

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

Complaint no.:	6495 of 2022
Date of decision:-	03.07.2024

1. Rachna Ved Gothwal
2. Ganesh Lalsingh Gothwal
Both R/o:- Flat no.-1402, Tower-3,
ILD Greens, Sector-37-C, Gurugram, Haryana

Complainants

Versus

M/s. ALM Infotech City Pvt. Ltd.
Regd. office:B-418, New friends Colony,
New Delhi-110065.

Respondent

CORAM:

Shri Ashok Sangwan

APPEARANCE:

Sh. Abhay Jain

Sh. Rishabh Gupta

Member

Complainants

Respondent

HARERA
GURUGRAM
ORDER

1. The present complaint dated 10.10.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the



promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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:

Sr. No.	Particulars	Details
1.	Name of the project	"ILD Grand", Section-37-C, Gurguram, Haryana.
2.	Project Area	5.679 acres
3.	Nature of project	Residential Group Housing Colony
4.	DTCP license no.	1. License No. 96/2010 dated 03.11.2010 2. License No. 118/2011 dated 26.12.2011.
5.	RERA registered	Registered 386 of 2017 Dated-18.12.2017.
6.	Welcome letter	12.10.2015 (As on page no. 35 of complaint)
7.	Unit no.	12-B, Type-3BHK, Tower Name- Panaroma B-1, Floor-12 th



		(As on page no. 35 of complaint)
8.	Unit area	1820 sq.ft. [Super-Area] (As on page no. 35 of complaint)
9.	Date of execution of buyer's agreement dated	02.04.2016 [As on page no. 39 of complaint]
10.	Possession clause	CLAUSE- 9 COMPLETION OF CONSTRUCTION AND COMPENSATION FOR DELAY <i>(i) Subject to Force majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, NOCs, etc. and further subject to the Allottee(s) having complied with all his obligations under the terms and conditions of this Agreement and the Allottee(s) not being in default under nay part of this Agreement including but not limited to the timely payment of the total Sale Consideration and other charges/fees/taxes/levies and also subject to the Allottee(s) having complied with all formalities or documentation as prescribed by the Developer, the Developer proposes to complete the construction within a period of 36 months computed from the date of execution of this agreement with further grace period of 180 days under normal</i>

		<i>circumstances.</i> <i>[Emphasis supplied]</i> <i>(As on page no. 52 of complaint)</i>
11.	Due date of possession	02.10.2019 [Calculated 36 months from the date of execution of agreement + 180 days grace period]
12.	Total consideration	Rs. 91,00,000/- (As on page no. 43 of complaint)
13.	Total amount paid by the complainant	Rs.48,24,364/- (As per S.O.A dated 08.06.2022)
14.	Tri-partite agreement [Note:- Between parties and HDFC]	Rs.73,00,000/-/ [Sanctioned amount]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant made the following submissions in the complaint:

1. That the respondent published a brochure, highlighting the residential group housing to be known as 'ILD Grand', at Sector - 37 C, Gurugram, Haryana. The project was launched in 2010 with the promise to deliver the possession on time and huge funds were collected over the period by the respondent.

- II. The complainants were approached by the sale representatives of the respondent who made tall claims about the project 'ILD Grand' as the world class project. The complainants were impressed by the representations and ultimately booked a 3 BHK apartment in the project by paying Rs.3,00,000/- as booking amount via cheque no. 099322 dated 06.10.2015 and the respondent issued a receipt acknowledging the booking payment.
- III. That the welcome letter was issued by the respondent on 12.10.2015 to the complainant and the booking was confirmed of the apartment no. 12B at 12th Floor in Tower B1-Panaroma measuring 1820 sq. ft. The complainants opted for a subvention payment plan. The respondent also issued an allotment letter to the complainants.
- IV. The Apartment Buyer's Agreement/ Agreement for Sale was executed on 02.04.2016 between the respondent and the complainants for a total sale consideration of Rs.91,00,000/- including EDC & IDC charges amounting Rs.6,09,700/- and IFMS amounting to Rs.91,000/-. At that time the respondent has already received a sum of Rs.9,31,850/-. Later, the respondent issued a tentative payment status to the complainant for the allotted apartment and mentioned that the total sale consideration including taxes is Rs.91,00,000/-

