



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

Complaint no. : 2412 of 2021
First date of hearing: 20.07.2021
Date of decision : 18.01.2024

Karuna Aggarwal
W/o Sh. Surinder Kumar Aggarwal
R/o: - RZ/S-52, Gali no. 09, Param
Puri, Uttam Nagar, New Delhi - 110059

Complainant

Versus

M/s Agrante Realty Limited.
Regd. Office at: 704 DLF, Tower- B, Jasola,
New Delhi- 110025

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Gaurav Bhardwaj (Advocate)
Sh. Tarun Biswash (Advocates)

Complainant
Respondent

ORDER

1. The present complaint dated 10.06.2021 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*.

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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	"Kavyam", Sector- 108, Gurugram
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	Registered vide registration no. 23 of 2018 dated 22.11.2018
	Validity status	31.11.2022
	registered area	5 acres
4.	DTPC License no.	101 of 2017 dated 30.11.2017
	Validity status	29.11.2022
	Name of licensee	Arvinder Singh & others
	Licensed area	5 acres
5.	Unit no.	TA4-123, in Tower A4 [page 52 of amended complaint]
6.	Unit area admeasuring	512.50 sq. ft. (carpet area) & 130.30 sq. ft. (balcony area) [page 52 of amended complaint]
7.	Application dated	26.07.2020 [page 25 of amended complaint]
8.	Allotment dated	04.08.2020 [page 52 of amended complaint]
9.	Building plan approved on	06.07.2018 [as per data available at DTCP official website]
10.	Environment clearance	20.08.2019 [as per data (A-H) available in the website of the authority]
11.	Possession clause	NA
12.	Possession clause as per Affordable Housing Policy, 2013	1 (iv) All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of





		commencement of project” for the purpose of the policy.
13.	Due date of possession	20.02.2024 [Calculated as 4 years from date of environmental clearance i.e., 20.08.2019 as the same is later + 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]
14.	Total sale consideration	Rs.21,00,000/- [Page 28 of amended complaint]
15.	Amount paid by the complainant	Rs.7,95,375/- [As per demand letter dated 20.07.2021 at pg. 75 of amended complaint]
16.	Pre cancellation letter	11.06.2021 [page 73 of amended complaint]
17.	Cancellation letter	28.06.2021 [page 74 of amended complaint]
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That in the year 2019, the respondent launched a new affordable group housing project namely “**Kavyam**” located at sector-108, Gurugram, as per the Haryana Affordable Housing Policy, 2013 the complainant booked a unit in the Affordable Housing Project namely “Kavyam” at Sector-108, Gurugram. On the basis of the advertisement dated 06.03.2020 for application for booking of residential apartments in two different categories namely category -1 for Rs.21.00 lakhs and category-3 for Rs.19.93 lakhs per apartment in said affordable housing project.

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- II. That on believing on the representations, the complainant chosen to book a unit in said project. That on 29.06.2020 through application form bearing no. 10420, applied for a 2BHK apartment under category 1 and deposited a cheque bearing no. 036521 dated 29.06.2020 for an amount of Rs.1,05,000/- towards said booking. Thereafter, a draw of lots was conducted on 01.08.2020 in which the complainant successfully allotted a unit bearing no. TA4-114, (2BHK, Type-1) in Tower-A4 having a carpet area of 512.50 sq. ft. and balcony area of 130.30 sq. ft. was allotted to her vide allotment/demand letter dated 04.08.2020 vide which a demand of Rs.4,25,250/- was raised on account of booking.
- III. That as per the advertisement as well as clause 17 of application form, the allottee was supposed to make payment in following manner: 5% of total price at the time of booking/application form, 20% on allotment and 75% of the amount in six equal monthly installments over three-year period.
- IV. That vide allotment/demand letter dated 04.08.2020, the respondent raised a demand of Rs.4,24,200/- that was payable within 15 days of allotment. Accordingly, the complainant has made a payment of Rs.4,24,200/- on 18.08.2020 and 19.08.2020 respectively.
- V. That thereafter, the complainant got shocked after receipt of the demand letter dated 05.11.2020 raised by the respondent for payment of third and fourth installment totaling to a demand of

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Rs.5,30,251/-. It is submitted by the complainant that as per the payment plan, the third installment was due within 6 months from the date of allotment letter dated 04.08.2020 i.e., comes to 04.02.2021 and the fourth installment was due after 12 months from the date of allotment i.e., comes to 04.08.2021 as per the Affordable Housing Scheme 2013. But the developer has malafidely raised the demand on 05.11.2020 for payment of installment on the slab of 'within 6 months' and 'within 12 months', that the respondent has raised demands by way of email dated 20.11.2020, 30.11.2020, 07.12.2020 and also threatened the complainant to levy delay interest charges @15%p.a. in the event of any further delay in making payment which is illegal and in arbitrary manner from the complainant, violating the payment plan terms mentioned in the aforesaid housing scheme plan.

