

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: First Date of Hearing: Date of Decision:

2568 of 2023 09.11.2023 18.04.2024

Smt. Kanchan Nanda R/o: - C-1A/46B, Janakpuri, B-1, West Delhi, Delhi-110058

Complainant

Versus

M/s Revital Reality Private Limited. **Regd. Office at:** 1114, 11th Floor, Hemkunt Chamber, 89, Nehru Place, New Delhi-110019

CORAM: Shri Vijay Kumar Goyal

APPEARANCE:

Sh. Jagdeep Kumar (Advocate) Sh. Bhrigu Dhami (Advocate)

ORDER

1. The present complaint dated 09.06.2023 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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

Respondent

Member

Complainant Respondent



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. No.	Particulars	Details	
1.	Name and location of the project	"The Valley" Sector- 78, Gurugram	
2.	Nature of the project	Affordable Group Housing	
3.	Project area	9.0625 acres	
4.	DTCP license no.	45 of 2018 dated 29.06.2018 valid up to 28.06.2023	
5.	Name of licensee	Revital Reality Pvt. Ltd. & others	
6.	RERA Registered/ not registered		
7.	Unit no.	102, 1 st floor and Tower/Block-M (As per page no. 41 of the complaint)	
8.	Unit area admeasuring	540 sq. ft. (Carpet area) & 99(Balcony Area)	
9.	Date of allotment letter	(As per page no. 32 of the complaint) 02.03.2019	
		(As per page no. 21 of the complaint)	
10.	Date of execution of	22.06.2019	
	agreement for sale	(As per page no. 26 of the complaint)	
11.	Date of building plan	29.06.2018	
	approval	(As per page no. 30 of the complaint)	
12.	Environmental clearance dated	29.07.2019	
13.	Possession clause	(As per page no. 2 of the reply)	
		8.POSSESSION OF THE APARTMENT 8.1 Schedule for possession of the Apartment: 8.1.2 The promoter assures to hand over possession of the Apartment along with parking space (if any) within 4(four) years from the date of approval of building plans or grant of environmental clearance certificate, whichever is later, unless there is delay or failure due to any causes attributable to the allottee, including but not limited to timely payment against the said apartment as per the payment plan, or	



	majeure conditions as defined under this agreement (As per page no. 39 of the complaint)	
Due date of possession	29.01.2024 [Note: Due date of possession to be calculated 4 years from the date of environmental clearance dated 29.07.2019, being later plus grace period of 6 months in lieu of covid-19]	
Total sale consideration	Rs.22,09,500/- (As per payment plan on page no. 55 of the complaint)	
Amount paid by the complainant	Rs.4,36,849/- (As per receipt information on page no. 58 of the complaint)	
Occupation certificate	Not obtained	
Offer of possession	Not offered	
	Amount paid by the complainant Occupation certificate Offer of possession Request for cancellation of the unit and refund of the	

B. Facts of the complaint:

- 3. The complainant has made the following submissions:
 - I. The complainant, Smt. Mrs. Kanchan Nanda is law-abiding citizen of India, currently residing at C-1A/46B, Janakpuri, B-1, West Delhi, Delhi.
 - II. That the respondent had advertised themselves as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that her dream home will be completed and delivered to her within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like



complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.

That somewhere in the month of December 2018, the respondent III. through its business development associate approached the complainant with an offer to invest and buy a unit in respondent's project namely "The Valley" in Sector-78, Gurugram. On 10.01.2019 the complainant had a meeting with respondent at the respondent's branch office where the respondent explained the project and highlighted that allotment of apartments under the project shall be done through draw of lots as per procedure defined under Affordable Housing Policy dated 19.08.2013, the respondent represented to the complainant that the respondent has a very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the project of respondent then they would deliver the possession of proposed unit on the assured delivery date as per the best quality assured by the respondent. The respondent confirms to complainant that this project is covered under Pradhan Mantri Awaas Yojana and the respondent assured that the complainant can avail subsidy on principal outstanding amount of up to Rs.2.67 lakhs on home loan. The complainant while relying upon those assurances and believing them to be true, the complainant submitted an application with the respondent for 2 BHK flat admeasuring 639 sq. ft. under draw of lots in the aforesaid project of the developer and made payment of application amount of Rs.1,01,475/- vide cheque dated 10.01.2019.

