



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

Complaint no. : 7404 of 2022
Date of Filing Complaint: 02.12.2022
Date of decision: 30.11.2023

Rakesh Sharma

R/O: 189, Main Chopal Wali Gali, Kangan Heri, New
Delhi-110071

Complainant

Versus

M/s GLS Infratech Pvt. Ltd.

Regd. office: 707, 7th Floor, JMD Pacific Square,
Sector-15, Part-II, Gurgaon, Haryana

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Nitesh Manchanda (Advocate)

Complainant

Sh. Harshit Batra (Advocate)

Respondent

ORDER

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

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

S. N.	Particulars	Details
1.	Name and location of the project	"Arawali Homes" at village Khaika & Sohna, sector 4, Sohna, District-Gurgaon, Haryana
2.	Nature of the project	Affordable Housing Colony
3.	Project area	10 acres
4.	DTCP license no.	110 of 2014 dated 14.08.2014 valid up to 11.04.2020
5.	Name of licensee	G.L.S Infratech Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 05 of 2020 dated 20.01.2020 valid up to 07.03.2024
7.	Date of approval of building plans	01.10.2014 (as mentioned in the brief facts at page no. 4 of reply)
8.	Date of receipt of environment clearance	12.04.2016 (as mentioned in the brief facts at page no. 4 of reply)
9.	Unit no.	508, 5 th Floor, in tower- 7 (Page no. 19 of the complaint)
10.	Unit area admeasuring	476 sq. ft. (carpet area) (Page no. 19 of the complaint)
11.	Allotment letter	23.09.2015 (Page no. 13 of the complaint)
12.	Date of flat buyer agreement	29.01.2016 (Page no. 18 of the complaint)
13.	Date of execution of tripartite agreement	29.01.2016 (Page no. 35 of the complaint)
14.	Possession clause	8. HANDING OVER THE POSSESSION OF THE APARTMENT AND PARTIES' OBLIGATIONS IN RELATION THERETO 8.1) EXPECTED TIME FOR HANDINGOVER OF POSSESSION <i>Except where any delay is caused on account of reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the</i>

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		<p><i>occupation/completion certificate from the competent authority(ies), the Company shall endeavor to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder.</i></p> <p>(Page no. 23 of the complaint)</p>
15.	Due date of possession	<p>12.10.2020</p> <p>[Note: - Calculated from date of approval of environment clearance being later i.e., 12.04.2016 as per policy, of 2013, which comes out to be 12.04.2020 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]</p>
16.	Total sale consideration	<p>Rs.19,29,744/-</p> <p>(As per customer ledger dated 22.11.2022 at page no. 46 of the complaint)</p>
17.	Amount paid by the complainant	<p>Rs.8,97,231/-</p> <p>(As alleged by the complainant at page no. 10 of the complaint and confirmed by the respondent)</p>
18.	Occupation certificate	<p>22.05.2020</p> <p>(as informed by the counsel of respondent during the proceedings)</p>
19.	Offer of possession	<p>10.08.2020</p> <p>(page no. 56 of reply)</p>
20.	Cancellation letter	<p>05.01.2022</p> <p>(Page no. 59 of the reply)</p>

B. Facts of the complaint:

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3. The complainant has made the following submissions: -

- I. That believing the false assurances and misleading representations of the respondent in their advertisements and relying upon the goodwill of the respondent company on 20.06.2015, the complainant applied for an apartment in the said project of the respondent company by paying an amount of Rs.88,180/- towards the said application of allotment of unit in the said project. Finally, after the days from date of application, an allotment letter dated 23.09.2015 was issued thereby allotting the unit bearing no. T7-508, located on 5th floor, admeasuring super area of 476 sq. ft. in the tower- T7 of the said project in favour of the complainant.
- II. That after, the complainant kept making payment in accordance with the demands raised by the respondent and as per the payment plan. After almost 7 months from the date of application, a builder buyer agreement was executed on 29.01.2016 between the parties for the above mentioned unit for the sale consideration of Rs.17,63,600/-.
- III. That as per clause 8.1 of the apartment buyer's agreement dated 29.01.2016, the respondent had undertaken to complete the project and handover possession of the unit within 4 years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances, whichever, is later.
- IV. That the due date for offer of possession is calculated from the date of environment clearance as it was later, which comes out to be 12.04.2020 but the respondent failed to handover the said unit on the due date. The respondent had made representations and tall claims that the project will be completed on time. On the contrary, the respondent has failed in adhering to the representations made by him and retained the hard-earned money paid by the complainant for so many years

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thereby causing wrongful loss to the complainant and wrongful gain to the respondent.