- VI. That vide emails dated 16.11.2020, 02.12.2020 and 10.12.2020 the complainant raised the objection upon the unjustified payment demand since the demand was completely against the payment plan. That through said emails complainant specifically highlighted that the third installment was due on 04.02.2021 and fourth installment was due on 04.08.2021 but it is the respondent who instead of withdrawing the said unjustified demands, raised another demand letter date 11.01.2021 wherein he raised fifth installment that was payable upon 18 months from the date of allotment letter i.e., on 04.02.2022. That in the demand letter dated

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11.01.2021 the respondent has imposed an interest of Rs.11,446.38/- on account of delay payment. Despite having no option the complainant made a payment of Rs.2,65,125/- on 12.01.2021 through RTGS vide email dated 26.07.2021, pointed out to the respondent that the said payment was made under protest as the same was not payable until 04.02.2022.

VII. That vide letter dated 22.02.2021 and reminder letter dated 31.03.2021, the complainant pointed out to the respondent that they had been raising unjustified demands and complainant was not liable to pay the delayed payment interest, however on 13.04.2021 the respondent further raised a demand of Rs.7,95,375/- inclusive of delayed payment interest.

VIII. Thereafter, the respondent issued a pre-cancellation notice dated 11.06.2021 to threatened the complainant to cancel her unit in case of non-payment as per the demands raised by him. To this, the complainant immediately rushed to the office of respondent and pointed out through mail that the demands raised by him are unjustified, illegal and were not payable by the complainant, thereafter the respondent pointed out to the complainant that as per Clause-4(c) of the affordable housing policy, 2013 (2019 amendment) in case of re-allotment, the maximum amount recoverable shall be equivalent to the amount payable by other allottees in the project at the stage. It is submitted by the complainant that she was never informed about her allotment is a

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case of re-allotment and also as per said clause-4(c), the excess amount should have been collected at the time of allotment itself, however, neither such amount was collected at the time of allotment nor any prior information was given to the complainant.

- IX. That the complainant kept requesting the respondent to execute the agreement but to utter shock, the respondent sent a cancellation letter dated 28.06.2021. That instead of withdrawing the cancellation letter or sending a revival letter vide demand letter dated 20.07.2021, the complainant made a payment of Rs.7,95,375/- on 26.07.2021, under protest.
- X. That various emails were exchanged between the complainant and the developer/respondent, but no fruitful answer has been received from the developer/respondent. That the complainant wants to retain the unit and the cancellation letter dated 28.06.2021 may kindly be set aside.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct the respondent to withdraw the cancellation letter dated 28.06.2021 and issue a revival letter.
 - Direct the respondent to execute the flat buyer agreement.
 - Direct the respondent to withdraw the unjustified demand letters.
 - Direct the respondent to waive off the unjustified and arbitrary delayed payment interest.
 - Direct the respondent to charge the delayed payments, if any, at the prescribed rate in accordance with the Act of 2016.

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5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent contested the complaint on the following grounds: -

- I. That the project named "Kavyam" is an affordable housing project under Pradhan Mantri Awas Yojna (PMAY) wherein the complainant has booked a 2 BHK type 1 having a carpet area 512.50 sq. ft. and balcony area 130.30 sq. ft.
- II. That the complainant is an allottee of the project and was allotted the subject matter unit vide the 2nd draw of units held on 01.08.2020. The complainant had applied vide application no. 10420 and his application was successful in the 2nd draw and unit bearing no. TA4-1203 was allotted to her subject to payment clearance.
- III. That the respondent issued an allotment/demand letter dated 04.08.2020 regarding the allotment of the flat no. TA4-1203, Tower-A4 i.e. 2 BHK Type-1 having a carpet area 512.50 sq. ft. and balcony area 130.30 sq. ft. and requested to deposit an amount of Rs.4,25,000/-, within 15 days i.e., 19.08.2020.
- IV. That the complainant paid an amount of Rs.50,000/- and Rs.3,75,250/- to the respondent's collection account vide NEFT no.

