



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

**Complaint no. :** 6743 of 2022  
**Date of filing complaint:** 31.10.2022  
**First date of hearing:** 07.03.2023  
**Date of decision :** 15.02.2024

Sh. Manoj Gandhi  
**R/o:** 4/30, Block-4, Ramesh Nagar, New  
Delhi-110015

**Complainant**

Versus

M/s Pareena Infrastructure Private  
Limited

**Respondent**

**Regd. Office at:** Flat No. 2, Palm  
Apartment, Plot No.13B, Sector ज-ते 6,  
Dwarka, New Delhi - 110075  
**Corporate Office at:** C-7A, Second Floor,  
Omaxe City Centre, Sector - 49, Sohna  
Road, Gurugram - 122018

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Kanish Bangia (Advocate)

Complainant

Sh. Prashant Sheoran (Advocate)

Respondent

**ORDER**

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

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under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

### A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Coban Residences", Sector-99A, Gurugram
2.	Nature of the project	Residential
3.	Project area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.03.2024
5.	Name of licensee	Monex Infrastructure Pvt. Ltd.
6.	RERA Registered or not registered	GGM/419/151/2020/35 dated 16.10.2020 valid up to 11.03.2024
7.	Unit no. and floor no.	1003 and 10 <sup>th</sup> floor and Tower-1 (As per page no. 34 of the complaint)
8.	Unit area admeasuring	2352 sq.ft. (Super area) (As per page no. 34 of the complaint)
9.	Date of execution of apartment buyer's agreement	29.04.2014 (As per page no. 32 of the complaint)
10.	Possession clause	<p><b>3.1</b>  <i>That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located within 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee.....</i>                      and  <b>5.1</b>  <i>In case within a period as provided hereinabove, further extended by a</i></p>





		<p><i>period of 6(six) months if so required by the developer, the developer is unable to complete construction of the said flat as provided hereinabove (subject to force majeure conditions) to the flat allottee(s), who have made payments as required for in this agreement, then the flat allottee(s) shall be entitled to the payment of compensation for delay at the rate of Rs. 5/- per sq.ft. per month of the super area till the date of notice of possession as provided hereinabove in this agreement. The flat allottee(s) shall have no other claim against the developer in respect of the said flat and parking space under this agreement.</i></p> <p>(As per page no. 45 and 48 of the complaint)</p>
11.	Due date of possession	16.10.2018 (Note: Due date to be calculated 4 years from the date of start of construction i.e., 16.10.2014 being later.)
12.	Payment Plan	Construction linked payment plan (As per page no. 55 of the complaint)
13.	Total sale consideration	Rs.1,36,67,752/- (As per schedule of payments on page no. 55 of the complaint)
14.	Amount paid by the complainant	Rs.1,29,15,383/- (As per statement of account on page no. 27 of the complaint)
15.	Occupation Certificate/ completion certificate	13.12.2022 (As per page no. 21 of the reply)
16.	Offer of possession	14.12.2022 (As per page no. 24 of the reply)
17.	Reminder letters	29.09.2015 & 03.11.2015 (As per page no. 45 & 47 of the reply)
18.	Notice for revocation of credit note	06.01.2021 (As per page no. 78 of the reply)

**B. Facts of the complaint:**

3. The complainant has made following submissions:

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- I. That pursuant to the elaborate advertisements, assurances, representations and promises made by respondent about their premium residential township called "Coban Residences" situated in Sector 99, Gurugram with impeccable facilities and believing the same to be correct and true, the complainant considered booking unit no. T1/1003 in "Tower-1" in the project on 23.07.2013 and the same was confirmed to the complainant on the same day only. The complainant paid an initial amount of Rs.10,00,000/- towards the booking vide cheque dated 27.01.2013 and thereafter, Rs.13,76,036/- vide cheque dated 01.09.2013.
- II. That the apartment buyer's agreement for unit No. T1/1003 in "Coban Residences" admeasuring 2352 sq. ft. super area was executed between the parties for a total consideration of Rs.1,14,55,416/-. According to **clause 3.1** of the apartment buyer's agreement, the possession was required to be delivered within 4 years from the date of execution of the agreement, i.e., on or before 28.04.2018. The complainant opted for a construction linked payment plan. The complainant had paid a total of Rs.1,29,15,383/- towards the above said unit till 19.03.2021.
- III. That the respondent despite the passing of the due date of possession kept on raising further demands from the complainant. The complainant in the hope of having the said unit kept on paying the demands of the respondent. The complainant sought clarification on the delivery of possession as promised at the time of signing of the agreement in 2014 and further information about the estimated time for delivery of possession and the payment demanded by the respondent to which the respondent always gave false assurances.