- V. The Tripartite Agreement was executed between HDFC Limited , the respondent and the complainant on 13.04.2016 for obtaining a loan amounting Rs.73,00,000/- for payment of the sale consideration of the allotted residential apartment.
- VI. The date of handing over the possession of the apartment comes out to be 02.04.2019, calculated 36 months from the date of execution of the agreement.
- VII. The complainants have paid all payable amounts, as and when demanded by the respondent and have paid an amount of Rs.48,24,364/- till date. The remaining 15 % of payable amount for the apartment is to be paid by the complainants only after a legal and valid offer of possession is made. Whereas, the respondent has failed to honour the terms of the agreement and timely deliver possession of the apartment to the complainants.
- VIII. The complainants have approached the respondent and pleaded for delivery of possession of his apartment as per the agreement on various occasions but the respondent did not reply to his letters, emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of their apartment.
- IX. The respondent is responsible and accountable to the terms and conditions prescribed in the agreement. The respondent is bound

to pay interest on the deposited amount if there is any delay in handing over the possession of the apartment.

- X. The complainants has lost confidence and in fact has got no trust left in the respondent, as the respondent has deliberately and wilfully indulged in undue enrichment, by cheating the complainant beside being guilty of indulging in unfair trade practices and deficiency in services in not delivering the legitimate and rightful possession of the apartment in time and then remaining non-responsive to the requisitions of the complainant.
- XI. The complainant does not intend to withdraw from the project. As per Section 18 of the Act, 2016 read with Rules 15 and 16 of the Rules, 2017, the promoter has an obligation to pay interest on the delayed possession on the amount deposited by the complainant at the rate prescribed. The respondent has neglected his part of obligations by failing to offer a legitimate and rightful possession of the apartment on time.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- i. Direct the respondent to pay a sum of Rs.17,30,162/- towards the delay caused, from the due date of possession, i.e., 02.04.2019 till 31.10.2022 (further accruing till possession of the apartment is handed over to the complainant).

- ii. Direct the respondent to complete the development of the apartment along with all facilities and amenities like water, electricity, roads, parks, club, etc. immediately.
- iii. Direct the respondent to handover the legal and rightful possession of the apartment to the complainant, after receiving all the required permissions and approvals from the competent authorities.
- iv. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant.

D. Reply by respondent:

5. The respondent has made following submissions by way of written submissions:
 - I. That the complainant around 2018, learned about the project of the respondent "ILD Grand" and approached the respondent and inquired about the project. That on 01.10.2015, the complainants decided to invest in the project and booked a 3 BHK unit admeasuring 1820sq.ft.
 - II. The respondent was allotted a unit no. 12B, Tower-B-1, Floor-12 in Panaroma (B1). Time was essence in respect to the allottees obligation for making the respective payment. That, on 02.04.2016 a Builder buyer agreement was executed between the respondent and the complainants.
 - III. That under the said agreement, the complainants were bound to make timely payment of dues in accordance with the demands raised by the respondent. It is to note that the complainant has not paid the total sale consideration which is why it was quite hard for the respondent to handover possession within the time bound

period as agreed in the agreement and the same can be perused from a plain reading of the Statement of Accounts.

