



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>1669 of 2019</b>
<b>Date of filing.:</b>	<b>22.07.2019</b>
<b>First date of hearing.:</b>	<b>03.09.2019</b>
<b>Date of decision.:</b>	<b>14.02.2023</b>

1. Amit Sharma  
Bu 233, 1st Floor, Pitampura, Near  
Abhinav Public School,  
New Delhi- 110034
2. Devender Dutt Sharma  
Bu 233, 1st Floor, Pitampura, Near  
Abhinav Public School,  
New Delhi- 110034

....COMPLAINANT

VERSUS

TDI Infracorp (India) Limited.  
Upper Ground Floor, Vandana Building  
Tolstoy Marg, Connaught Place,  
New Delhi

....RESPONDENT

**CORAM:**

**Dr. Geeta Rathee Singh**

**Member**

**Nadim Akhtar**

**Member**

**Present:**

Mr. Roopak Bansal, Counsel for the complainant  
through VC.

Mr Ajay Ghanghas, Counsel for the respondent  
through VC.

*Geeta Rathee*

**ORDER ( DR. GEETA RATHEE SINGH- MEMBER )**

1. Present complaint has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is, inter-alia, prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**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, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project.	Water Side Floors, KWF, Lake Grove, TDI City, NH-1, Kundli, District Sonapat, Haryana
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Registered vide Registration no. 43 of 2017 dated 11.08.2017
5.	Details of unit.	WF-149/ SF, Water Side Floors, measuring 1400 sq.ft.

6.	Date of builder buyer agreement	10.12.2016
7.	Due date of possession	10.12.2019
8.	Possession Clause	“ .....However, if the possession of the Floor is delayed beyond the stipulated period of 30 months and a further period of 6 months granted as a grace period from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company hen for every month of delay, the shall be entitled to a fixed monthly compensation damages/penalty quantified @ Rs.5 per square foot of the total super area of the Floor. The Buyer agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the Floor.”
9.	Total sale consideration	₹54,99,280/-
10.	Amount paid by complainant	₹ 23,15,821/- upto 28.03.2014
11.	Offer of possession.	None

### B. FACTS OF THE COMPLAINT

3. In the captioned complaint, complainants had booked a unit in the project of the respondent namely “Waterside Floors in Lake City Grove” situated in Kundli, Sonapat on 08.05.2013. The total sale

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consideration of said unit was ₹ 54,99,280/- against which the complainants had paid an amount of ₹ 23,15,821/-. Unit no. WF-149/Sf was allotted to the complainants on 15.10.2013. A builder buyer agreement dated 10.12.2016 was executed between both the parties. As per clause 28 of builder buyer agreement possession of the unit was to be delivered by 10.12.2019 (within 30 months from date of execution of agreement and a further grace period of 6 months) . It is alleged by the complainant that the construction of the project has been stalled for a long time. Even by June 2019 i.e after two years from date of execution of builder buyer agreement the project was not in a position to be ready for offering possession. As a proof, complainants have annexed photographs of the project taken on 02.07.2019, as Annexure C-2 in complaint file, showing a partially constructed project site. Since, there was no scope of timely completion of the project in foreseeable future, complainants informed the respondent that because of delay caused in delivery of possession, they do not wish to be a part of the project and requested for refund of paid amount along with interest, however no response was received from the respondent. Possession of the booked unit has been delayed as per the time period stipulated in the buyer's agreement. Further, the respondent is still not in a position to deliver possession of booked unit.

**C. RELIEF SOUGHT**

4. That the complainants seeks following relief and directions to the respondent:-

- i. That the respondent be directed to refund the sum of ₹ 23,15,821/- to the complainant along with interest.
- ii. To pay a sum of ₹ 5,00,000/- on account of harassment caused for delay in possession of the unit.
- iii. To pay a sum of ₹ 10,00,000/- for physical harassment caused due to non-delivery of the property within reasonable time.
- iv. To refund legal cost of ₹ 1,00,000/- incurred by the complainant.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

5. Respondent in its written submissions has submitted that the present project is registered with the Authority vide registration no. 43 of 2017. Construction of the project is at advanced stages and the unit of the complainants is likely to be ready for possession. Complainants had opted for a construction linked plan and had been negligent towards payment of instalment as agreed between the parties. There is still an amount of ₹ 27,41,581/- outstanding against the complainants. Respondent issued various demand notices and reminders to the

 P. Rattal<sup>5</sup>

complainants for payment of outstanding amounts but the same were not paid by the complainants. Copies of demand notices are annexed as annexure R-2. There has been default on the part of the complainants in making payments as per construction link plan in respect of the booking made in the said project. Therefore, complainants are not entitled to any relief.