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- IV. That in the said application form, the price of the said unit was agreed at the rate of Rs.4,000/- per sq. ft. mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said unit from the area or the price committed by the respondent in the said application form or agreed otherwise.
- V. That on 02.03.2019, the respondent issued an offer of allotment through letter dated 02.03.2019 in the name of complainant, the respondent offered a residential unit no. 102, tower-M admeasuring 639 sq. ft. in the project for Rs.22,09,500/-. The said offer of respondent was accepted by complainant and made the requisite payment of Rs.3,26,374/- to the respondent through cheque dated 31.12.2019.
- VI. That complainant applied for housing loan from Punjab National Bank after receiving of allotment letter dated 02.03.2019 and the loan application of complainant was approved by the Punjab National Bank on 27.03.2019.
- VII. That the respondent fails to fulfil the sanction conditions & property document requirement of Punjab National Bank and due to that bank did not release the payment to the respondent, which shattered all aspirations of complainant to avail the benefits of Rs.2.67 lakhs subsidy under Pradhan Mantri Awaas Yojana.
- VIII. That due to non-fulfilment of home loan sanction documents by the respondent to nationalized banks, loan was not granted for the said unit and because of that reason, the complainant suffers financial crisis. The complainant arranged money from her own sources to clear the payment of 20% of consideration value of unit on

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31.12.2019.The building plan for the said project was approved by the office of DGTCP on 29.06.2018.

- IX. That on 22.06.2019 the respondent issued an agreement for sale which consists very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature because every clause of agreement is drafted in a one-sided way and a single breach of unilateral terms of agreement for sale by the complainant will cost her forfeiting of earnest money of Rs.25000/-.
- X. That the complainant visited the project site on 31.12.2019 after making the payment of 20% of consideration value for allotment of unit, the complainant found that there is no development on the project site for tower "M" even after the one year of booking of unit and as the bank also not sanctioning the housing loan for the said project of the respondent, which resulting the complainant not only losing the opportunity of availing the benefit of subsidy of Rs2.67 Lakhs under PRADHAN MANTRY AWAAS YOJNA, but also lending him into a financial crisis. After analyzing the situation, the complainant decided not to pay further till the respondent not started the construction of Tower-M.
- XI. That the respondent has breached the terms of said clause 5(III)(B) of Haryana Affordable Housing Policy 2013 and failed to fulfill its obligations and has not delivered possession of said unit within the agreed time frame of the policy. The proposed possession date as per Haryana Affordable Housing Policy 2013 was due on 02.03.2023.
- XII. That as per clause 2 of the agreement for sale, the sale consideration for said unit was Rs.22,09,500/- (which includes the cost of providing the common facilities) exclusive of Service Tax and GST. The complainant has paid the total some of Rs.4,36,849/- towards



consideration value along with applicable taxes to the respondent for the said unit.

- XIII. That on 05.04.2021, the complainant has sent an email through which she expressly demanded the refund of money which she has paid to the respondent on pretext of part payment towards the sale consideration of said unit, although the complainant tacitly conveyed her intent of seeking refund by not paying the payment to the respondent after 07.01.2020.
- XIV. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said unit which amounts to unfair trade practice which is immoral as well as illegal. The respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said unit situated at the project within the timelines agreed in the agreement for sale and otherwise.
- XV. That the cause of action accrued in favour of the complainant and against the respondent on 10.01.2019 when the complainant had submitted an application for the said unit and it further arose when respondent failed /neglected to deliver the obligations. The cause of action is continuing and is still subsisting on day-to-day basis.
- XVI. That the complainant being an aggrieved person filing the present complaint under section 31 with the Authority for violation/contravention of provisions of this Act as mentioned in the preceding paragraph.
- XVII. That the present complaint is within the prescribed period of limitation.
 - C. Relief sought by the complainant:



