of the said complex is delayed by reason of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the company, or non-payment of timely instalments by unit allottee(s) civil commotion or by reason of war, or enemy action, or earthquake or any act of god, or if non-delivery of possession is as a result of any act, notice order, rule or notification of the government and for any other public or competent authority or for any delay made by government authorities in grants of necessary sanctions and approvals or for any other reason beyond the control of the company and in any of the aforesaid events, the company shall be entitled to a reasonable extension of time for delivery of possession of the said premises to the unit allottee(s). In the event of any such contingency arising/happening, the company shall have right to alter or vary the terms and conditions of allotment, or if the circumstances, beyond the control of the company, so warrant, the company may suspend the scheme for such period as it may consider expedient and no compensation of any nature whatsoever can be claimed by the unit allottee(s) for the period of suspension of the scheme. If for the aforesaid or any other reason the company is forced to abandon the whole or part of the scheme, then and in such a case, the company's liability shall be limited to the refund of the amount paid by the unit allottee(s) without any interest or any compensation whatsoever."</i></p> <p style="text-align: right;">(Emphasis supplied)</p>	
<p>Due date of possession: The due date of possession is calculated from the date of sanction of revised building plan i.e., 13.11.2013. Grace period of 6 months included being unqualified. Accordingly, the due date of possession comes out to be 13.05.2017.</p>	



Occupation certificate: - 18.10.2018				
Date of revised building plans: - 13.11.2013				
Sn	Complaint No. & Case Title	CR/6333/2019	CR/6377/2019	CR/6422/2019
1.	Reply status	28.09.2020	28.09.2020	28.09.2020
2.	Unit no.	209, 2 nd floor [page 10 of complaint]	210, 2 nd floor [page 11 of complaint]	211, 2 nd floor [page 10 of complaint]
3.	Date of BBA	14.03.2011 [page 9 of complaint]	14.03.2011 [page 10 of complaint]	14.03.2011 [page 9 of complaint]
4.	Total Consideration / Total Amount paid by the complainant (s)	TSC: ₹36,50,000/- AP: ₹32,91,457/-	TSC: ₹36,50,000/- AP: ₹32,91,457/-	TSC: ₹36,50,000/- AP: ₹32,91,457/-
5.	Offer of possession	03.12.2018 [pg. 10 of reply]	03.12.2018 [pg. 12 of reply]	03.12.2018 [pg. 10 of reply]
6.	Relief sought	Delay possession charges	Delay possession charges	Delay possession charges

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges along with interest and compensation.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/6333/2019 Ashok Kumar V/s JMD Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Unit and project related details

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

CR/6333/2019 Ashok Kumar V/s JMD Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Imperial Suite, JMD Suburbio", Sector 67, Gurugram
2.	Nature of the project	Commercial Complex
3.	DTCP license no.	291 of 2007 dated 31.12.2007
	Validity of license	30.12.2024
	Licensee	Ananddham Realtors Pvt. Ltd
4.	HRERA registered/ not registered	30 of 2022 dated 25.04.2022
	HRERA registration valid up to	30.12.2024
5.	Occupation certificate granted on	18.10.2018 [pg. 13 of reply]
6.	Unit no.	209, 2 nd floor [page 10 of complaint]
7.	Area of the unit	650 sq. ft
8.	Date of execution of buyer's agreement	14.03.2011 [page 9 of complaint]



10. Possession clause

15. POSSESSION

*That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within **three years from the date of sanction of revised building plan from the competent authorities or further extended period of six (6) months after the expiry of 36 months as agreed above except the force majeure circumstances.** The company shall not incur any liability if it is unable to deliver possession of the said premises by the time aforementioned, if the completion of the said complex is delayed by reason of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the company, or non-payment of timely instalments by unit allottee(s) civil commotion or by reason of war, or enemy action, or earthquake or any act of god, or if non-delivery of possession is as a result of any act, notice order, rule or notification of the government and for any other public or competent authority or for any delay made by government authorities in grants of necessary sanctions and approvals or for any other reason beyond the control of the company and in any of the aforesaid events, the company shall be entitled to a reasonable extension of time for delivery of possession of the said premises to the unit allottee(s). In the event of any such contingency arising/happening, the company shall have right to alter or vary the terms and conditions of allotment, or if the circumstances, beyond the control of the company, so warrant, the company may suspend the scheme for such period as it may consider expedient and no compensation of any nature whatsoever can be claimed by the unit allottee(s) for the period of suspension of the scheme. If for the aforesaid or any other reason the company is forced to abandon the whole or part of the scheme, then and in such a case, the company's*



		<i>liability shall be limited to the refund of the amount paid by the unit allottee(s) without any interest or any compensation whatsoever.</i> (Emphasis supplied) [pg. 15 of complaint]
11.	Date of sanction of revised building plan	13.11.2013
12.	Due date of possession	13.05.2017 [Note: Grace period of 6 months included being unqualified]
13.	Total consideration as per payment plan annexed with the buyer's agreement at pg. 11 of complaint	Rs. 36,50,000/-
14.	Total amount paid by the allottees as per statement of account dated 22.08.2019, at page 44 of complaint	Rs. 32,91,457/-
15.	Offer of possession	03.12.2018 [pg. 10 of reply]

B. Facts of the complaint

8. The complainant has pleaded the complaint on the following facts:

- a. That the complainant booked one unit bearing no. 209 admeasuring 650 sq. ft. "JMD IMPERIAL SUITES" on 14th March 2011. That the complainant when visited the respondent office in first week of August 2019 then he was informed that occupancy certificate has been obtained by the respondent and offer of possession was also send to the complainant in December 2018 only. The complainant was surprised to know this fact as complainant till date has not received any offer of possession from the respondent either through email or through post.