#### **E. REPORT OF LOCAL COMMISSIONER**

6. During the course of hearing dated 10.08.2022, learned counsel for the respondent submitted that construction of the unit is complete and that the respondent has offered possession of unit to the complainants. Learned counsel for complainants refuted the submission of respondent and requested the Authority to appoint a local commissioner to ascertain actual status of the apartment. In view of conflicting statements regarding completion of the apartment as well as project Authority decided to appoint a Local Commissioner to ascertain status of construction/completion of apartment and to evaluate the existing condition of the project.
7. Protech Consortium, Kurukshetra was appointed Local Commissioner to visit the site of the project and submit report regarding existing condition of the project. Local Commissioner visited the site in

  
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question on 30.09.2022 at 11.00 A.M. A report of the visit was submitted in the office of the Authority on 06.10.2022.

8. In its report submitted on 06.10.2022, the local commissioner i.e Protech Consortium, Kurukshetra stated the following:

- (i) the unit no. WF-149/SF of KWF block of "Lake Grove City" was complete with flooring, bathrooms, kitchen, sanitary and electrical fittings, etc.
- (ii) Only grievance of the complainants seemed to be that there was no occupation certificate available and no electricity connection had been provided from Government department. There was no responsible representative of TDI Infracorp Ltd at site to confirm the status of occupation certificate of the apartment.
- (iii) Electricity was being supplied from generators and there was no connection from the infrastructure of electricity department.
- (iv) The campus of Waterside Floors-Lake Grove City' is divided into two parts, eastern and western, by a village road. The same village road was the only approach available to the campus. The unit of complainants was in eastern part of the campus. Both parts were provided with boundary walls, internal roads, rainwater disposal drains, streetlights, embedded

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firefighting systems and maintained green areas/parks etc.. ST is situated in western part of the campus and was in working condition.

(v) Water supply was from ground water arranged through submersible tube well after due treatment .

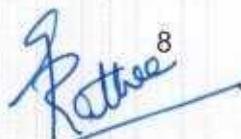
(vi) There was no electricity sub-station.

(vii) In all there were 15 high-rise towers and 51 four storeyed blocks in the campus. Visibly, about half of high rise towers were almost complete and others were still under construction.

(viii) However, only about 2% of the total residences/flats were occupied and inhabited while others were not habited yet.

#### **F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS**

9. During oral arguments learned counsel for both parties reiterated their averments as were submitted in writing. Learned counsel for the complainants further submitted that as per clause 28 of the builder buyer agreement possession of the unit was to be delivered within a period of 30 months from date of execution of agreement and a further grace period of six months. The period of 30 months expired on 10.06.2019. However, in June 2019 complainants visited the site of the project and found that the project in question was nowhere near

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completion and the unit booked by complainant could not be ready for possession in foreseeable future. As proof, complainants have annexed photographs of the project taken on 02.07.2019 to substantiate their claim. Seeing that the project would take an extensive amount of time to be completed and ready for possession, which would go beyond the six months grace period, complainants chose to withdraw from the project and seek refund of the paid amount. Since the respondent failed to refund the amount paid towards booked unit, complainant filed present complaint before the Authority for the same. Though, as per the report of the local commissioner the unit in question i.e WF-149/SF is complete, however, respondent has not yet received occupation certificate for the project. Complainants do not wish to take possession of unit without occupation certificate. Even in its written submission, respondent has failed to apprise with regard to status of grant of occupation certificate in respect of the project in question. Learned counsel for the complainants prayed the Authority that considering the aforementioned circumstances, direction be issued to respondent to refund the paid amount along with interest.

**G. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT**

10. On the other hand, highlighting the report of the local commissioner, learned counsel for the respondent submitted that the project of the respondent is complete and ready for possession including the unit of the complainants and they may take possession after payment of outstanding balance consideration. However, complainants may not be allowed relief of refund as that will hamper the construction progress of the project. Authority vide its order dated 10.08.2022 had observed that no case of refund is made out at this stage as respondent has already invested the amount paid by complainant towards completion of their unit and also that refund of amount paid by complainants at this stage will also encourage other allottees to withdraw from the project and seek refund which would adversely affect the project. Hence, the complainants are not entitled to claim relief of refund of paid amount.
11. At this point a specific query was put up to the learned counsel for respondent as to whether respondent has obtained occupation certificate qua the tower in which complainants's unit is situated. In response, learned counsel for the respondent submitted that occupation certificate has not been received till date.

