

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

Complaint no.: 4591 of 2023
Date of complaint: 28.09.2023
Date of order: 28.03.2024

Maya Devi
R/o: - House no. 1899, ward no. 4, Sector-12
Sonipat, Haryana.

Complainant


Versus

M/s SS Group Private Limited.
Regd. Office at: - SS House, Plot o. 77, Sector-44,
Gurugram-122003.

Respondent

CORAM:
Vijay Kumar Goyal

Member

APPEARANCE:
Ms. Sapna Malik (Advocate)
Sh. Rahul Bhardwaj (Advocate)

Complainant
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 thereunder 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:

Sr. No.	Particulars	Details
1.	Name of the project	SS-Linden, Sector 84-85, Gurugram
2.	Nature of the project	Residential
3.	Unit no.	B-66/F2, 2 nd floor, Block B (page 73 of complaint)
4.	Unit admeasuring	1565 sq. ft. carpet area (page 49 of complaint)
5.	Allotment letter	26.12.2022 (page 24 of complaint)
6.	Date of execution of builder buyer agreement	11.04.2023 (page 41 of reply)
7.	Possession clause	7.1 <i>The Promoter assures to hand over possession of the Unit for Residential usage along with parking (if applicable) as per agreed terms and conditions within 24 months from the date of this agreement provided the Allottee(s) is not in breach of the terms of this Agreement or unless there is delay due to "force majeure", Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project. If the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Unit. It is further agreed that the time period for handing over possession of the 'said Unit' can also be extended as per the mutual agreement between the parties.</i> (Emphasis Supplied)
8.	Due date of delivery of possession	11.04.2025 (calculated from the date of execution of buyer's agreement)
9.	Reminder/demand letters	04.05.2023, 19.05.2023, 22.05.2023, 29.05.2023 and 30.05.2023 (page 85-90 of reply)
10.	Total sale consideration	Rs.1,72,72,500/- (as per payment plan page 76 of complaint)
11.	Total amount paid by the complainant	Rs.16,50,000/- (as per applicant ledger dated 30.05.2023 page 96 of complaint)
12.	Final reminder	29.05.2023

		(page 91 of reply)
13.	Cancellation letter	18.07.2023 (page 83 of complaint)
14.	Letter of refund sent by respondent	07.08.2023 (page 93 of reply)
15.	Amount received by complainant from respondent	Rs.16,50,000/- (through cheque dated 02.08.2023)
16.	Occupation Certificate	Not obtained

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the respondent launched a residential project "SS-Linden" residential floor in Sector 84-85, Gurugram, Haryana and had actively promoted the project to attract the public at large. On 14.12.2022 the complainant made an application for booking of residential unit no. B-66/F2, 2nd floor admeasuring carpet area 1565 sq. ft. plot no.66 in block B and paid a sum of Rs.5,00,000/- along with GST to the respondent with the help of her son-in-law Mr. Raj Kumar Takshak before booking the aforesaid unit. The respondent issued vide receipt no. SS/REC/22-23/495 dated 14.12.2022 in favor of the complainant for the same.
- II. That after receiving the aforesaid amount from the complainant, the respondent sent an email dated 16.12.2023 to the complainant allotting a unit no. B66, 2nd floor, under the scheme of "Modular Kitchen and Wardrobes". Following this the respondent issued allotment letter dated 26.12.2022 allotting the residential unit no. B-66/F2.
- III. Thereafter, on 19.12.2023, the complainant with the help of her son-in-law Mr. Raj Kumar Takshak, added the respondent's bank account details to her son-in-law's HDFC Bank Account i.e. HDFC Bank, Ashok Marg C Scheme Branch, O 10, Ashok Marg C Scheme Branch, Jaipur, Rajasthan and tried to make the payment for the aforesaid unit, but the payment of Rs.1,000/- was reversed due to the respondent's block/frozen bank account. Further, the

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complainant through her son-in-law contacted and informed the same to the respondent. However, the respondent did not resolve the payment issue.

