



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

Complaint no. : 6750 of 2022
Date of filing of complaint: 14.10.2022
Order pronounced on: 17.08.2023

1. Mr. Arjun Singh
2. Mrs. Jaya Singh
Both RR/o: - E-2/11, Vasant Vihar, New Delhi- 110057

Complainants

Versus

M/s Raheja Developers Limited.
Regd. office: W4D, 204/5, Keshav Kunj, Cariappa Marg,
Western Avenue, Sainik Farms, New Delhi- 110062

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Rohit Kumar Singh (Advocate)
Sh. Garvit Gupta (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made



thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"Raheja's Aranya City", Sectors 11&14, Sohna Gurugram
2.	Project area	107.85 acres
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no. and validity status	25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	Name of licensee	Standard Farms Pvt. Ltd and 9 others
6.	RERA Registered/not registered	Registered vide no. 93 of 2017 dated 28.08.2017
7.	RERA registration valid up to	27.02.2023 27.08.2022 + 6 months in view of covid - 19.
8.	Unit no.	Plot no. D-99 (Page no. 29 of the complaint)
9.	Unit area admeasuring	342.840 sq. yds. (Page no. 29 of the complaint)
10.	Allotment letter	28.06.2013 (Page no. 24 of the complaint)



11.	Date of execution of agreement to sell	28.06.2013 (Page no. 27 of the complaint)
12.	Possession clause	4.2 Possession Time and Compensation <i>That the Seller shall sincerely endeavor to give possession of the plot to the purchaser within thirty-six (36) months from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not completed within the time period mentioned above. In the event of his failure to take over possession of the plot, provisionally and /or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be lie at his/her risk and cost the purchaser shall be liable to pay @ Rs.50/- per sq. Yds. of the plot area per month as cost and the purchaser shall be liable to pay @ Rs.50/- per sq. Yards. Of the plot area per month as holding charges for the entire period of such delay....."</i> (Page no. 35 of the complaint).
13.	Grace period	Allowed being unqualified.

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14.	Due date of possession	28.12.2016 (Note: - 36 months from date of agreement i.e., 28.06.2013 + six months grace period)
15.	Payment plan	Installment Linked payment plan (As per payment plan at page no. 45 of the complaint)
16.	Basic sale consideration	Rs.1,14,76,154/- (As per payment plan at page no. 45 of the complaint)
17.	Total sale consideration	Rs.1,17,76,570/- (As per customer ledger dated 18.03.2019 at page no. 62 of the complaint)
18.	Amount paid by the complainants	Rs.1,19,31,359/- [As alleged by the complainants at page no. 9 of the complaint]
19.	Occupation certificate /completion certificate	Not received
20.	Offer of possession without obtaining OC/CC	17.11.2016 [Page no. 65 of the complaint]
21.	Legal notice sent by the complainants	27.06.2022 [Page no. 75 of the complaint]
22.	Delay in handing over the possession till date of filing complaint i.e., 14.10.2022	5 years 9 months and 16 days

B. Facts of the complaint



3. The complainants have made the following submissions in the complaint: -
- I. That the complainants were allotted a plot bearing no. D-99, in plotted township in "Raheja Aranya City". Situated at Sector 11 and 14, Sohna, Gurgaon, Haryana vide allotment letter dated 28.06.2013.
 - II. That on 28.06.2013 the agreement to sell was executed between the parties for a total sale consideration of Rs.1,17,76,570/- and he has paid an amount of Rs.1,19,31,359/- till date. As per the said agreement, possession of the plot was to be handed over within 36 months of its execution. Thereafter, the complainants receive offer of possession letter dated 17.11.2016. However, complainants were shocked to see that the entire plot is just lying barren and no work has even started in the said project. Therefore, the complainants wrote a mail dated 15.02.2022 to the respondent stating to either give possession of the property and in event of failure to refund the amount with interest.
 - III. That the complainants received a mail from the respondent dated 26.02.2022 admitting to the delay and the fact that there is no infrastructure in the vicinity and that waiting for the completion certificate. So, the complainants seeing no development taking place send a legal notice dated 27.06.2022 to the respondent and the same was received by it on 28.06.2022 but till date no response has come forward from it.

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- IV. That the respondent vide clause 4.2 of the said agreement agreed that in the event of any delay, a delay charge would be payable by it @ Rs.50/- per sq. yards of the plot area per month for the entire period of such delay, but the same has also not be complied with.
- V. Therefore, the complainants being aggrieved filed this complaint seeking refund of the entire amount along with interest as well as compensation under the provision of the Real Estate (Regulation and Development) Act 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- I. Direct the respondent to refund the amount paid by the complainants along with interest on the delayed possession as per agreement within a time bound manner of 90 days from the date of filing if the present complaint as per section 18 & 19 of the Act of 2016.
 - II. Direct the respondent to hand over the @ 50 per sq. ft. as stated in the agreement to sell dated 28.06.2013.
 - III. To cancel the application for license of the respondent under the section 7(1)(C) of the Act of 2016.
 - IV. Direct the respondent to compensate @ Rs.20,000/- per month under section 12 of the Act.
 - V. Direct the respondent to @ Rs.50,000/- pr month to the complainants as the deficiency in service for keeping the complainants in dark

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regarding the progress of the property which is made on respondent under section 11 and 19 of the Act of 2016.