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- IV. That despite several efforts from the complainant to seek timely updates about the status of the construction work at the site, the respondent was negligent and did not provide any satisfactory response to their queries. The apartment buyer's agreement dated 28.04.2014 entered between the parties provided for construction linked payment plan, wherein the payments were to be made as per the stages of construction and so the complainant had assumed the money collected by the respondent would be utilized for construction purpose. Unfortunately, the respondent has failed to properly utilize the complainant's hard-earned money and even after the lapse of the 4 years of the date of booking, there is no sign of delivery of possession.
- V. That upon visiting the site, the complainant was shocked to see 30% progress being done at the construction site and the purpose of the complainant to book the unit is not fulfilled. It is submitted that the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not allotting the said unit to the complainant.
- VI. That the respondent at various instances violated the terms and condition of the apartment buyer's agreement by not handing over the peaceful and vacant possession of the above-said allotted unit.
- VII. That the respondent is guilty of deficiency in service, unfair trade practice, giving incorrect and false statement while selling the said unit to the complainant within the purview of provisions of the Act of 2016 and applicable rules. The complainant has suffered losses on account deficiency in service, unfair trade practice, giving incorrect and false statement.
- VIII. That the cause of action accrued in favour of the complainant and against the respondent on the date when the respondent advertised the said project, it again arose on diverse dates when the complainant





entered into the agreement, it also arose when the respondent inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse delayed the project beyond any reasonable measure continuing to this day and it continues to arise as the complainant has not been given possession of his unit and have not been paid the amount of interest for delayed possession of the unit in the project till date and the cause of action is still continuing and subsisting on day to day basis.

- IX. That the complainant herein is constrained to file this present complaint seeking the peaceful and vacant possession, registration of the sale deed of the allotted unit. Further, the complainant herein reserve his right(s) to add/supplement/amend/change/alter any submission(s) made herein in the complaint and further, reserve the right to produce additional document(s) or submissions, as and when necessary or directed by the Authority.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- To handover the actual, physical, vacant possession of the unit.
  - To direct the respondent to execute the sale deed of the above-said unit in favour of the complainant.
  - To direct the respondent to pay the delay penalty charges with interest as per Act of 2016.

**D. Reply by the respondent:**

5. The respondent contested the present complaint on the following grounds:

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- i. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "Coban Residences" at Sector 99A.
- ii. That the respondent has already completed the concerned unit and vide letter dated 14.12.2022 a letter of offer of possession was issued to the complainant. It is submitted that construction of the concerned unit as well as tower stands completed in the month of April 2022 itself and thereafter an application for obtaining occupation certificate was filed by the respondent before the concerned authority. Thus, the reason for filing the present complaint is absolutely baseless. That the respondent is a committed real estate developer, who is developing various residential colonies as per rules and law.
- iii. That the respondent continues to bonafidely develop the project in question despite there being various instances of non-payments of installments by various allottees. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one seriously hampers the capability of the respondent to deliver the project as soon as possible. The amounts which were realized from the complainant have already been spent in the development work of the proposed project. On the other hand the respondent is still ready to deliver the unit in question to the complainant, of course, subject to payment of due installments and charges.
- iv. That it has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondent with a mere motive of avoiding the payment of balance consideration and charges of the unit in question. If such frivolous and baseless allegations will be admitted then, interest of other genuine

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allottees of the project, will be adversely affected. In these circumstances, the present complaint deserves to be dismissed.

- v. That the completion of project is dependent on a collective payment by all the allottees and just because few of the allottees paid the amount, demand does not fulfill the criteria of collective payment. It is submitted that numerous allottees have defaulted in payment demanded by the respondent, resulted in delaying of completion of the project, yet the respondent is trying to complete the project as soon as possible by managing available funds.
- vi. That over a period of time numerous allottees have defaulted in their payments at the relevant stages of construction and it is not possible to construct with inadequate funds. Thus, the situation of non-payment of amount by the allottees is beyond the control of respondent. It is submitted that even in the apartment buyer's agreement it was stated that period of 4 years was subjected to normal conditions and force majeure and with any stretch of imagination situations faced by respondents are not normal. That it is the fault of those allottees who had committed defaults and respondent should not be made to suffer for the same.
- vii. That the complainant has not come before authority with clean hands as they would have not disclosed the actual state of affairs and mode and time period of payment made by them, but they concealed all their defaults with a malafide motive to gain undue benefit from the authority.
- viii. That non-payment is one of the major issue faced by all the developer including respondent but it is not the only issue faced by the respondent while developing a project, the outbreak of COVID-19, several orders / notifications were kept on passed by various

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authorities/courts like NGT or Supreme Court where construction activities were either completely stopped or levied such condition which makes it highly difficult to develop the project, even when developer is facing shortage of fund due to non-payment of installments by allottees.

- ix. That above stated issues are only few out of many, still respondent is trying to complete construction even after all these odds. The respondent nearly completed the project out of its own expenses even after facing all these issues. That in such cases if delayed possession charges is granted than it would be absolutely against the natural justice. It is pertinent to mention here that whatsoever amount which was received by respondent qua construction as already been utilized for construction and it is the complainant who delayed in payments. It is therefore prayed that keeping in above stated facts and circumstances it is crystal clear that present complaint is not maintainable and is liable to be dismissed.

**E. Jurisdiction of the authority:**

6. 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, 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.