- IV. That the complainant through her son-in-law always contacted with the respondent for making the payment for the unit but the respondent asked the complainant to wait on whatsapp messages on 21.12.2023. Further, on 22.12.2023, the respondent gave cancelled cheque details of SS Group Private Limited's account details instead of the account details of SS-Linden and asked to make the payment. After confirmation from the respondent, the complainant made the payment of Rs.1,000/- by NEFT to the respondent on 29.12.2022 from the bank account of her son-in-law. The respondent confirmed the payment of Rs.1,000/- by vide email dated 31.12.2023. However, the respondent did not issue the receipt to the complainant for the aforesaid amount.
- V. That on 06.01.2023, her son-in-law Mr. Raj Kumar Taskshak on behalf of the complainant went to the respondent's office and made the payment of Rs.50,000/- by NEFT and gave a cheque of Rs.11,00,000/- in favor of the respondent's project name for the aforesaid unit/flat. in this regard, the respondent issued vide receipt No. SS/REC/22-23/830 dated 06.01.2023 in favor of the complainant.
- VI. That however, the respondent did not deposit the aforesaid cheque to their bank account due to the account of SS-Linden was blocked/frozen till 21.02.2023. Thereafter, the respondent asked the complainant made the payment through online in their different account. As such, on 22.02.2023, the complainant made the payment of Rs.11,00,000/- by RTGS to the respondent. In this regard, the respondent issued vide receipt No. SS/REC/22-23/689 dated 22.02.2023 in favor of the complainant.

- VII. That after several request from the respondent, the respondent agreed to execute the agreement for sale for the aforesaid unit in favor of the complainant. As such, the agreement for sale was executed between the parties on 11.04.2023, which was registered before the Sub Registrar, Manesar, Gurugram. As per the agreement for sale dated 11.04.2023, the total consideration amount of the aforesaid unit is Rs.1,72,72,500/-, which includes all taxes (GST/Cess or any other Taxes) excluding enhanced EDC/IDC etc.
- VIII. That thereafter, even after receiving the payments from the complainant of total Rs.16,56,000/-, the reminder letter dated 01.04.2023 was issued to the complainant by miscalculating the payment of Rs.1,72,606/- towards at the time of booking as the balance amount Rs.1,27,250/- and interest of Rs.45,356/-.
- IX. That on 27.05.2023, the complainant visited the respondent's office and met Mr. Gagandeep Singh CRM of the respondent company, and requested the respondent for extension of time to make the payment along with interest for the subject unit. Further, the complainant gave the written assurance to the respondent to make the final payment by 15.09.2023. The respondent agreed to extend the timeline of the payment verbally. However, the respondent issued the final reminder letter dated 29.05.2023 to the complainant by email dated 30.05.2023. Following this, the complainant contacted the respondent towards the aforesaid email telephonically, the respondent informed to give reply to the email dated 30.05.2023 of the final reminder letter.
- X. Thereafter, her son-in-law Mr. Raj Kumar Taskshak on behalf of the complainant replied by email dated 06.06.2023 that the complainant will send the payment by 15.09.2023. However, the respondent again sent the

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reminder letter dated 28.06.2023 by email with a malafide intention and with pre-planned manner to cancel the aforesaid unit.

- XI. That on 18.07.2023, the respondent illegally and arbitrarily cancelled the aforesaid unit without informing the complainant, even the respondent verbally agreed for the timeline of the payment of the complainant by 15.09.2023. The complainant did not get the cancellation letter from the respondent.
- XII. That on 01.08.2023, the complainant through her son-in-law Mr. Raj Kumar Taskshak approached the respondent by email dated 01.08.2023 and telephonically for the payment, where the complainant came to know that the unit was already cancelled through respondent. Thereafter, the complainant immediately called Mr. Gagandeep Singh and other staffs of the respondent for reminding their assurance of the extension of the timeline for making the payment for the subject unit. However, the respondent was not ready to listen the same. Further, the complainant also informed respondent that the complainant did not get the cancellation letter. Thereafter, the respondent sent the cancellation notice dated 18.07.2023 by email. After receiving the email from the respondent, the complainant protested the illegal and arbitrary cancellation and submitted that "we have not received any document for cancellation and is not accepting the same.
- XIII. That on 09.08.2023, the complainant again discussed with respondent telephonically and whatsapp message to the respondent for meeting on 10.08.2023. The complainant along with her husband and son-in-law visited the respondent's office and requested respondent for reinstating the unit. After considering the same the respondent agreed to reinstate the unit verbally and asked the complainant to send the email for the same and sent the email on ravi.saxena@ssgroup-india.com. However, despite following up, the respondent did not reply for the same.