- V. That the complainant was unable to pay entire amount himself and hence wanted to take a loan from a housing bank. On the recommendation of the respondent/builder, he took a loan from Indiabulls Housing Finance Limited as it was on panel of respondent/builder. He was not given an opportunity to select a housing bank of their choice and the inherent right of freedom of contract of the complainant was exploited by the respondent.
- VI. That on the same date on which builder buyer agreement was executed between the parties, the tripartite agreement was also executed i.e., on 29.01.2016 between the complainant, respondent/builder and Indiabulls Housing Finance Limited. A loan amount of Rs.15,00,000/- was sanctioned to the complainant vide loan account number HHLGRG00257768.
- VII. That the financial institution has disbursed total amount of Rs.8,09,050/- to respondent/builder and thereafter due to burden of heavy EMI's complainant asked the financial institution to stop making further payments to the respondent/builder.
- VIII. That the respondent/builder kept on charging arbitrary charges above the sale price of the unit i.e., Rs.17,63,600/- as mentioned in buyer's agreement which was raised to as much as Rs.19,29,744/- as mentioned in the account statement maintained by the respondent.
- IX. That the complainant aggrieved by the respondent unjustified and huge demands and was not prepared neither financially nor mentally to deposit such a huge amount. Since the Indian government has announced complete lockdown on 24.03.2020 as preventive measure



against the on doing pandemic 'Covid-19' which continues till mid of year 2021. Therefore, it become impossible for the complainant to arrange such a huge amount within such short term. That soon the complainant was served a notice for payment of outstanding dues on 28.12.2020, whereas the said unit stand cancelled due to non-performance of obligations by the complainant.

- X. That in the month of January 2021 the complainant reached out to the office of the respondent and has got to know by the officials of respondent that the said unit in question has been cancelled by the respondent company due to non-payment of arbitrary and unlawful final demand raised vide letter dated 28.12.2020. That till date complainant has made a total payment of Rs.8,97,231/- as per receipts.
- XI. That the complainant has made all the respective payments to the Indiabulls Housing Finance Limited of Rs.8,09,050/- plus interest of Rs.3,22,821/- i.e., total of Rs.11,31,871/-. Thereafter, no due certificate was issued by the Indiabulls Housing Finance Limited on 07.04.2022.
- XII. That the complainant never received any cancellation letter. Further, on 10.11.2022, respondent/builder sent an email referring the total paid up amount of Rs.8,97,231/- and deducted the amount of Rs.6,96,463/- which is totally irrelevant and unlawful.
- XIII. That the complainant visited several times at the office of respondent company for the copy of cancellation letter but subsequently the respondent/builder has failed to do so. That on 23.11.2022 complainant again visited the office of the respondent company and requested them to provide cancellation letter. The cancellation was then provided by respondent/ builder.



- XIV. That the respondent simply duped the complainant of his hard-earned money and life savings, who took the complainant used it for to develop infrastructure of the said project and when the fruit is ripped the respondent out nowhere side lined the complainant. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted into extreme kind of financial hardship, mental distress, pain and agony to the complainant.
- XV. That after being helpless and tired by the conduct of respondent the complainant expressed an interest in obtaining refund of the amount paid by them. The respondent/ builder cancelled the allotment of the complainant but failed to refund the paid up amount despite repeated plea, leading to filing of the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to refund the payments made by the complainant along with interest at the prescribed rate from the date of such payments were made.
 - Direct the respondent to pay compensation of Rs.2,00,000/- for mental harassment.
 - Direct the respondent to pay Rs.50,000/- for litigation expenses.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions:
- That the complainant being interested in the affordable housing project of the respondent known under the name and style of "Arawali Homes" applied for the allotment of a unit vide application no. 07406 dated 20.06.2015 and was consequently allotted unit no. T7-508, 5th floor in tower 7, admeasuring 476 sq. ft. through the draw of lots.