 J. Rathore

## H. JURISDICTION OF THE AUTHORITY

12. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

### H.1 Territorial Jurisdiction

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

### H.2 Subject Matter Jurisdiction

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.

In view of the provisions of the Act of 2016 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 learned Adjudicating Officer if pursued by the complainants at a later stage.

#### **I. ISSUES FOR ADJUDICATION**

13. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

#### **J. OBSERVATIONS OF THE AUTHORITY**

14. After going through rival contentions of both parties and perusing documents placed on record, the factual matrix is that complainants had booked a unit in the real estate project of the respondent on 08.05.2013. Complainant was allotted unit bearing no. WF-149/SF of

KWF block of Lake Grove City. Builder Buyer Agreement was executed between both parties on 10.12.2016. As per clause 28 possession of the unit was to be delivered by the respondent by 10.12.2019 i.e 30 months plus 6 months grace period. It is alleged by the complainants that respondent has failed to construct the project and the unit booked by the complainants is not in a habitable condition. Therefore, complainants have prayed for a direction to respondent to refund the paid amount along with interest. On other hand, respondent in its written submissions has submitted that the project in question including the unit of the complainants is complete and ready for possession. However, it is the complainants who have failed to make payment of outstanding dues and accept possession.

15. In order to ascertain the actual status of the apartment and to evaluate the existing condition of the project, Authority vide order dated 10.08.2022 had decided to appoint a local commissioner to visit the site and submit a report. A status report was submitted by the local commissioner in the office of the Authority on 06.10.2022. The detailed observation of the local commissioner at the site have been recorded under sub-heading 'E' of this order. Gist of the report being that the project including the unit of the complainant stood complete and ready for possession as on 30.09.2022 . The only material grouse

of the complainant was the non receipt of occupation certificate qua the tower in which the unit of the complainants is situated.

16. Considering all the facts and submissions, Authority observes that complainants are not willing to accept possession without occupation certificate. They have already waited for a long time for delivery of possession but now they are not willing to wait for an indefinite period for grant of occupation certificate to the respondent. As per the terms of builder buyer agreement, respondent should have offered possession of the booked unit after obtaining occupation certificate by 10.12.2019, including a six months grace period. However, photographs submitted by the complainants along with the complaint shows that as on 02.07.2019 the project was nowhere near completion. It was reasonably clear to the complainants that respondent will not be in a position to deliver possession as per time period stipulated in the agreement. Timely delivery of possession was of essence however, upon seeing that completion of the project was uncertain in foreseeable future complainants did not wish to give to the respondent any benefit of six months grace period. On 22.07.2019, complainants exercised their rights under section 18 of the RERA Act 2016 and filed present complaint before the Authority seeking refund of paid amount along with interest on account of default in delivery of possession of booked unit within the stipulated period as agreed between the parties.

17. Evidently, during hearing proceedings dated 10.08.2022, respondent had stated that unit is complete, further, respondent has already offered fit out possession of the unit to the complainant and even occupation certificate for the same will be received soon therefore, complainants cannot be allowed relief of refund. In such circumstances, Authority had prima facie observed that no case for refund was made out at that stage as respondent has already invested the amount paid by the complainants towards completion of their unit. However, during the course of hearing today, learned counsel for respondent was categorically asked whether occupation certificate has been received qua the unit of the complainant to which he replied that occupation certificate has not been received till date and neither could not provide a date by which the occupation certificate is expected to be obtained from the concerned department. Authority vide its order dated 10.08.2022, had tentatively observed that refund cannot be granted in present case since the project is complete and occupation certificate will soon be granted. However, in consonance of the fact that an offer of possession without occupation certificate is not a valid offer of possession and the allottee cannot be forced to take a unit without occupation certificate nor can be expected to wait endlessly for valid offer of possession, specifically in circumstances where the respondent/ promoter in reply or during oral argument could not provide the status of occupation certificate application or expected date of

receiving occupation certificate from the competent Authority. Authority had laid a criteria as to what shall be called lawful offer/ handing over of possession in **Complaint Case No. 903 of 2019- Sandeep Goyal Vs. Omaxe Ltd.** Relevant part of the said order is reproduced below:

*“7. At this stage, the Authority would express its views regarding the concept of ‘valid offer of possession’. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:*

*(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.*

*(ii) .....*

*(iii) .....*”