- VI. Direct the respondent to reimburse the litigation cost of Rs.1,00,000/- paid by the complainants.
- VII. Direct the respondent to compensate with the opportunity cost of Rs.10,0000/- per month to the complainants causing due to the delay in giving the possession.
5. The respondent/promoter put in appearance through company's A.R & Advocate and marked attendance on 01.02.2023, and 06.07.2023. Despite multiple opportunities for filing reply and written submission in the registry of the authority it failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the matter and is avoiding to file written reply. Therefore, in view of order dated 17.08.2023, the defence of the respondent is struck off.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents as well as written submission made by the complainants.

D. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

D. II Subject-matter jurisdiction

9. 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.

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 complainants at a later stage.

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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. 2021-2022 (1) RCR (Civil), 357* and 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* 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."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainant.

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- E. I Direct the respondent to refund the amount paid by the complainants along with interest on the delayed possession as per agreement within a time bound manner of 90 days from the date of filing if the present complaint as per section 18 & 19 of the Act of 2016.
- E. II Direct the respondent to hand over the @ 50 per sq. ft. as stated in the agreement to sell dated 28.06.2013.
13. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.- सत्यमेव जयते

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

14. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

4.2 Possession Time and Compensation

*That the Seller shall sincerely endeavor to give possession of the plot to the purchaser **within thirty-six (36) months from the date of the execution of the Agreement to sell** and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject*

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to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. However, the seller shall be entitled for compensation free grace period of six (6) months in case the development is not completed within the time period mentioned above. In the event of his failure to take over possession of the plot, provisionally and /or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be lie at his/her risk and cost the purchaser shall be liable to pay @ Rs.50/- per sq. Yds. of the plot area per month as cost and the purchaser shall be liable to pay @ Rs.50/- per sq. Yards. Of the plot area per month as holding charges for the entire period of such delay....."

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. 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 making payment as per the plan 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 a clause in the agreement to sell by the promoter is just to evade the liability towards the 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

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and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

16. **Due date of handing over possession and admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by June 2016. However, considering the ground in above clause of handing over possession which led to delay in completion of the project, in the present case, the grace period of 6 months is allowed.
17. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the prescribed rate of interest. However, the allottees intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

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18. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
19. 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., 17.08.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
20. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell executed between the parties on 28.06.2013, the possession of the subject unit was to be delivered within a period of 36 months from the date of execution of buyer's agreement which comes out to be 28.06.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 28.12.2016.
21. 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 plot in accordance with the

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- 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.
22. The due date of possession as per agreement for sale as mentioned in the table above is **28.12.2016** and there is delay of 5 years 9 months and 16 days on the date of filing of the complaint. The authority has further, observes that even after a passage of more than 6.7 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to it and for which they have paid a considerable amount of money towards the sale consideration. It is also pertinent to mention that complainant has paid more than 100% of total consideration till 2017. Further, the authority observes that vide proceeding of day dated 06.07.2023, the counsel for the respondent confirmed that earlier the competent authority has granted a provisional completion certificate in the year 2016, itself but the same was later on withdrawn by it due to certain discrepancy and as on date no part CC/CC of the said project has been granted.
23. Moreover, 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 allottees 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

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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....."

24. 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

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."

25. 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). The promoter has failed to complete or unable to

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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 the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.75% p.a. (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 refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

E.III To cancel the application for license of the respondent under the section 7(1)(C) of the Act of 2016.

27. In the absence of particulars for proceeding under section 7(1)(C) of the Act 2016, no directions can be issued.

E. IV Direct the respondent to compensate @ Rs.20,000/- per month under section 12 of the Act.

E. V Direct the respondent to @ Rs.50,000/- pr month to the complainants as the deficiency in service for keeping the complainants in dark regarding the progress of the property which is made on respondent under section 11 and 19 of the Act of 2016.

E.VI Direct the respondent to reimburse the litigation cost of Rs.1,00,000/- paid by the complainants.

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E.VII Direct the respondent to compensate with the opportunity cost of Rs.10,0000/- per month to the complainants causing due to the delay in giving the possession.

28. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

F. Directions of the authority

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

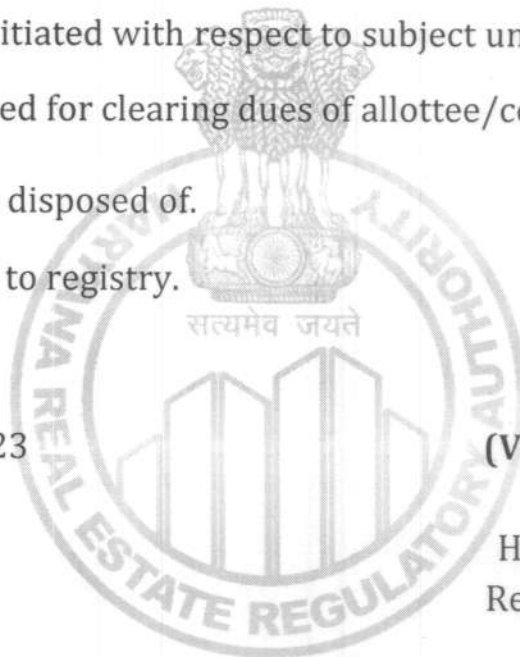
- i. The respondent/promoter is directed to refund the entire paid-up amount i.e., Rs.1,19,31,359/- received by it from the complainants along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the amount.

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- 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.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants. Even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee/complainants.
30. Complaint stands disposed of.
31. File be consigned to registry.

Dated: 17.08.2023



v.1-3
(Vijay Kumar Goyal)

Member
Haryana Real Estate
Regulatory Authority,
Gurugram