

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

<b>Complaint no.</b> :	<b>6127 of 2022</b>
<b>Date of pronouncement of order</b> :	<b>27.10.2023</b>
1. Suraj Prakash Sharma 2. Shikha Sharma <b>Both R/o</b> - 505A, Plot no. 47, Sector- 56, Gurugram, Haryana	<b>Complainants</b>
Versus	
JMK Holdings Pvt. Ltd., R/o: - 1302, Dr. Gopal Das Bhawan, 28 Barakhamba Road, Cannaught Place, Delhi - 110001	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Aarushi Kochhar proxy counsel	Complainants
Mr. Niraj Kumar (Advocate)	Respondent

**HARERA**  
**GURUGRAM**  
**ORDER**

1. The present complaint dated 22.09.2022 has been filed by the complainants/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 provision of the act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

### A. Unit and project related details

2. 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:

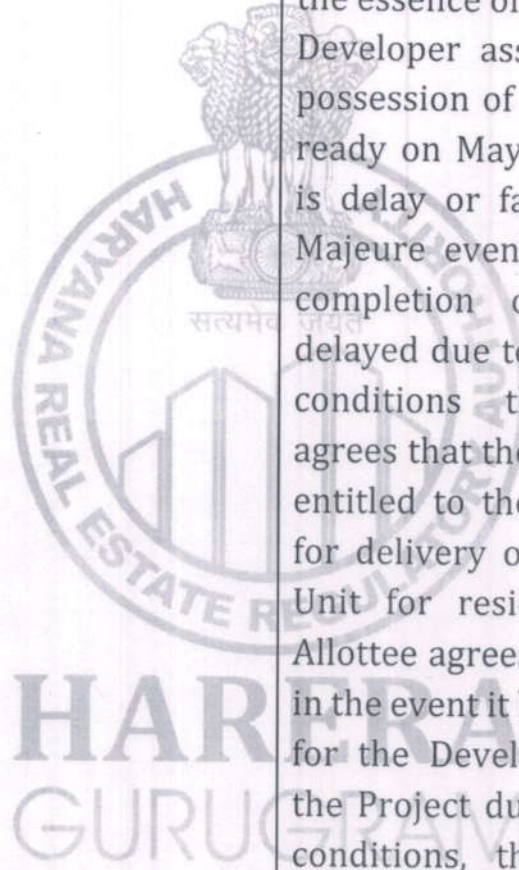
S.N.	Particulars	Details
1.	Name of the project	"Signum", Sector 103, Gurugram
2.	Nature of project	Commercial component in Affordable Group Housing Colony
3.	Licensed area	9 acres
4.	DTPC License no.	157 of 2014 dated 11.09.2014 and valid up to 05.05.2021
	Name of licensee	JMK Holdings Pvt. Ltd.
5.	HARERA Registration no.	Registered 13 of 2017 dated 03.07.2017 and valid up to 28.03.2021
6.	Unit no.	Flat no. SF-36 [pg. 22 of the complaint]
7.	Carpet area	283 sq. ft. [pg. 22 of the complaint]
8.	Date of buyer's agreement	24.06.2016 [pg. 19 of the complaint]



9. Possession Clause

8.

Schedule for possession of the said Unit - The Developer agrees and understands that timely delivery of possession of the Unit to the Allottee and the Common Areas to the association of allottees or the Governmental Authority, as the case may be, is the essence of the Agreement. The Developer assures to hand over possession of the Unit along with ready on May-2020, unless there is delay or failure due to Force Majeure events. If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Developer shall be entitled to the extension of time for delivery of possession of the Unit for residential usage. The Allottee agrees and confirms that, in the event it becomes impossible for the Developer to implement the Project due to Force Majeure conditions, then this allotment shall stand terminated and the Developer shall refund to the Allottee the entire amount received by the Developer from the allotment within 90 (ninety) days from that date on which Allottee confirms that it has become impossible for the Developer to implement the