- 4. The complainant has sought following relief(s):
 - Direct the respondent to refund the entire amount of Rs.4,36,849/paid by the complainant along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.
 - ii. Direct the respondent not to create any charge, lien, or third-party rights in any manner upon the plot till final realization of the amount by the Hon'ble court along with up to date interest.
 - iii. Direct the respondent to pay an amount of Rs.55,000/- to the complainant as cost of the present litigation.
- 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 on the following grounds:
 - a. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favor of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
 - b. That the present complaint deems to be prima facie dismissed being barred by limitation.
 - c. That the respondent is one of the leading real estate developers in the State of Haryana and NCR region. It has several projects across the State, and such has built a great reputation for having the highest quality of real estate developments.



- d. That one of the marquee projects of the respondent company is "The Valley" project located in Sector 78, Gurugram. The complainant approached the respondent, making enquiries about the project, and after thorough due diligence and complete information being provided to her, sought to book an apartment in the said project. Accordingly, on 27.02.2019, the complainant vide draw was allotted an apartment bearing number no. 102 in Tower M, having a super area of 639 sq. ft. (approx.) for a total consideration of Rs. 22,09,500/.
- e. That consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed an agreement for sale on 22.06.2019.
- f. That the 'possession clause' itself provided a 'Commencement Date' from which point the respondent herein had to deliver possession of the unit within 4 years, subject to the force majeure clause. The respondent received the sanctions for its building plans on 29.06.2018 by Directorate of Town and County Planning, Haryana, and environmental clearance on 29.07.2019. Therefore, the commencement date as per the agreement is 29.07.2019 and 4 years from that date would mean that the respondent has to give possession of the unit by 28.07.2023, subject to the Force Majeure clause. Accordingly since the contractual period for handing over possession of the unit still subsists, the instant complaint is premature and vexatious and merits dismissal.
- g. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before 4 years after obtaining the requisite approval of the building plans or environmental clearance, whichever is later. However, the agreement



for sale duly provides for extension period of 6 months over and above the said date.

- h. That in and around 2021 as per the own admission of the complainant, owing to certain personal reasons, had sought to withdraw from the project and demanded cancellation of the booking. The said fact duly stands reflected in the complainant's own pleadings. In terms of the facts as presented above the present complaint is liable to be dismissed being pre-mature.
- That the complainant has not come with clean hands before the i. Hon'ble Authority and have suppressed the true and material facts from the Authority. The project "The Valley" is registered with the Authority vide registration certificate no. GGM/288/2018/20 dated 23.10.2018. The said project is a continuance business of the respondent and the respondent endeavors to complete the same within the prescribed timeline. It is to mention here that when the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted. It is very much clear from the true facts mentioned above that the complainant has filed the present complaint in order to escape from her obligations as well as from her liabilities, the present complaint shall be dismissed on the basis of the grounds mentioned above. Hence, the complainant is not entitled for any compensation or refund claimed as it is a pre mature demand for possession.
- 7. 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 those 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

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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

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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.

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.

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9. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors." SCC Online SC 1044 decided on 11.11.2021 and followed in M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

10. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme

Court in the matter of M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra), the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by her.

F. Findings on objections raised by the respondent:

F.I Objection regarding complaint barred by Limitation Act, 1963

11. Another contention of the respondent is that if the date of possession was

to be construed in January 2024 and the complaint was filed in June 2023, so there is no question of limitation arises. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The



same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 00600000021137 titled as *M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others* which provides as under:

"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."

Moreover, the complainant-allottee has made request for refund of the paid-up amount within 2 years of commencement of construction and hence is not barred by limitation. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to refund the entire amount of Rs.4,36,849/- paid by the complainant along with interest at the prescribed rate on the paid amount from the date of payment till actualisation.