- XIV. That the complainant received the refund letter dated 07.08.2023 towards the subject unit along with cheque bearing No.001874 dated 02.08.2023 of Rs.16,50,000/- from the respondent. However, the complainant is not presenting the cheque in her bank and the complainant will return the aforesaid cheque to the respondent. The respondent illegally cancelled the subject unit arbitrary manner without informing the same to the complainant, even the respondent agreed to extend the timeline for making the payment with interest towards the unit by 15.09.2023.
- XV. That the complainant is ready to pay the entire remaining outstanding amount along with interest (as per clause 1.10 and 5.2 and Schedule E of the agreement for sale dated 11.04.2023) to the respondent for the unit No. B-66/F2.
- XVI. That as per clause 24.1 of the agreement for sale dated 11.04.2023, respondent's sole option and discretion, the respondent may waive the breach by the complainant in not making payments as per the payment plan (Schedule E) including waiving the payment of interest for delayed payment. After requests from the complainant, the respondent agreed to waive the breach by the complainant verbally in not making payments on time and the respondent also agreed verbally that the complainant will make the payment for the unit on 15.09.2023. The respondent initially agreed for the same as per Clause 24.1 of the agreement for sale, but later on, the respondent illegally and arbitrarily cancelled the aforesaid unit of the complainant with a malafide intention to get higher the monetary benefit from the aforesaid unit. Hence, the respondent breached and violated the aforesaid clause of the agreement for sale dated 11.04.2023 and the letter of cancellation dated 18.07.202 is arbitrary, illegal and void against the eyes of law.

XVII. That the respondent's act is serious in nature and amounts to breach of agreement for sale, breach of trust against the complainant and the act and conduct of the respondent shows that the respondent illegally and arbitrarily cancelled the aforesaid unit of the complainant with a malafide intention to get the higher monetary benefit from the unit. The complainant suffered greatly on account of mental and physical agony, harassment and litigation charges. Thus, due to such hardship faced by the complainant by the act and misconduct of the respondent, the complainant is exercising her right to file and pursue a case for compensation before the Authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Direct the respondent to reinstate and handover the possession of the unit allotted to the complainant.
- II. Direct the respondent to give or allot another unit on the same carpet area 1565 sq. ft in the same project in case the respondent already sold out of the aforesaid unit/flat before filing the present complaint.
- III. Declare the cancellation letter dated 18.07.2023 arbitrary, illegal and void against the eyes of law and set aside the same.

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 has contested the complaint by filing reply dated 04.11.2022 on the following grounds: -

- i. That the complainant approached the respondent and expressed an interest in booking a unit in the residential project developed by the respondent "SS LINDEN, Sector 84-85, Gurugram, Haryana. Prior to making the booking, the complainant conducted extensive and independent enquiries with regard to the project and it was only after the complainant was fully satisfied about all aspects of the project, that the complainant took an independent and

informed decision, un-influenced in any manner by the respondent, to book the unit in question.

- ii. That thereafter the complainant vide registration form dated 01.12.2022 showed keen interest in purchasing the unit with the respondent to which the complainant was provisionally allotted a unit bearing no. B-66/F2, 2nd floor, plot no. 66 in block-B. Pursuant to the said registration, an allotment letter was issued to the complainant dated 26.12.2022 wherein, the complainant was allotted the subject unit. The complainant consciously and wilfully opted for a construction linked payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that they shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant and proceeded to allot the unit in question in their favor.
- iii. That after fulfilling certain documentation and procedures, the agreement for sale was executed on 11.04.2023 between the parties, which contained the final understandings stipulating all the rights and obligations of both the parties. Total sale consideration of the unit was Rs.1,72,72,500/- including the GST and other miscellaneous charges. The total sale consideration amount was exclusive of the registration charges, and stamp duty charges, and other charges which were to be paid by the complainant at the applicable stages.
- iv. That the complainant at the inception of the allotment defaulted in making payments towards the booking amount of the unit itself 26.12.2022, as per Schedule-E of the agreement for sale.
- v. That the complainant despite knowing the agreed conditions between the parties and law prevailing under RERA failed to fulfil its obligation and could only clear an amount of Rs.16,50,000/- towards the booking amount against the total sale consideration. The complainant failed to clear the

amount of Rs. 28,37,102/- which was to be paid by the complainant at the inception of the process till 15.03.2023 as the initial payments.