- b. That immediately after knowing that occupancy certificate has been received the complainant informed the respondent vide its mail dated 12th August 2019 that he has not received any offer of possession from the respondent and requested the respondent to send a final offer of possession after adjusting delay penalty @18%.
- c. That the complainant received a statement of account dated 12th August 2019 from the respondent and surprisingly the respondent has charged 18% interest on unit amounting to ₹ 36,50,000/-. That the complainant submits that it has not defaulted in payment of any instalment then how the respondent could impose such a hefty fine on the complainant. Further, the responsibility of sending offer of possession lies with the respondent and if no such offer of possession is sent to the complainant, then how respondent could impose penalty@ 18%.
- d. That as per Section 19(6) of the Real Estate (Regulation and Development) Act, 2016, the complainant has fulfilled his responsibility in regard to making the necessary payment within time specified in the agreement. But such an inordinate delay in the delivery of possession to the allottee is a violation of the rights of the allottee under the provisions of RERA Act as well as the agreement executed between the complainant and respondent.
- e. That surprisingly in clause 8 of the builder buyer agreement it is specifically mentioned that in case of delay in any payment by the buyer he shall be liable to pay an interest at 18% on the delayed payment. However, there is not any single clause in the builder buyer agreement which mentions about the delay penalty which respondent will give in case project is delayed beyond the date it



was promised. The builder buyer agreement was discriminatory and do not safeguard the interests of the complainant.

- f. As claimed by the respondent that the occupancy certificate was received in last quarter of 2018 then it is really surprising that why the respondent has not taken the RERA registration for its project.
- g. That it is very important to state here that the complainant is a law-abiding citizen and consumer who has been cheated by the malpractices adopted by the respondent being a developer and promoter of real estates since long time. Based on the advertisement, complainant showed interest in purchasing a service apartment in project JMD Imperial Suite, Sector 67, village Badshahpur, Gurugram, Haryana and being developed by M/s JMD Limited.

C. Relief sought by the complainant:

9. The complainant in his compliant has sought following reliefs:
- a. Delay possession charges at prescribed rate of interest.
10. On the date of hearing, the authority explained to the respondents/promoter about the contravention 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.

11. The respondent has contested the complaint on the following grounds:
- a. That the respondent herein is submitting the present application to bring on record certain additional information and documents with respect to the present complaint, which are necessary for proper adjudication of the matter.
- b. That the complainant booked the said unit in the project vide premise buyer's agreement dated 14.03.2011. That as per clause 15



of the said agreement the due date of handing over of possession of the unit is within 3 years from the date of sanction of revised building plan. It is most humbly submitted that the revised building plans have been sanctioned on 13.11.2013 by the competent authority.

- c. Further, as per the said clause 15 the due date of possession of the Unit comes out to be 13.05.2017 including grace period of six months. The same has already been held by this Id. authority in the Judgment dated 02.05.2019.
- d. It is most humbly submitted that the complainant has already offered the possession of the unit to the complainant on 03.12.2018, after obtaining the occupation certificate on 18.10.2018. Thereafter, the following reminders have been sent to the complainants to take possession and payment of dues. Letter dated 08.01.2019, 04.06.2019, 29.08.2019, 30.09.2019, 31.10.2019, 07.12.2019, 26.02.2020, 26.11.2020, 07.01.2021, 06.07.2021, and 18.08.2021. However, till date the complainant has failed to take over the possession of the unit.
- e. It is submitted that the complainant deliberately and intentionally failed to take over the physical possession of the unit in the project with a malafide intension, despite of the possession being offered by the respondent on 03.12.2018.
- f. It is also submitted that the complainant has huge outstanding dues payable against the sale consideration of the unit. It is noteworthy to mention that the complainant till date has only paid ₹ 32,91,457/- of the sale consideration out of the sale consideration amount of ₹46,43,999/- and are in deliberate default of ₹ 13,52,542 payables against the sale consideration amount.



- g. It is further submitted that since the offer of possession was made on 03.12.2018 and the complainant failed to take over the possession, the complainant is liable to pay interest on the outstanding amounts. Therefore, as on date the total outstanding dues with respect to the sale consideration including interest, on the part of the complainant is ₹ 19,29,333/-.
- h. It is also submitted that from the date of handing over of the possession i.e., 03.12.2018, maintenance charges as per the terms and conditions of the agreement has accrued. Therefore, over the years the respondent has duly been maintaining the unit on behalf of the complainant. That the total due amount from the date of handing over of possession of the unit till February 2023 an amount of ₹ 3,24,441/- along with delayed interest of ₹ 1,42,960/- which cumulatively comes out to be ₹ 4,67,401/- is pending payment by the complainant.
12. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

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

E.I. Territorial jurisdiction

14. 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

15. 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.

16. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I. Delay possession charges at prescribed rate of interest.

17. The above-mentioned issues are being dealt up together. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges. Clause 15 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

*"15. That the possession of the said premises is proposed to be delivered by the company to the unit allottee(s) within **three years from the***



date of sanction of revised building plan from the competent authorities or further extended period of six (6) months after the expiry of 36 months as agreed above except the force majeure circumstances. The company shall not incur any liability if it is unable to deliver possession of the said premises by the time aforementioned, if the completion of the said complex is delayed by reason of non-availability of steel and/or cement or other building materials or water supply or electric power or slow down strike or due to a dispute with the construction agency employed by the company, or non-payment of timely instalments by unit allottee(s) civil commotion or by reason of war, or enemy action, or earthquake or any act of god, or if non-delivery of possession is as a result of any act, notice order, rule or notification of the government and for any other public or competent authority or for any delay made by government authorities in grants of necessary sanctions and approvals or for any other reason beyond the control of the company and in any of the aforesaid events, the company shall be entitled to a reasonable extension of time for delivery of possession of the said premises to the unit allottee(s). In the event of any such contingency arising/happening, the company shall have right to alter or vary the terms and conditions of allotment, or if the circumstances, beyond the control of the company, so warrant, the company may suspend the scheme for such period as it may consider expedient and no compensation of any nature whatsoever can be claimed by the unit allottee(s) for the period of suspension of the scheme. If for the aforesaid or any other reason the company is forced to abandon the whole or part of the scheme, then and in such a case, the company's liability shall be limited to the refund of the amount paid by the unit allottee(s) without any interest or any compensation whatsoever."

18. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The



incorporation of such clause in the flat buyer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

19. **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]

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.”

20. The legislature in its wisdom in the subordinate legislation under 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.
21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as



on date i.e., **19.04.2023** is 8.70%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.70%.

22. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottees, as the case may be.

Explanation. —For the purpose of this clause—

the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default; the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.70%** by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
24. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of three years from the date of sanction of revised building plan from the competent authorities. The authority calculated due date of possession from approval of building plan i.e., 13.11.2013 being later. The period of 3 years expired on 13.11.2016. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage. Accordingly, the due date of possession comes out to be 13.05.2017.

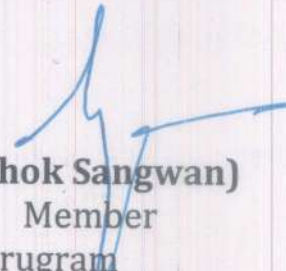
25. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act, by not handing over possession by the due date as per the agreement. By virtue of clause 15 of the agreement executed between the parties on 14.03.2011, the possession of the subject apartment was to be delivered within a period of three years from the date of sanction of revised building plan from the competent authorities. The authority calculated due date of possession from approval of building plan i.e., 13.11.2013 being later. The period of 3 years expired on 13.11.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 13.05.2017. 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. 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., 13.05.2017 till 03.02.2019 i.e., after expiry of 2 months from the date of offer of possession (03.12.2018), at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

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

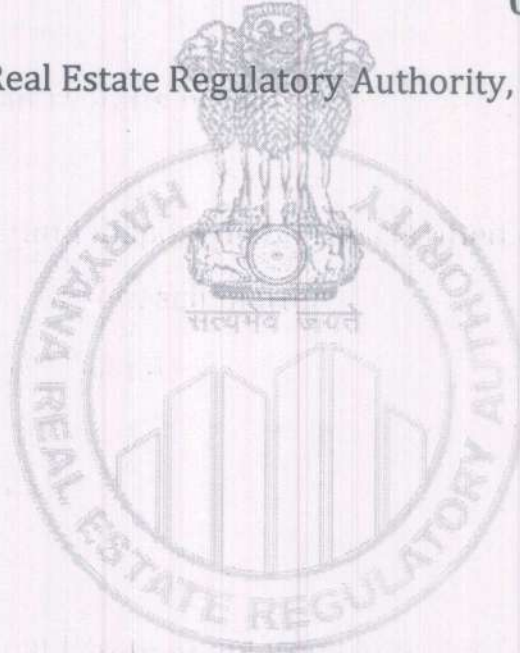
- a. The respondent is directed to pay the interest at the prescribed rate i.e., 10.70% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 13.05.2017 till 03.02.2019 i.e., after expiry of 2 months from the date of offer of possession (03.12.2018).
- b. The arrears of such interest accrued from 13.05.2017 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.
- c. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- d. The rate of interest chargeable from the complainant/allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- e. If there is no amount outstanding against the allottees or less amount outstanding against the allottees then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottees.
- f. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

27. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
28. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
29. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.04.2023



HARERA
GURUGRAM