12. The complainant was allotted a unit in the project of respondent "The Valley", in Sector-78, Gurugram vide allotment letter dated 02.03.2019 for a total sum of Rs.22,09,500/-. An agreement for sale dated 22.06.2019 was executed between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.4,36,849/-. An agreement for sale dated 22.06.2019 was executed between the parties and the possession clause of the agreement is reproduced below for ready reference:



8. POSSESSION OF THE APARTMENT 8.1 Schedule for possession of the Apartment:

8.1.2 The promoter assures to hand over possession of the Apartment along with parking space (if any) within 4(four) years from the date of approval of building plans or grant of environmental clearance certificate, whichever is later, unless there is delay or failure due to any causes attributable to the allottee, including but not limited to timely payment against the said apartment as per the payment plan, or any of the causes covered under the force majeure conditions as defined under this agreement......

- (Emphasis supplied) 13. The due date of possession is to be calculated 4 years from the date of environment clearance i.e., 29.07.2019 plus grace period of 6 months. Therefore, the due date of possession comes out to be 29.01.2024 as per the possession clause of agreement.
- 14. The complainant has requested for cancellation of the unit and refund of the paid-up amount on 05.04.2021 and the counsel for the complainant vide proceedings of the day dated 18.04.2024 requested for refund of the amount paid after deduction of Rs.25,000/- and interest from the date on which cancellation has sought. The counsel for the respondent has mentioned that request for cancellation made by the complainant vide email dated 05.04.2021 supposed to be completed only on submission of affidavit of cancellation with original documents and request for interest not to be allowed.
- 15. The project was registered on 23.10.2018 vide registration no. 20 of 2018 and valid up to 31.10.2022. The authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the booked unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of building plan is 29.06.2018 and date of environment clearance is 29.07.2019. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes



out to be 29.07.2023. 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/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being booked by the complainant is 29.07.2023 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. So, in such case the due date for handing over of possession comes out to 29.01.2024.

16. Now when the complainant approached the Authority to seek refund, the respondent already clarified their stance that the complainant is entitled to refund as per clause 5(iii)(h) of Affordable Housing Policy, 2013 in case of surrender of flat by any successful allottee, the amount of Rs.25,000/- can be forfeited in addition to the following:

S. No.	Particulars	Amount to be forfeited Nil
(aa)	In case of surrender of flat before commencement of project	
(bb)	Up to 1 year from the date of commencement of project	1% of the cost of flat
(cc)	Up to 2 years from the date of commencement of project	3% of the cost of flat
(dd)	After 2 year from the date of commencement of project	5% of the cost of flat

17. Since the complainant has applied for cancellation on 05.04.2021 i.e., after 1 year from the commencement of the project i.e., 29.07.2019(date of EC). Keeping in view the aforementioned factual and legal provisions, the respondent can retain the amount paid by the complainant against the booked unit as per clause 5(iii)(h) of Affordable Group Housing Policy, 2013 i.e., Rs.25,000/ plus 3 % of the cost of the flat.



- 18. The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.
- 19. The authority hereby directs the promoter to return the amount received by him i.e., Rs.4,36,849/- after deducting the amount of Rs.25,000/- plus 3% of the cost of the flat along as per above-mentioned clause of Affordable Group Housing Policy, 2013 along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender i.e., 05.04.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G.II Direct the respondent to pay an amount of Rs.55,000/- to the complainants as cost of present litigation.

20. The complainant is seeking relief w.r.t compensation in the aforesaid 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* 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.

H. 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):



- The respondent /promoter is directed to refund the amount i.e., Rs. 4,36,849/- received from the complainant-allottee after deducting the amount of Rs.25,000/- plus 3% of the cost of the flat as per clause 5(iii)(h) of Affordable Group Housing Policy, 2013 along with interest on such balance amount at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender i.e., 05.04.2021 till the actual date of refund of the amount.
- A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
- 22. Complaint stand disposed of.
- 23. File be consigned to registry.

(Vijay Kumar Goyal) Member Haryana Real Estate Regulatory Authority, Gurugram Dated: 18.04.2024