- IV. It is pertinent to mention here that a resolution plan has already been submitted and executed to all the allottees of the project, in which IIFL, builder i.e., ALM Infotech City Pvt. Ltd., RWA and a construction company will complete the project before 31.12.2023.
- V. That the respondent was committed to complete the project but the developmental work of the project was slightly delayed due to reasons beyond the control of the respondent. The project was majorly hindered due to lack of infrastructure in the said area. That the twenty four meter sector road was not completed on time. Due to non-construction of the sector road, the respondent faces many hurdles to complete the project. For the completion of road, the respondent was totally dependent upon the Govt. department/machinery and the problem is beyond the control of the respondent.
- VI. The project was not completed due to several reasons and circumstances beyond the control of the respondent, such as interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by the National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.
- VII. That due to the impact of the Goods and Services Act, 2017 which came into force after the effect of demonetisation in the last quarter of 2016, which left long lasting effect on various real estate

and development sector even in 2019. It is a matter of fact that the respondent has to undergo huge obstacle due to adverse effect of demonetisation and implementation of GST.

- VIII. That in the recent years, various construction activities in the real estate sector were stayed due to constant ban levied by various Courts/Tribunals/Authorities/ to curb pollution in Delhi-NCR Region. It is pertinent to mention, that recent years the Environment (Pollution and Control) Authority, NCR (EPCA) vide its notification dated 25.10.2019, bearing no. EPCA-R/2019/L-49 banned the construction activities in NCR during night hours (6:00 PM to 6:00 AM) from 26.10.2019 to 30.10.2019. And, subsequently the EPCA vide its notification bearing no. R/2019/L-53, dated 01.11.2019, converted the same into a complete ban on 01.11.2019 to 05.11.2019.
- IX. The Hon'ble Apex Court in the writ petition vide its order dated 04.11.2019 passed in writ petition bearing, no. 13029/1985 titled as, "**MC Mehta vs. Union of India**" has completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Court vide its order dated 14.02.2020.
- X. That due to the ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers.
- XI. Despite such obstacles on the construction activity in the real estate sector and before the normalcy could resume, the entire nation was hit by the Worldwide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of

the project was due to genuine force majeure circumstances and the period shall be excluded while computing the delay. The current Covid-19 pandemic resulted in serious challenges for the respondent with no available labourers, contractors etc. for the construction of the project. That on 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM-1 (A) recognised that entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020.

- XII. Subsequently, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. It is to note, various State Governments, including the Government of Haryana have also imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.
- XIII. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.
- XIV. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. That during



the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was halted in the state due to the adverse effect of the pandemic.

XV. It is a matter of fact, that despite after lifting the restrictions the respondent was bound to resume with the construction activity in a hybrid mode i.e., only with the labours that were available within the region and nearby to the construction site. And, due to such acute shortage of labour the project was deemed to be delayed due to above said circumstances which were not in control of neither the respondent nor the complainant.

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 observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

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 complainant at a later stage.

F. Findings on objections raised by the respondent

F.1 Objection regarding delay due to force majeure circumstances

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to lock down due to

outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the welcome letter was issued by the respondent to the complainant on 12.10.2015. The apartment buyer's agreement was executed between the parties on 02.04.2016. Thus, the due date for completion of project was 02.10.2019. The respondent is seeking the benefit of covid-19, which came into picture after the due date of possession. Thus, the Authority is of the view that no relief w.r.t this can be granted to the respondent.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay a sum of Rs.17,30,162/- towards the delay caused, from the due date of possession, i.e., 02.04.2019 till 31.10.2022 (further accruing till possession of the apartment is handed over to the complainant).

G.II Direct the respondent to handover the legal and rightful possession of the apartment to the complainant, after receiving all the required permissions and approvals from the competent authorities

12. In the present complaint, the complainants intend to continue with the project and are seeking possession and delay possession charges along with interest on the amount paid. Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.

"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, —

*.....
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.*

13. **Admissibility of grace period:** The promoter was obligated to hand over the possession of the unit by 02.10.2019 as the same has been undertaken by the respondent in clause 9 (i) of the agreement to sell dated 02.04.2016.
14. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark



lending rates which the State Bank of India may fix from time to time for lending to the general public."