		<p>Project. The Developer shall intimate the Allottee about such termination at least 30 (thirty) days prior to such termination of the Agreement. After refund of the money paid by the Allottee, the Allottee agrees that he/ she shall not have any rights, claims etc. against the Developer and that the Developer shall be released and discharged from all its obligations and liabilities under this Agreement.</p> <p>(Emphasis supplied)</p>
10.	Due date of possession	30.11.2020 (30.05.2020 + 6 Months grace period of COVID)
11.	Total sale consideration	₹ 13,30,100/- [As per BBA at page 25 of the complaint]
12.	Amount paid by the complainants	Rs. 13,77,298/- [As per customer ledger dated 04.10.2021 at page 47 of the complaint]
13.	Addendum to BBA	30.06.2016 (Page 44 of complaint)
14.	Occupation certificate	20.04.2021 (As per DTCP website)
15.	Offer of possession	04.10.2021 [pg. 49 of the complaint]
16.	Possession certificate	07.03.2022

17.	Conveyance deed	[pg. 51 of the complaint] 07.03.2022 (Page 54 of complaint)
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## B. Facts of the complaint

3. That the respondent is the developer of "Signum 103" situated at Sector 103, Gurugram, Haryana. In May 2016, while searching for a commercial shop, the complainants came across the project being developed by the respondent. Intrigued by the rosy advertisements of the project, they approached the respondent office to enquire about the same. The respondent officials promised them that they would be provided with the possession of the unit by or before May 2020. It was further informed to them that they were eligible for a payment of INR 23,317/- per month as assured return from the date of the execution of the builder buyer agreement till the possession of the unit was provided to them.
4. That solely relying on the representations, promises and personal guarantees of the respondent officials, they decided to purchase a shop in the said project. Subsequently, they booked the unit (Shop bearing no. SF 36) in the project vide application form dated 31.05.2016 and paid an amount of INR 2,00,000/- as the booking amount for the same, out of the total sale consideration of INR 13,77,298/-. That subsequently, a builder buyer agreement dated 24.06.2016 ("BBA") was also executed between the parties.

5. That it is pertinent and important to mention that after a few days later, the officials of the respondent approached them and informed them that for official purposes they had to execute an addendum with the complainants which stated that the assured returns would be provided to them only from July 2016 to June 2019. The said statement came as shock to them as it was contrary to their earlier statement that the amount of assured return would be provided to them each month from the day of the execution of BBA till the possession of the unit was provided to them.
6. It is pertinent to mention that in accordance with the respondent promises and the terms of BBA, the possession of the Unit was to be provided to them by or before May 2020. That they made multiple follow up visits to your office as well as made several communications with the respondent officials with respect to the handover of possession of the unit to them, however, no concrete response was provided to them by the respondent officials with respect to date of possession and/or the payment of pending assured return.
7. That after a wait of more than 1.5 years, in October 2021, vide offer of possession dated 04.10.2021, they were finally provided with the possession of the unit. Furthermore, the respondent is liable to pay INR 1,83,410/- as delay possession charges on the amount paid by the them i.e. INR 13,77,298/- for a delay of 17 months from May 2020 to October 2021.

8. That the Complainants also issued a legal notice dated 21.05.2022 to the Respondent with respect to their concerns. However, the Respondent did not pay any heed to the same.

### **C. Relief Sought**

9. This Authority may be pleased to direct the respondent as follows:
- a) Direct the respondent to pay the assured returns of INR 6,06,242/- (excluding TDS) along with interest per annum as per the prevailing RERA rate of interest to them for the purchase of the unit from July 2019 to October 2021;
  - b) Direct the respondent to pay the delay possession charges of INR 1,83,410/- to them for delay in handing over the possession of the unit; and
  - c) Direct the respondent to compensate the complainants to the tune of INR 2,00,000/- for extreme mental anguish and harassment caused to them due to the respondent illegal, unethical and unprofessional conduct;

### **D. Reply by the respondent**

10. In this respect it is submitted that the BBA and the addendum has been executed on the same day i.e. 30.06.2016 and therefore, anything contrary to the documents are wrong and hence denied.
11. It is denied that the possession was to be delivered by May,2020 as the delivery of possession was subject to force majeure Events and the

Complainants have agreed for such extension time if the Project is delayed due to force majeure conditions. In this respect the relevant Clause VII of the BBA is reproduced herein below for sake of brevity.

*"VII. POSSESSION:*

*That the Possession will be delivered to the Allottee, on or before May-2020 subject to Force Majeure Circumstances."*

12. It is respectfully submitted the project has been delayed on account of force majeure circumstances which was beyond the control of the respondent. It is submitted that the project has been delayed on account of following force majeure events:

a). That in fact, almost the entire world had struggled to cope with the Coronavirus menace. The Novel Coronavirus had been declared as a pandemic by World Health Organization. Following the declaration of the World Health Organization, the Ministry of Home Affairs, Government of India vide notification 40-3/2020-DM-I(A) dated 24.03.2020 under the Disaster Management Act, 2005, had imposed lockdown for whole of India for 21 days with effect from 25.03.2020 wherein all the commercial and private establishments was directed to be closed down including transport services besides others. Further, the lockdown was extended vide direction dated 17.05.2020 upto 31.05.2020.

b). That it is respectfully submitted the Hon'ble Haryana Real Estate Regulatory Authority vide order no.9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 extended the date of completion for all Real Estate projects registered under Real Estate Regulation and Development Act,



where completion date, revised completion date or extended completion date was to expire on or after 25<sup>th</sup> of March, 2020 automatically by 6 months, due to outbreak of the COVID -19 (Corona Virus), which is calamity caused by nature and is adversely affecting regular development of real estate projects by invoking "force majeure" clause.

e). That thereafter, during the second wave of Covid-19 the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula by way of resolution in the meeting held on 2<sup>nd</sup> of August 2021 ordered for extension of three months from 01.04.2021 to 30.06.2021 due to second wave of Covid-19 as a force majeure event. The Hon'ble Authority observed that the second wave of Covid-19 has adversely hit all sections of the society and it being a case of natural calamity, the Authority pursuant to Section-37 of the Real Estate Regulations & Development Act, 2016, decides to grant three months general extension from 01.04.2021 to 30.06.2021, considering it as a force majeure event.

h). That the Respondent had also suffered devastatingly because of blanket ban on raising of construction, advisories etc. The concerned statutory authorities had earlier imposed a blanket ban on raising of construction, advisories had been issued by the statutory authorities to the developers to ensure that no retrenchment of staff/labour are done and further to ensure that the staff/labour were adequately fed and provided for. That it is pertinent to mention that the Agreement of sale notified under the Haryana Real Estate (Regulation and Development) Rules, 2017 categorically excludes any delay due to "force majeure", Court orders,

Government policy/ guidelines, decisions **affecting the regular development of the real estate project.** That in addition to the aforesaid period, the following period also deserves to be excluded for the purpose of computation of period available to the respondent to deliver physical possession of the apartment to the complainants as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017:-

**1. Date of Orders:-** 9<sup>th</sup> of November 2017 and 17<sup>th</sup> of November 2017

**Directions:-** National Green Tribunal had passed the said order dated 9<sup>th</sup> of November 2017 completely prohibiting the carrying on of construction by any person, private or government authority in the entire NCR till the next date of hearing (7<sup>th</sup> of November 2017).

**Period of Restriction/ Prohibition:-** 9<sup>th</sup> of November 2017 to 17<sup>th</sup> of November 2017

**Days Affected:-** 9 days

**2. Date of Order:-** 29<sup>th</sup> of October 2018

**Directions:-** Haryana State Pollution Control Board, Panchkula had passed the order dated 29<sup>th</sup> of October 2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27<sup>th</sup> of October 2018.

**Period of Restriction/ Prohibition:-** 1<sup>st</sup> November 2018 to 10<sup>th</sup> November 2018

**Days Affected:-** 10 Days

**3. Date of Order:-** 11<sup>th</sup> of October 2019

**Directions:-** Commissioner, Municipal Corporation, Gurugram had passed order dated 11<sup>th</sup> of October 2019 whereby construction activity had been prohibited from 11<sup>th</sup> of October 2019 to 31<sup>st</sup> of December 2019.

**Period of Restriction/ Prohibition:-** 11<sup>th</sup> of October 2019 to 31<sup>st</sup> of December 2019

**Days Affected:-** 81 days

**4. Date of order:** November 01,2019

Environment Pollution (Prevention & Control) Authority, for the National Capital Region vide direction dated November 01,2019 imposed complete ban on the construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida until morning of November 05,2019.