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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 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.*

#### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

7. 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 objections raised by the respondent:**

#### **F.I Objection regarding delay due to force majeure circumstances**

8. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Supreme Court or NGT, lockdown due to outbreak of Covid-19 pandemic and non-payment of instalments by different allottees. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of



4 years from the date of start of construction or date of execution of buyer's agreement, whichever is later." In the present case, the date of execution of buyer's agreement is 29.04.2014 and date of start of construction is 16.10.2014 as taken from the documents on record. The due date is calculated from the date of start of construction being later, so, the due date of subject unit comes out to be 16.10.2018, which is prior to the occurrence of Covid-19 restrictions and hence, the respondent cannot be benefitted for his own wrong. Though there has been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

**G. Findings on relief sought by the complainants:**

**G.I Direct the respondent to handover the possession and pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016**

9. The relief(s) sought by the complainant are taken together being interconnected.
10. In the present complaint, the complainant intend to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"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,*

*na*

*till the handing over of the possession, at such rate as may be prescribed.”*

*(Emphasis supplied)*

11. Clause 3.1 of the apartment buyer's agreement provides for handing over of possession and is reproduced below for ready reference:

**3.1**

*That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located within 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee (with additional floors for residential units if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the developer may consider necessary or may be required by any competent authority to be made in them or any of them. To implement all or any of these charges, supplementary sale deed(s)/agreements, if necessary will be got executed and registered by the developer which the flat allottee(s) undertakes to execute.....*

*(Emphasis supplied)*

12. The due date of possession of the apartment as per clause 3.1 of the apartment buyer's agreement, is to be calculated as 4 years from the date of start of construction i.e., 16.10.2014 being later. Therefore, the due date of possession comes out to be 16.10.2018.
13. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate and 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%.*

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*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.*

14. 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.
15. 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., 15.02.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
16. The definition of term 'interest' as defined under section 2(za) 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;"*

17. 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 delayed possession charges.

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18. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 of apartment buyer's agreement executed between the parties on 29.04.2014, the possession of the subject unit was to be delivered by 16.10.2018.
19. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been obtained by the respondent-builder and offered the possession of the subject unit to the complainant after obtaining occupation certificate on 14.12.2022. So, it can be said that the complainant would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is to be given to the complainant keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 16.10.2018 till actual handing over of possession or offer of possession made on 14.12.2022 after obtaining occupation certificate from competent authority plus two months; whichever is earlier.
20. The counsel for the respondent stated during the proceedings dated 15.02.2024 that out of the total amount credited towards the payment by

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the allottee, an amount of Rs.3,48,750/- is on account of credit note and hence, delayed possession charges may be considered only on the amount actually paid by the complainant i.e., Rs.88,61,759/- after deduction of the amount paid towards credit note. It is evident from the SOA dated 16.06.2021, the amount paid to the complainants towards loyalty bonus is Rs.6,17,400/-. It has been clarified by the counsel for the respondent vide an application dated 01.05.2024 that the actual amount paid by the complainant is Rs.1,22,97,987/- and the amount of Rs.3,48,750/- paid to the complainant towards loyalty bonus was inadvertently mentioned during the proceedings of the day dated 15.02.2024. Thus, the actual amount paid to the complainant towards loyalty bonus is Rs.6,17,400/-. However, the counsel for the respondent also brought to the notice of the authority vide application dated 01.05.2024 that the whole of the amount paid towards the loyalty bonus has been revoked vide letter dated 06.01.2021 which is placed on record by the respondent on page no. 78 of the reply. Keeping in view the afore-mentioned facts and statement of accounts dated 16.06.2021, no amount has been paid to the complainant towards loyalty bonus and the total amount paid by the complainant is Rs.1,22,97,983/-.

21. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 16.10.2018 till actual handing over of possession or offer of possession made on 14.12.2022 after obtaining occupation certificate from competent authority plus two months, whichever is earlier at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

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**G.II Direct the respondent to execute and register the conveyance deed of the unit in favour of the complainant**

22. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
23. The possession of the subject unit has already been offered after obtaining occupation certificate on 14.11.2022 but the same was not taken by the complainant. So, the respondent is directed to handover the possession and to get the conveyance deed executed in terms of section 17(1) of Act of 2016 after payment of requisite stamp duty and registration charges by the complainant and payment of outstanding dues remains, if any.

**H. Directions of the Authority:**

24. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- The respondent is directed to pay delayed possession interest at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 16.10.2018 till offer of possession (14.12.2022) plus two months i.e., up to 14.02.2023 as per proviso to section 18(1) of the Act read with rule 15 of the rules..
  - The arrears of such interest accrued from 16.10.2018 till date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.

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- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and thereafter upon payment of such dues, if any, the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of apartment buyer's agreement.
  - iv. The respondent is directed to execute the conveyance deed in terms of section 17(1) of Act of 2016 within a period of 90 days after payment of requisite stamp duty and registration charges by the complainant.
  - 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 case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - vi. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement. No holding charges shall be levied as per law settled by **Hon'ble Supreme Court in Civil Appeal no. 3864-3889/2020 decided on 14.12.2020.**
25. Complaint stands disposed of.
26. File be consigned to the registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 15.02.2024