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N231201218303126 dated 18.08.2020 and N23331219168575 on 19.08.2020 which is the sum total the 20% of the cost of the flat.

- V. That the project being subject to the provisions of Affordable Housing Policy has to comply with its mandatory guidelines. The respondent as per the policy guidelines is mandated to offer for possession of the units in the project within 4 years from the date of environmental clearance or date of sanction of building plans whichever is later and will be considered as the project commencement date of project, and units be offered for possession within 4 years from project commencement date.
- VI. That rule 5 (iii) (b) provides and contemplates that all the units in the project be allotted in one go within 4 months from the date of environmental clearance and units be offered for possession within 4 years from project commencement date. It further categorically provides that the allottee shall pay a total of 25% of the cost of the unit at the time of allotment of the unit. Thereafter, the balance 75% will be received in six equated monthly instalments which shall be spread over the three years available from the date of commencement of the project.
- VII. That the complainant is one such allottee who was allotted the subject matter unit in the 2nd draw held on 01.08.2020. The timelines as applicable on the complainant was communicated and agreed by. The respondent after receiving the 20% towards allotment issued demands in alignment with the stage of

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construction that has already taken place and would have been received if the unit was not subsequently re-allotted to the complainant vide 2nd draw. Further, the six equated monthly instalments for payment of the balance 75% of the unit consideration is to be spread over three years commencing immediately from the allotments of units conducted in the first draw on 24.06.2019. It is emphasized that fresh three years for payment of six equated monthly instalments would not be available for allottee who have been allotted units in 2nd and 3rd draw subsequently. The complainant has unnecessarily without understanding the scope and spirit of the affordable policy guidelines refrained from meeting the demands.

- VIII. That The Complainant being aggrieved filed the present complaint seeking withdrawal of the demand notices and the interest levied by the Respondent. It is submitted that the complaint and the relief sought for by the Complainant stands partly infructuous as the admitted timelines for the payment of 3rd, 4th and 5th Instalment has already expired and the complainant has to pay accordingly. Further, the interest components are charged as there was unnecessary delay by the complainant himself and cannot be waived off. The respondent in support of the chargeable interest submits that the delay in payment of instalments hurts the efficiency and speed of construction and thus the respondent is

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legally right to demand interest on delayed payments to undo the damage.

- IX. The Respondent further submits that the grievance of the complainant with respect to execution of builder buyer agreement is also false and the complainant has concealed vital facts and emails. The Respondent has never denied the execution of agreement and has time and again requested the complainant to confirm his availability for the same. The Respondent has categorically emailed the Complainant to confirm his availability on one such slots which was available for registration of the agreement however, the complainant did not confirm the same.

E. Jurisdiction of the authority

7. The authority has complete territorial and 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, 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.

E.II Subject-matter jurisdiction

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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.

F. Findings on the relief sought by the complainant.

F. I Direct the respondent to withdraw the cancellation letter dated 28.06.2021 and issue a revival letter.

F. II Direct the respondent to execute the flat buyer agreement.

11. The complainant was allotted unit no. TA4-1203, in tower - A4, in the project "Kavyam" by the respondent/builder for a total consideration of Rs.21,00,000/- under the Affordable Group Housing Policy 2013 vide allotment letter dated 04.08.2020. The possession of the unit was to be offered with 4 years from approval of building plans (06.07.2018) or from the date of environment clearance (20.08.2019) and whichever is

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later which comes out to be 20.08.2023. 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 date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is ~~04.08.2020~~ ^{20.08.2023} 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. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 20.02.2024. The complainant paid a sum of Rs.15,90,750/- up to 26.07.2021, and she is always ready and willing to retain the allotted unit in question. However, the respondent has submitted that it has given sufficient time and opportunity to the complainant to clear the due installments and also issued multiple demand notices dated 05.11.2020, 11.01.2021, 20.07.2021 and reminders for clearing the dues timely, but the complainant miserably failed in depositing the outstanding installment amount. Therefore, the respondent after raising multiple demand notices issued a pre cancellation notice dated 11.06.2021 whereby the complainant was apprised that a final opportunity is being given to the complainant to retain the said unit by depositing entire due amount along with the interest within 15 days, failing which the said unit allotted shall be canceled/terminated



without any further notice as per the policy. Accordingly, on 28.06.2021 the respondent issued a cancellation letter. Further, the cancellation was effected after granting enough opportunity to the complainant-allottee and on failure to deposit the same within prescribed timeline a publication in the newspaper was also made, as per provisions of Affordable Housing Policy of 2013. In line with the aforesaid facts, 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?"