**Period of Restriction/ Prohibition:-** November 01, 2019 to morning of November 05, 2019

**Days Affected:-** 4 days

**5. Date of order: 04<sup>th</sup> of November,2019**

Hon'ble Supreme Court vide order dated 04.11.2019 in the W.P.(Civil) No.13029/1985 M.C.Mehta vs Union of India & ors; directed for stoppage of all the constructions work till further order.

**Period of Restriction/Prohibition:-** 04.11.2019 to 14.02.2020.

**Days affected: -**102 days.

**Overlap period:** 04.11.2019 to 31.12.2019 i.e. 58 days

13. Therefore, no. of days affected on account of Hon'ble Supreme Court Order is 103-58 days=45 days. That the period of 240 days in addition to the period affected by Covid-19 (6+3= 9 months) mentioned hereinabove was

consumed on account of circumstances beyond the power and control of the Respondent owing to passing of orders by statutory authorities affecting the regular development of the real estate project. Since, the respondent was prevented for the reasons stated above from undertaking construction activity within the periods of time already indicated hereinbefore, the said period ought to be excluded, while computing the period availed by the respondent for the purpose of raising construction and delivering possession.

14. That it is respectfully submitted that in a recent judgment Hon'ble RERA Authority of Guatam Budh Nagar has provide benefit of 116 days to the Developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.10.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.11.2019 to 14.02.2020. The Hon'ble Authority was also pleased to consider and provided benefit of 6 months to the Developer on account of effect of COVID also.
15. That it is also in public domain that the third wave of Covid-19 had also badly hit all the activities not only in Haryana but also in India and rest of the world. Haryana Government had imposed lockdown for varying periods owing to Covid19 third wave resulting in virtual closure of construction activities in their entirety within the state of Haryana.
16. In view of the above, the complaint deserves to be dismissed.
17. All the averments in the complaint are denied in toto.

18. Copies of all the relevant documents have been duly filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

### **E. Jurisdiction of the authority**

**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**

19. 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**

The 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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

20. 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.

**F. Findings on the objections raised by the respondent**

**F.I Objection regarding delay due to force majeure circumstances.**

21. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the Unit be ready on May-2020. So, the due date of subject unit comes out to be 30.05.2020. Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 30.05.2020 i.e., after 25.03.2020. Therefore,

an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 30.11.2020.

22. Further in the judgement of the **Hon'ble Supreme Court of India in the case of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Civil Appeal no. 6745-6749 of 2021)**, 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"

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate and proviso to section 18 provides that where an allottee does not intend to withdraw from the project, she shall be paid, by the promoter, interest for every month of delay, till the handing over of

possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

24. 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.
25. 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., 27.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
26. The definition of term 'interest' as defined under section 2(z) of the act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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



*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

27. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
28. On consideration of the documents available on record and submissions made by both the parties 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 8 of the agreement executed between the parties on 24.06.2016, the possession of the subject apartment was to be delivered within stipulated time (to handover the possession of the Unit be ready on May-2020) i.e., by 30.05.2020. As far as grace period is concerned, the same is allowed for the reasons w.r.t. COVID-19 quoted above i.e, 30.11.2020. The offer of the said unit has been made on 04.10.2021 and even possession certificate dated 07.03.2022 is also been placed on record. The respondent has delayed in offering the possession but now the same has been offered. 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., 30.11.2020 till date of offer of possession (04.10.2021) plus two months i.e., (04.12.2021) at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

29. As far as relief no. 1 w.r.t. assured return is concerned, vide proceeding dated 01.09.2023, it was stated that the same has been paid by the respondent as per addendum to the agreement and there is no dispute on that.

**F.II Direct the respondent to award compensation of Rs. 2,00,000/-**

30. The complainants are seeking relief w.r.t. compensation in the above-mentioned relief. **Hon'ble Supreme Court of India in civil appeal 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. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the

complainants may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**G. Directions of the authority**

31. 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):

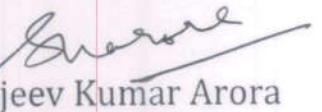


- i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by them from the due date of possession i.e., 30.11.2020 till date of offer of possession (04.10.2021) plus two months i.e., (04.12.2021).
- ii. The promoter shall not charge anything which is not part of the BBA.

32. Complaint stands disposed of.

33. File be consigned to registry.

**HARERA**  
GURUGRAM

  
Sanjeev Kumar Arora  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 27.10.2023**