- vi. That initially on account of non-payment of the outstanding amount, the respondent sent numerous demand letters to the complainant. As, per the terms and conditions of the agreement for sale, the first demand letter dated 04.05.2023 was issued to the complainant to which complainant paid no heed to the requests made. The respondent issued the first demand letter dated 04.05.2023 to the complainant.
- vii. That as per the terms and conditions agreed between the parties, complainant was obligated to pay Rs. 17,27,500/- at the time of booking. Subsequent to the booking amount, the complainant was further obligated to clear another payment of Rs.17,27,250/- as the 1st instalment within a period of 60 days of booking and 2nd instalment of Rs. 8,63,625/- on or before 15.03.2023.
- viii. That the construction of the project was within the time-line as stipulated in the agreement for sale and accordingly, the complainant was obligated to pay the instalments of the said unit by way of construction linked-payment plan. However, the respondent from the very inception had to run after the complainant to clear the outstanding dues. The same can be evidenced by the very fact that the complainant even failed to clear the complete first instalment/booking amount towards the unit. Before the cancellation of the unit, the respondent sent numerous demand letter from December 2022 to May 2023 i.e. 04.05.2023, 19.05.2023, and 22.05.2023.
- ix. Moreover, along with the demand/reminder letters the respondent from time to time, also apprised the complainant through several e-mails dated 04.05.2023, 19.05.2023, 23.05.2023, 29.05.2023 and 30.05.2023 for their continuous defaults and outstanding towards the purchase of the unit to which the complainant responded while acknowledging the delay on their



part. The complainant in her email apprised the respondent about the financial crisis that complainant's family shall be going through and requested for a waiver of following 9 months to clear the pending payment and apprised that the complainant shall make/clear the pro- payment within following 9 months. The complainant through its email was providing surety of making complete pre-payment by the time, i.e, by the time when entire sale consideration of Rs. 1,72,72,500/-shall be due. The bare perusal of the complainant's e-mail evidences the fact that the complainant arbitrarily was trying to change the terms and conditions of the agreed agreement entered between the parties and was in clear breach of the terms and conditions of the agreement. The complainant here instead of clearing her dues, was trying to fool the respondent

- x. That the complainant till the issuance of the final demand letter have only paid Rs. 16,50,000/- which was due since the time of booking towards the total sale consideration amounting to Rs. 1,72,72,500/-. The amount paid only accounts to approx. 8% of the total sale consideration. The complainant was very well aware of the continuous delays and was reminded on continuous basis through the demand letters. Both the parties were bound to agree as per the terms and conditions and the complainant was well aware that "time being the essence" of the agreement.
- xi. That, the complainant has failed to make the payments in time in accordance with the terms and conditions of the agreement for sale that clearly stipulated that the payment plan would be in accordance with the (construction linked-payment plan). The last payment towards the agreed sale consideration was made dated 22.02.2023 amounting to Rs. 11,00,000/- and since then no payment howsoever, has been made by the complainant. The respondent continuously sent numerous demand letters to clear the outstanding dues to which complainant responded in clever

fashion while acknowledging their debt, requesting for period of more than 9 months just to clear pre-payment amount, approximately Rs.28,00,000/-.

xii. That the complainant being a wilful defaulter in complying with the terms and conditions of the agreement for sale is trying to take a shelter under the garb of the Act 2016 and is shifting the burden on the respondent, whereas, the respondent has suffered huge financial loss due to such wilful defaulters. The respondent therefore as a last reminder sent final notice dated 29.05.2023 to the complainant followed by the notice for cancellation of the unit dated 18.07.2023. The respondent vide final notice for cancellation gave almost 2 months' time period to clear the dues, to which the complainant paid no heed and was still adamant in its approach. The respondent was constrained as per the terms and conditions of the agreement for sale to cancel the unit vide cancellation letter dated 18.07.2023. The respondent in pursuance of the cancellation repaid the entire amount of Rs.16,50,000/-back to the complainant via cheque dated 02.08.2023.