15. 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.
16. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 03.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.
17. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

18. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

19. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. Due date of possession as mentioned specifically in clause 9(i) of the apartment buyer's agreement dated 02.04.2016. As per clause 9(i) of the apartment buyer's agreement dated 02.04.2016, the possession was to be handed over to the complainants within 36 months from the date of execution of the agreement alongwith a grace period of 180 days. Therefore, the due date of handing over possession is 20.10.2019. The respondent has not yet offered the possession of the subject apartment.
20. A detailed joint resolution plan dated 09.04.2023 was submitted in the registry of the Authority on 07.06.2023 by the promoter, resident welfare association and M/s Rapti Timeline Infra (India) (Investor & contractor) for completion of the remaining work of tower 2 of the project. Vide the said resolution plan, the parties approached the Authority with the request to allow it to carry out the balance construction work of tower 2 by introducing an investor & contractor i.e, M/s Rapti Timeline Infra, thus, the occupation certificate would be applied at the earliest. It has been proposed that a period of 12 months will be required for completion of the balance work from the date of authorization. The promoter shall complete the tower 2 of the project as per the completion plan submitted by the promoter and agreed by the association. However, as per the said resolution plan, it was proposed that M/s Rapti



Timeline Infra (India) (Investor & contractor) shall invest Rs. 10 crore against the unsold inventory of B units in tower 2 with an approximate saleable area of 24,000 sq. ft which would expedite in completing construction of tower 2 in the said project. The aforesaid resolution plan was placed before the Authority and the same was principally approved ***subject to the condition that the promoter is in no way absolved from the obligations enshrined in the Act including obtaining of necessary approval from the concerned authorities,*** as both the respondent/promoter and the allottees were in agreement with the same and the same would have facilitated in early completion and obtaining of possession of the units booked by the allottees. The Authority observed that out of three towers for which registration was granted, the occupation certificate for two towers has already been obtained and possession of the apartments in such towers have also been handed over. Only one tower i.e., tower 2, remains to be handed over and construction work of above tower was almost complete only finishing work and provisions of amenities remained to be completed which seems feasible to achieve vide aforesaid resolution plan. The parties to the resolution undertook to complete the construction of the project by 31.12.2023.

21. The Authority is of the view that the said period i.e., 31.12.2023 has also elapsed and still the construction work has not been complete and no offer of possession has been made to the complainant/allottee. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities

as per the agreement to hand over the possession within the stipulated-period.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees, shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 02.10.2019 till offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.III. Direct the respondent to complete the development of the apartment along with all facilities and amenities like water, electricity, roads, parks, club, etc.

23. As per Section 11, Clause 4, Sub-clause (a), the promoter is obligated to fulfill all duties, responsibilities, and functions outlined in the agreement executed between the parties, until all the apartments, plots, or buildings are conveyed to the allottees. In the present complaint, the project remains incomplete despite the expiration of the due date of possession and also the lapse of the extension requested under the resolution plan. Thus, the Authority directs the respondent/promoter to complete the development of the apartment along with all associated facilities and amenities at the earliest and handover the apartment to the complainant/allottee after obtaining the occupation certificate from the concerned authorities.

G.IV. Direct the respondent to pay legal expenses of Rs.1,00,000/- incurred by the complainant.

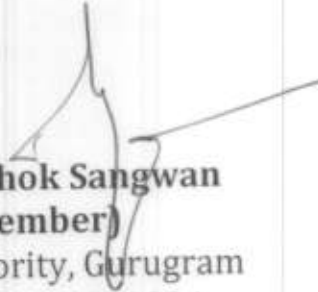
24. The complainants are seeking the above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)* has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

25. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate i.e., 10.95% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 02.10.2019 till actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- ii. The arrears of such interest accrued from 02.10.2019 till the date of order by the Authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The rate of interest chargeable from the allottees/complainants by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(z a) of the Act.
 - v. The respondent/promoter is directed to complete the development of the apartment along with all the facilities and amenities.
 - vi. The respondent shall not charge anything from the complainant which is not the part of the agreement.
26. Complaint stands disposed of.
27. File be consigned to registry.


Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 03.07.2024