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- II. That subsequently allotment letter dated 23.09.2015 was issued to the complainant. That thereafter apartment buyer's agreement was executed between the parties on 29.01.2016.
- III. That the relationship between the parties is contractual in nature and is governed by the agreement executed between the parties. The rights and obligations of the parties flow directly from such agreements. At the outset, it must be noted that the complainant willingly, consciously and voluntarily entered into the agreement after reading and understanding the contents thereof to their full satisfaction. Hence, the complainant agreed to be bound by the terms and conditions in the application form, allotment and the agreement. Moreover, the amount payable to the respondent was agreed upon by the parties via the said agreements and mutual understanding. That the respondent is cooperative and transparent throughout as evident from its conduct.
- IV. That the complainant was responsible to make payments timely for the unit to the respondent according to the terms and conditions of the allotment letter, agreement as well as the provisions of the Act 2016.
- V. That the complainant failed to comply with his obligation as is evident from the customer ledger annexed herewith. That upon the non-payment of the dues against the unit the respondent issued various payment letter and reminders upon non-payment therefrom.
- VI. That the possession of the unit was to be delivered to the complainant within a period of 4 years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later.



- VII. That the building plan approval of the project was received on 01.10.2014 and the environmental clearance was received on 12.04.2016, so the due date of possession is calculated from the date of environmental clearance, as it being later and the due date therefore, comes out to be 12.04.2020.
- VIII. That the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done. That all these circumstances come within the purview of the force majeure circumstances.
- IX. That the respondent, despite defaults on part of the complainant, earnestly fulfilled its obligation under the agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. The defaults committed by various allottees and due to various factors beyond the control of the respondent are the factors responsible for delayed implementation of the project. The respondent cannot be penalised and held responsible for the default of its customers or due to force majeure circumstances.
- X. That despite the failure of the complainant to make the requisite payment and the construction of the project being hit by various force majeure circumstances, the development work of the project

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continued. That regular payments against the unit are imperative for construction activities. That the respondent, after having completed the development of the unit, applied for the grant of occupancy certificate and received the same on 22.05.2020. The respondent legally made the offer of possession of the unit vide offer of possession dated 10.08.2020.

- XI. That the entire country was affected due to the advent of the pandemic in 2020. That the respondent was particularly affected by the same. That it led to delays in the working of all the authorities and the functioning of the respondent as well. That the same was beyond the control of the respondent. However, regardless of the advent of the pandemic, the respondent rightly offered possession of the unit on 10.08.2020. The complainant neither took possession of the unit nor made the payment of due instalments w.r.t. to the unit.
- XII. That despite the transparent and clean conduct of the respondent, complainant failed to fulfil their obligations. Despite several reminders being sent to the complainant as evident from the table above, the complainant failed to make the requisite payments and take possession of the unit. That the respondent in compliance of the Affordable Housing Scheme, 2013 also issued a public notice of the list of defaulters-allottee in the regional newspaper, despite which the complainant did not come forward to pay their dues or take possession. Consequently, the respondent sent the cancellation letter dated 05.01.2022 as per clause 7.2.2 and clause 5(iii) (I) of the Affordable Housing Policy, 2013.
- XIII. That the deductions on account of cancellation was communicated to the complainants through various email exchanges as evident from email dated 10.11.2022. It is also pertinent to mention that through

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the email dated 31.10.2022 the respondent has been pursuing the complainant to share the bank NOC as the unit has lien marked over it from India bulls Housing Finance Limited (IHFL), to do the needful of refund.

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

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the 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 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.

F. Findings on the relief sought by the complainant:

F.I Direct the respondent to refund the payments made by the complainant along with interest at the prescribed rate from the date of such payments were made.

11. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest as per section 18(1) of the Act and the same 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,-

(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)

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12. Clause 8 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

8. HANDING OVER THE POSSESSION OF THE APARTMENT AND PARTIES' OBLIGATIONS IN RELATION THERETO

8.1) EXPECTED TIME FOR HANDING OVER OF POSSESSION

"Except where any delay is caused on account of reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from the competent authority(ies), the Company shall endeavor to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder."