12. 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".*

13. Since the present matter relates to affordable group housing therefore the allotment as well as the cancellation is to be in accordance with the affordable housing policy, 2013 only. The authority while going by the facts of the case and the documents placed on record finds that the respondent company has issued reminders letter dated 05.11.2020, 03.02.2021, and 05.05.2021. Thereafter, the respondent issued pre cancellation notice followed by cancellation notice dated 11.06.2021

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which led to issuance of notice for cancellation by the respondent/builder dated 28.06.2021. The respondent has also published a list of defaulters of payments in the daily newspaper as per provisions of the Affordable Group Housing Policy 2013. The Authority observes that on the documents and submission made by the parties as per the annexure P/10 (i.e., demand letter dated 20.07.2021) and annexure P/11 (i.e., receipt dated 26.07.2021) of the complaint, the respondent has received an amount of Rs.7,95,375/- after cancellation of the allotted unit and the said demand raised by the respondent was cleared by the complainant.

14. Further, during hearing dated 18.01.2024, the GM Legal along with counsel for the respondent clarifies that the complainant/allottee has made the payment of amount demanded in the cancellation notice as well as public notice and unit continues in the name of the complainant allottee. Further, the copy of BBA was sent to the complainant and the respondent is ready to execute the same. Therefore, in view of the above, the cancellation done by the respondent vide letter dated 28.06.2021 is hereby set aside.

F. III Direct the respondent to withdraw the unjustified demand letters.

15. Vide order dated 18.01.2024, the Authority has directed the respondent that the BBA shall be executed within next 4 weeks after payment of stamp charges by the complainant/allottee and no amount shall be demanded from the complainant which is not part of BBA and Affordable Housing Policy.

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- F. IV Direct the respondent to waive off the unjustified and arbitrary delayed payment interest.**
- F. V Direct the respondent to charge the delayed payments, if any, at the prescribed rate in accordance with the HARERA Act of 2016.**

16. The complainant is seeking delay payment charges at the prescribed rate of interest. However, proviso to section 19 (7) provides that where an allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount to charges to be paid under sub-section (6) 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.

17. 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.
18. 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 18.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.

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19. 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:

"(z) "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;"*

20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to the complainant in case of delay possession charges.

G. Directions of the authority

21. 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 withdraw the cancellation letter dated 28.06.2021 and restore the allotted unit of the complainant within a period of 30 days from the date of this order and issue a



fresh statement of account as per builder buyer's agreement or the Affordable Group Housing Policy, 2013 along with prescribed rate of interest i.e., 10.85% p.a. on the outstanding amount towards complainant/allottee as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

- ii. The respondent is further, directed to execute the buyer's agreement within a period of 4 weeks after payment of registration charges by the complainant/allottee.
- iii. The respondent is also directed not to charge anything from the complainant/allottee which is not part of the buyer's agreement or the provisions of the Affordable Housing Policy, 2013 (as amended by the state government time to time).
- iv. The complainant/allottee shall make the requisite payments at the prescribed rate of interest i.e. 10.85% of the subject unit as per the provisions of sections 19(6) & (7) of the Act of 2016, within a period of next 30 days failing which the respondent/promoter may consider cancellation of the subject unit allotted to the complainant/allottee as per the terms of the buyer's agreement and the provisions of the Affordable Housing Policy, 2013.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in


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case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- vi. The benefit of six months grace period on account of Covid-19 shall be applicable to both the parties in the manner detailed herein above and no interest to be charged for the period of 25.03.2020 to 25.09.2020 from the complainant or to be paid by the respondent on account of delay for the above said Covid period.
- vii. 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.
22. Complaint stands disposed of.
23. File be consigned to registry.

Dated: 18.01.2024


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