7. All other averments made in the complaint were denied in toto.

8. 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 and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

10. 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

11. 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.

12. 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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to reinstate and handover the possession of the unit allotted to the complainant.

F.II Direct the respondent to give or allot another unit on the same carpet area 1565 sq. ft in the same project in case the respondent already sold out of the aforesaid unit/flat before filing the present complaint.

F.III Declare the cancellation letter dated 18.07.2023 arbitrary, illegal and void against the eyes of law and set aside the same.

13. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

14. In the present complaint the complainant is seeking relief w.r.t setting aside the cancellation letter dated 18.07.2023. The complainant was allotted a plot bearing no. unit no. B-66/F2, 2nd floor admeasuring carpet area 1565 sq. ft. in the project "SS-Linden" Sector 84-85, Gurugram by the respondent for a total consideration of Rs.1,72,72,500/- against which she paid a sum of Rs. 16,50,000/-.
15. The complainant took a plea that she is ready to pay the entire remaining outstanding amount along with interest. Further she states that verbal request for extension of date of deposit was made and was agreed by the respondent.
16. On the contrary, the counsel for the respondent states that the unit has been cancelled after issuance of various reminders and complainant has paid less than 10% of the consideration money. Furthermore, the complainant did not clear any dues even after sending several reminders. Due to which, vide letter dated 18.07.2023 the respondent-builder cancelled the subject unit and refunded the entire paid-up amount vide cheque dated 02.08.2023 without any deduction of earnest money. Now, the question before the authority is whether the cancellation is valid or not?
17. The authority has gone through the payment plan (Schedule E) of the agreement executed between the parties, same is extracted below for ready reference: -

Instalment	Amount (in Rs.)	GST (in Rs.)	Amount Payable (in Rs.)
At the time of booking	16,45,000.00	82,250.00	17,27,500.00
Within 60 days from the Date of Booking	16,45,000.00	82,250.00	17,27,500.00
On or before 15 th March,2023	8,22,500.00	41,125.00	8,63,325.00
On completion of Structure	41,12,500.00	2,05,625.00	43,18,125.00
On offer of possession	82,25,000.00	4,11,250.00	86,36,250.00
Total Payable	1,64,50,000.00	8,22,500.00	1,72,72,500.00

18. On considering the documents available on record as well as submissions made by both the parties, it can be ascertained that the complainant has paid only 10% of the sale consideration. The complainant only paid an amount of

Rs.16,50,000/- towards the booking amount against the subject unit, which is approx 10 % of the sale consideration Therefore, the authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties.

19. The respondent sent various reminder letters/emails dated 04.05.2023, 19.05.2023, 22.05.2023, 29.05.2023 and 30.05.2023 to make payment of the outstanding amount. However, the complainant continued with her default and again failed to make payment even after receipt of final reminder letter dated 29.05.2023 leading to cancellation of unit vide letter dated 18.07.2023.

20. As, per clause 9 of the agreement to sell, the respondent /promoter have right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainant to make timely payment as per the agreed payment plan. Clause 9 of the buyer's agreement is reproduced under for ready reference:

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- (i) In case the Allottee fails to make payments for demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;
- (ii) In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment of the Unit for Residential usage along with parking in favor of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment, taxes paid by the Allottee and interest component on delayed payment (payable by the customer for breach of agreement and non-payment of any due payable to the promoter). The rate of interest payable by the allottee to the promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation. On such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination.

21. Further, section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in

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view of the terms and conditions of the buyer's agreement dated 11.04.2023 is held to be valid.

22. It is important to note that the respondent-builder had already refunded the entire amount paid by the complainant without any deduction vide cheque dated 02.08.2023 to the complainant. In the event that the complainant fails to encash the cheque due to its expiration, the respondent is directed to issue a fresh cheque for the same amount in favor of the complainant.
23. Hence, in view of the above findings, no case is made w.r.t reinstating and handing over of possession of the unit on fault of the complainant to make timely payments as per the buyer's agreement. In view of the factual as well as legal positions detailed above, the complaint filed by the complainant is not admissible being devoid of merits.
24. Complaint stands disposed of.
25. File be consigned to the registry.

Dated: 28.03.2024

HARERA
GURUGRAM


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