18. During hearing dated 10.08.2022, respondent had stated that occupation certificate has been applied and will be received soon. However, more than six months have passed but the project has still not been granted

occupation certificate. Naturally, such delay in grant of occupation certificate raises a genuine doubt in the mind of the complainants with regard to the credibility of the respondent and its claims in respect of the completion of the project. Complainants cannot be forced to accept possession of the unit without an occupation certificate. When an allottee booked a unit in the project, completion of construction of the project and handing over of possession of booked unit, as per the terms stipulated in the buyers agreement, becomes essential. In the present case, as per the builder buyer agreement, possession was supposed to be handed over within 30 months + 6 months grace period, accordingly, the deemed date of possession was 10.12.2019. However, when respondent did not deliver the possession as per agreed terms, it became the unqualified and absolute right of the allottees/complainants whether they wish to opt for possession of the booked unit or demand refund of the paid amount on account of default in delivery of possession as per agreement for sale. Since it is the respondent who has failed to discharge his obligations as mentioned under section 11 (4) of the RERA ACT of 2016, the complainant acquires an unqualified right to withdraw from the project on account of delayed delivery of possession and demand refund of the paid amount along with interest. In view of the aforementioned facts, Authority observes that the complainant is entitled to receive refund of

the paid amount along with interest in terms of Rule 15 of HRERA Rules 2017.

**J1. FINDINGS ON WHETHER COMPLAINANT HAS DEFAULTED IN MAKING PAYMENTS AS PER SCHEDULE.**

(i) In its written submission, respondent has stated that there has been default on the part of the complainant in making timely payments as per construction link plan in respect of the booking made in the said project. It is further stated that there is still an amount of ₹ 27,41,581/- outstanding against the complainants. Despite issuing various demand notices and reminders to the complainants for payment of outstanding amounts, complainants have failed to make timely payment of instalments. Copy of demand notices is annexed as annexure R-2 (Colly).

(ii) In the present complaint, complainants had opted for a construction linked plan of payment at the time of booking in the year 2013 and by the year 2014 had paid a substantial amount of ₹ 23,15,821/- out of the total sale consideration of ₹54,99,280/-. On bare perusal of the demand/ reminder issued by the respondent it is revealed that in any of these

notices, respondent has failed to mention the stage of construction towards which a particular demand was being raised. Respondent has merely mentioned the amount that is to be paid by the complainants without providing any communications in respect to the status of the project. Respondent has given no basis or details as to how the amount claimed in demand notice has been calculated therefore, it cannot be ascertained whether demands raised from time to time were in consonance with the actual construction work executed on ground. In the last demand notice issued on 27.11.2018, annexed at page 38, respondent has claimed payment of outstanding amount including payment of an amount ₹ 7,37,965.61/- as interest accrued on account of delayed payments. Again respondent has not attached any proof as to when a particular demand was raised and by how many days the complainant defaulted in making payments to become liable to pay such a huge amount of interest. Mere random statements without substantive proof cannot be accepted in the court of law. Respondent has failed to justify its claim that the complainant had defaulted in making payments as per the agreed schedule.



19. Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others " has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per agreed agreement. Para 25 of this judgement is reproduced below:

*"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."*

20. The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of

possession. The complainants wish to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

***“Rule 15:** Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:*

*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."*

21. The legislature in its wisdom in the subordinate legislation under the provisions 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.
22. 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. 14.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.
23. The term 'interest' is defined under Section 2(za) of the Act which is as under:

*(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;*

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*(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;*

Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid by them till the actual realization of the amount.

24. Authority has got calculated the interest payable to the complainants till date of order i.e 14.02.2023 which works out to ₹ 23,06,657/-  
Accordingly, the total amount payable to the complainants including interest calculated at the rate 10.60% works out to ₹ 46,22,478/-.

25. While filing the complaint in the relief sought, to pay a sum of ₹ 5,00,000/- on account of harassment caused for delay in possession of the unit, to pay a sum of ₹ 10,00,000/- for physical harassment caused due to non-delivery of the property within reasonable time & to refund legal cost of ₹ 1,00,000/- incurred by the complainant. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12,14, 18 & section 19 of the Act, the

complainants may file a separate complaint before Adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the HRERA rules. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation.

#### **K. DIRECTIONS OF THE AUTHORITY**

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

- (i) Respondent is directed to refund the entire amount of ₹ 46,22,478/- (till the date of this order i.e 14.02.2023) to the complainants.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.



27. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.



.....  
**NADIM AKHTAR**  
**[MEMBER]**



.....  
**DR. GEETA RATHEE SINGH**  
**[MEMBER]**