13. The complainant booked a unit in the affordable group housing colony project of the respondent known as "Arawali Homes" situated at sector 4, Sohna, District- Gurgaon, Haryana and was allotted a unit bearing no. 508 on 5th floor in tower- 7 of the project vide allotment letter dated 23.09.2015. The flat buyer agreement was executed between the complainant and the respondent on 29.01.2016 for a total sale consideration of Rs.17,63,600/- out of which the complainant had paid an amount of Rs.8,97,231/-. The tripartite agreement was also executed between the complainant, respondent and the financial institution on 29.01.2016.
14. As per the possession clause the possession of the unit was to be offered within 4 years from the date of approval of building plans (01.10.2014) or from the date of environment clearance (12.04.2016), whichever is later and which comes out to be 12.04.2020 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Therefore, the due date comes out be **12.10.2020**.

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15. The respondent vide reminder/demand letters dated 03.05.2018, 17.05.2018, 19.06.2019, 07.10.2019, and final reminder letter dated 28.12.2020 intimated the complainant for payment of the outstanding dues but he failed to adhere the same. It is observed that the complainant failed to pay the remaining amount as per the schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 05.01.2022.
16. It is observed that the complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 05.01.2022. In line with the aforesaid facts, the documents and submissions placed on record, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid in the eyes of law?"
17. Clause 5(iii) (i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:-
- "If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of **Rs.25,000/-** may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".*
18. The respondent company has issued demand cum reminder letters dated 03.05.2018, 17.05.2018, 19.06.2019, 07.10.2019, and final reminder on 28.12.2020. Thereafter, the respondent company has obtained the

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occupation certificate on 22.05.2020 and offered possession of the allotted unit on 10.08.2020, but on failure of the complainant to take possession of the allotted after payment of the outstanding dues, the respondent was constrained to issue notice for cancellation of unit after publishing a list of defaulters in the daily hindi newspaper on 05.01.2022.

19. As per clause 5(iii)(b) of the Policy of 2013, the allottee/applicant is under obligation to deposit the 25% amount of the sale consideration of the unit till allotment. However, in the present case, the agreement to sell was executed inter-se the parties on 29.01.2016, and the complainant/allottee has paid an amount of Rs.8,97,231/- which constitutes only 46.49% of the total sale consideration. Accordingly, the respondent /builder issued numerous reminders dated 03.05.2018, 17.05.2018, 19.06.2019, 07.10.2019 and final reminder on 28.12.2020 to the complainant. Thereafter, the respondent company has obtained the occupation certificate on 22.05.2020 and offered possession of the allotted unit on 10.08.2020, but on failure of the complainant to take possession of the allotted after payment of the outstanding dues, the respondent was constrained to issue notice for cancellation of unit after publishing a list of defaulters in the daily hindi newspaper on 05.01.2022. The authority is of the considered view that the respondent /builder has followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation letter dated 05.01.2022 is held to be valid.

20. The authority further observes that the complainant has availed the home loan from the financial institution i.e., Indiabulls Housing Finance Limited and the tripartite agreement was also executed in this regard on 29.01.2016. However, the complainant has placed on record a copy of "No Dues Certificate" dated 07.02.2022, which shows that the complainant has repaid the loan amount which was disbursed by the financial institutional.

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21. As per clause 5(iii)(i) of the Affordable Housing Policy of 2013, in case of cancellation the respondent can deduct the amount of Rs.25,000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent-builder to the complainant/allottee. Thus, it has been using the funds of the complainant. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy 2013 along with interest from date of cancellation of allotment i.e., 05.01.2022 till the actual realization of the amount.

F.II Direct the respondent to pay compensation of Rs.2,00,000/- for mental harassment.

F.III Direct the respondent to pay Rs.50,000/- for litigation expenses.

22. The complainant in the aforesaid relief is seeking 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.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority:

23. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations



cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed refund the paid-up amount of Rs.8,97,231/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.75% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation of allotment i.e., 05.01.2022 till the actual realization of the amount.
 - ii. A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.
24. Complaint stands disposed of.
25. File be consigned to the registry.

Dated: 30.11.2023



(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram