

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

**Complaint no.:** 3851 of 2021  
**Date of filing of complaint:** 10.02.2021  
**Date of first hearing:** 29.10.2021  
**Date of decision:** 07.08.2024

1. Mr. Sanjesh Shivhare
2. Mrs. Sangeeta Shivhare

**Both R/O:** C-13/35, S.F. Ardee City, Sector- 52,  
Gurugram, Haryana

**Complainants**

Versus

St. Patricks Realty Pvt. Ltd.  
**Registered address at** 3<sup>rd</sup> Floor, Tower-D, Global  
Business Park, MG Road, Gurugram, Haryana

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Anish Verma Advocate  
Shri Pravin Bahadur Advocate

Complainants  
Respondent

**ORDER**

1. The present complaint 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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provision of the Act or the rules and regulations made there under or to the 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 complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name and location of the project	"Central Park Flower Valley", Sohna, Gurugram
	Nature of the project	Plotted colony
	Project area	20.225 acre
2.	Unit no.	Unit no. 201, Block D, 1 <sup>st</sup> floor [Annexure C9 at page 76 of the complaint]
3.	DTCP License no. and validity status	7 of 2020 dated 29.01.2020 valid upto 28.01.2025 54 of 2014 dated 20.06.2014 valid upto 19.06.2024
	Name of licensee	Chandiram and 3 others.
4.	RERA registration	Registered vide registration no. 11 of 2020 dated 18.03.2020 valid upto 31.12.2024
5.	Saleable area	1093 sq. ft. [BBA at page 76 of the complaint]
6.	Date of booking	07.10.2015 [Annexure I of amended CRA]
7.	Date of allotment	30.08.2016 [Annexure I of amended CRA and page 64 of complaint]
7.	Date of builder buyer's agreement	28.03.2017 [Annexure I of amended CRA and page 74 of complaint]
8.	Possession clause	<b>Clause 7.1</b> "The company shall endeavour to handover the possession of the said floor of the allottee <b>within a period of 24 months with a grace period of another 6 months from the date of the agreement</b> subject to timely payment of sale price, other charges as per Details of Payment (Annexure 1), Payment Plan (Annexure 2) and all other payments as per terms of this agreement including payment of interest by the Allottee(s). In case of default in the aforesaid payments by the



		<i>Allottee(s) or violation or non-compliance of any term of this Agreement....."</i> <i>(Emphasis supplied)</i>
9.	Due date of possession	28.09.2019 (Calculated to be 24 months from the date of agreement i.e., from 28.03.2017 and further unqualified grace period of 6 months)
10.	Basic Sale Consideration	Rs.54,48,800/- (Annexure C9 at page 76 of the complaint)
11.	Amount paid by the complainant	Rs.21,90,371/- (Annexure I of amended CRA and SOA at page 110 of complaint)
12.	Occupation certificate	19.10.2020 (Annexure R1 at page 26 of reply)
13.	Offer of possession	17.12.2020 (Annexure R2 at page 27 of reply)

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- a) That in 2013-14, the complainants in their quest for search for residential accommodation for their own use came across wide advertisement and publicity campaigns launched by respondent for a residential project. It was stated that the said project will be surrounded by lush green surroundings and the residents will have luxury of malls and multiplexes in their vicinity in the said project itself.
- b) That lured by publicity campaigns and flimsy portrayals regarding the project, the complainants made enquiries for the project in the office of the developer and local real estate agents. During this period, one Sh. Raghuvir Singh, an accredited real estate agent of the respondent from Lexus Estate, also called the complainants assuring them that he can extract a good 2-bedroom unit deal at very competitive price, because of him being accredited agent and good relationship with the office of the respondent i.e., Promoters of Central Park-III, Sohna. The complainants fell into the trap and got interested to book a unit in the said project.

- c) That on 25.09.2014, the complainants applied for a residential unit in the upcoming housing project at Central Park-III and paid requisite amount of Rs.7,00,000/-. In the pre-formatted application form executed by the complainants on 03.10.2014, it was stated and agreed so by the developer that in case they do not allot the units as promised, the complainants will be entitled to refund of their amounts with 9% interest.
- d) That the project at this time was not even initiated and there were no approvals for the said project, thus, it was a prelaunch offer, which is per se illegal. On receipt of the amount, no proper document or anything in writing was given by the respondent.
- e) That the respondent was unilaterally changing the overall features of the project on failure to have approvals in the said project. The respondent conceded the same and asked the complainants to have the unit transferred to a separate scheme of air conditioned independent floors, being constructed as per new plans, and that the amount may be easily transferred in the independent floors project situated on the plot admeasuring 180 sq. yds. and with a floor area of 1093 sq. ft. comprising of two bedrooms, two toilets and one study, with a credit interest of Rs.70,000/-. To further lure the complainants, the developer undertook to give rebate in booking of the said floor Unit.
- f) That on this specific promise/undertaking in the presence of Sh. Raghuvir Singh, the real estate agent, the complainants transferred the said amount of Rs.7,00,000/- towards booking a residential first floor on 15.09.2015 admeasuring 1093 sq. ft. for a basic sale price of Rs.55,60,000/- with EDC of Rs.318 per sq. ft., under possession linked plan, for which a discount of 2% was promised to be given by the developer and a new application form dated 15.09.2015 containing expression of interest was signed by the complainants.

- g) However, despite transfer of the said amount no adjustment of any discount/rebate was made. Thus, the complainants were constrained to write to the office of the developer on 30.08.2016 for adjustment of the amounts of Rs.70,000/- and discount of 2%. To establish their bonafide and to ensure that they were still interested in the said project, on the demand from the developer, the complainants made another payment of Rs.6,45,000/- (after deduction of discount/rebate) to the office and receipt acknowledgment receipt from developer's office.
- h) Though not much development could be seen at the site of the respondent, on 01.10.2016, the developer's office sent complainants a reminder informing them to send an amount of Rs.10,26,571/- was due, further stating that the allotment procedure has been started (though no particular unit was allotted at that time also after almost two years from the date of payment). The complainants were shocked to learn that vide the same reminder no adjustment of penalty was given to complainants, against which they immediately informed the office vide letter dated 17.10.2016. The same adjustments were even reiterated by Sh. Raghuvir Singh, the agent, in favour of the complainants, vide letter dated 07.11.2016 addressed to the developer. The complainants, who were in dire need of the accommodation, this time again paid a sum of Rs.8,45,371/- vide different cheques in conformity with the allotment scheme and discussions.
- i) On 10.11.2016, the complainants received a letter from the respondent's office stating that they have been provisionally allotted an independent first floor, plot no. 201 in Block D in Central Park Flower Valley( earlier Central Park III), Sohna, Gurugram. Along with the same the complainants were handed over two copies of floor buyer agreement (which were already typed, with no option to modify at complainants' end). The complainants had no option but to execute the agreement. The

unit was to be delivered to the complainants by 2018 or maximum by May 2019 with grace period.

- j) Vide the buyer's agreement dated 28.03.2017, it was specified that the price of the unit will be about Rs.54,48,800/- along with EDC @Rs. 318 sq. ft. and the size of the unit was 1093 sq. ft. It was also stated that the possession of the unit would be delivered to complainants within 24 months from the date of agreement, with grace of another 6 months.
- k) That the complainants have already made payment of Rs.21,90,371/- as against demands made by the respondent. By the end of 2020, during the COVID-19 Pandemic against all odds, and when the project was nowhere near completion, the complainants were informed through other allottees, that developer has started offering possession of the units (but no offer as such was received by complainants). After much insistence from complainants on 17.12.2020 they received letter of offer of possession of the independent floor D-201/FF, but now with the final area was 644 sq. ft. and balcony area of 233 sq. ft., thereby making the habitable area diminished by more than 25%. The complainants to establish the irregularity, have got the same verified by a Govt. approved Architect/surveyor, that the area calculation is per-se wrong. It was even more shocking that the adjustment of 2% was still not reflected in the accounts, and also escalation charges were shown in the account sheet.
- l) That on visiting the site where the unit of the complainants was situated, it was found that the construction was still going on. There were villages in the project as lot of rural population was being seen in the project and small water pits/ponds where mosquitos breded.
- m) That the complainants, left with no choice, on 27.12.2020, sent to the developer a letter demanding reply their queries, but instead of the same, the developer's office is bent upon cancelling complainants allotment and gobbling up their hard-earned money.

- n) That the complainants were constrained to serve a legal notice to the developer and the real estate agent on 05.02.2021, and through this notice complainants called upon the developer to answer their queries and adhere to the undertaking and agreements made with complainants with interest and compensation for agony faced, the same was duly replied after more than 2 months with vague assertions, and again with a threat to cancel the allotment of the unit in the name of the complainants.
- o) That the complainants, by way of the present complaint, are seeking refund since they have lost all faith in the project and the commitments made by the developer.

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

4. The complainants have sought the following relief(s):
- I. Direct the respondent to refund Rs.21,90,371/- paid by the complainants along with interest @ 18% p.a. till date.
  - II. Direct the respondent to pay Rs.2,00,000/- as cost of initiating legal recourse.
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 respondent:**

6. The respondent has contested the complaint by filing reply on the following grounds: -
- a) That the present complaint has been filed by the complainants seeking refund of Rs.21,90,371/- paid towards booking of an independent floor no. D-201/FF in Flamingo Floors, Central Park Flower Valley, Sohna, Gurugram in order to evade possession with a mala fide intention to unjustly enrich themselves.
  - b) That on receipt of the occupation certificate on 19.10.2020, respondent has already offered possession to the complainants on 17.12.2020 subject to payment of the outstanding amount and submission of necessary documents. The complainants have also been paid compensation of Rs.76,961/- towards delayed possession. However, till

date the complainants have failed to clear the outstanding amount and take possession of the independent floor.

- c) That the complainants by not taking possession are in breach of clause 7.2 of the Agreement and therefore are also liable to pay holding charges @ Rs. 5/- per sq. ft. per month of the saleable area.
- d) That the complainants at the time of booking the unit in question had opted for a possession linked payment plan (35:65), wherein the complainants were required to pay 35% of the total price within 90 days from the date of the booking and the remaining 65% at the time of offer of possession. Even, the full payment of 35% was not paid and payment of Rs. 1,42,279/- (being part of 35%) was delayed by almost 1490 days i.e. almost 4.5 years, by the complainants. It is submitted that the respondent, after completing the construction of the unit at its own cost, offered possession of the unit to the complainants on 17.12.2020. However, the complainants failed to pay the outstanding contractual amount to the respondent.
- e) That the terms and conditions set out in the BBA dated 28.03.2017 clearly provided compensation to be paid in the event of delay in handing over of the possession and the complainants after having understood the clauses had executed the agreement and therefore, the relief being claimed by the complainants did not take into account the contractual position and as such the relief claimed is not maintainable before the Hon'ble Court.
- f) Further, as per clause 7.1 read with clause 18 of the agreement, the complainants have agreed that developer shall be entitled to proportionate extension of time for completion of the said complex, if any delay is due to circumstances which are beyond the control of the company and which adversely affects ability of the company to perform its obligation under the BBA.



- g) That a bare perusal of clause 7.3 of the agreement would make it evident that in the event of respondent failing to offer possession within the proposed timelines, then in such a scenario, the respondent would pay a compensation @ SBI Base Rate + 2% for the period of delay. The respondent has also paid compensation of Rs.76,961/- towards delayed possession to the complainants at the time offer of possession.
- h) That as far as the allegation of the construction is still going on in the said project. It is to be noted that the project in question is part of Central Park Flower Valley township, which is a huge township of over 200 acres. As such, the same is being developed in parts. Insofar as the part whereunder unit in question has been developed, the said part is duly complete and habitable. It is submitted that the construction of unit is complete and there are no cracks in the walls as alleged by the complainants.
- i) That the malls or shopping complexes were not liable to be constructed by the respondent, and the respondent never promised that it will construct any malls or shopping complexes.
- j) That it is incorrect to state that discount/rebate of 2% was not adjusted or given to the complainants. A bare perusal of the application for provisional allotment executed on 17.10.2016 would prove otherwise. The basic sale price of the independent floor was Rs.5089.92 per sq. ft., and after adjusting the discount of 2%, the basic sale price for the unit in question allotted to the complainants was kept at 4985.18 per sq. ft. The respondent, as a goodwill gesture, has given a rebate of 2% on the basic sale price, which was given suo-moto, and the same was not perforce.
- k) That the respondent at the time of offer of possession has raised a demand of Rs. 4,41,533/-towards escalation charges, which is in terms clause 1.13 r/w Annexure 4 of the agreement. It is denied that the said charges are illegal. Further, the respondent has categorically informed to

the complainants in the letter offering possession that the escalation charges have been calculated for only the 30 months, i.e., up to the contracted delivery period.

- l) That the respondent in terms of the clause 1.6 of the Agreement, at the time of offer of possession has charged an amount of Rs.1,02,742/- towards excess EDC/IDC. Therefore, the allegation of the demand of extra EDC as illegal, is completely erroneous as the same has been charged in consonance with the agreement.
- m) That the parties have agreed vide clause 7.4 of the agreement that the respondent is only responsible to provide one-time basic infrastructure of water lines and electricity lines inside the colony. However, the external facilities and infrastructure outside the colony and the Central Park Flower Valley Township has to be provided by the government/municipality and its agencies such as access to main water line and electricity line. Currently, in the project of the respondent, 145 number of families are residing out and enjoying the facilities provided at the Central Park Flower Valley.
- n) That it is denied that there is no any reduction in the area, much less by 25% as alleged by the complainants. The transaction between the parties was done on the basis of super area. The super area from the very beginning was 1093 sq.ft., and the same has remained unchanged. The carpet area was mentioned in the offer of possession letter only due to advent of Real Estate (Regulation and Development) Act, 2016, however, the same does not impact the transaction between the parties, which was on super area basis.
- o) That the complainants vide legal notice dated 05.02.2021 had, inter-alia, sought possession of the unit. However, when the respondent has categorically replied on 13.04.2021, to all the allegations raised by the complainants, thereafter, the complainants vide email dated 11.09.2021

sought access to the unit/floor for the purpose of interior work and now the complainants have shifted their stand and has filed the instant complaint seeking refund of the amount paid, which is completely frivolous and liable to be dismissed. The complainants by filing the present complaint are evading payment of their remaining 65% cost of the floor price to the respondent and are taking shelter of this Hon'ble Court for their ill motive.

7. All other averments made by the complainant were denied in toto.
8. 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 oral as well as written submissions made by the parties.

**E. Jurisdiction of the authority:**

9. The plea of the respondents regarding lack of jurisdiction of Authority is rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for 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 the entire Gurugram District for all purposes 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 the 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 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 with 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, given 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.

13. 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. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs 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."*

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainant.**

**F.I Direct the respondent to refund Rs.21,90,371/- paid by the complainants along with interest @ 18% p.a. till date.**

15. The complainants were allotted unit no. D-201 in Block-D, first floor in the project "Central Park Flower Valley" situated at Sector-29, 30 and 32, Sohna, Gurugram by the respondent-promoter at a basic sale consideration of Rs.54,48,800/-. Thereafter, a builder buyer agreement dated 28.03.2017 was executed between the parties. As per Clause 7.1 of the agreement, the possession of the unit was to be offered within a period of 24 months from the date of execution of the agreement along with an unqualified grace period of further 6 months. Thus, the respondent was under a contractual obligation to deliver the possession of the unit by 28.09.2019, which has not been adhered to by the respondent.

16. The complainants have paid an amount of Rs.21,90,371/- against the basic sale consideration of Rs.54,48,800/-. The occupation certificate was received on 19.10.2020 and thereafter possession of the unit was offered on 17.12.2020. However, the complainant has surrendered the unit by filing the present complaint on 10.02.2021 i.e., post offer of possession after receipt of occupation certificate. Therefore, in this case, refund can only be granted after certain deductions. Though, it is contended on behalf of respondents that they are liable to forfeit amount towards earnest money, statutory taxes, brokerage etc. However, the Authority is of view that the respondents cannot not retain more than 10% of the sale consideration and is bound to return



the remaining. Even the Hon'ble Apex court of the land in cases of ***Maula Bux Vs. Union of India (1973) 1 SCR 928, Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136***, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as ***Jayant Singhal and Anr. Vs. M/s M3M India Ltd.*** decided on 26.07.2022 took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder and as such, there is hardly any actual damage. So, it was held that 10% of the sale price is reasonable amount to be forfeited in the name of earnest money. Thus, keeping in view the principles laid down by the Hon'ble Apex court in the above mentioned two cases, the rules with regard to forfeiture of earnest money were framed by the authority known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, providing as under:

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

17. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondents-promoter is directed to refund the amount paid by the complainants after deducting 10% of the sale consideration i.e., Rs.54,48,800/- being earnest money along with an interest @11% (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 on the refundable amount, from the date of surrender/withdrawal i.e., 10.02.2021 till actual refund of the amount after adjusting the amount/pre-handover amount paid by respondents, if any within the timelines provided in Rule 16 of the Haryana Rules, 2017 *ibid*.

**F.II Direct the respondent to pay Rs.2,00,000/- as cost of initiating legal recourse.**

18. 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.* 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.

**H. Directions of the Authority:**

19. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

I. The respondent-promoter is directed to refund the amount paid by the complainants after deducting 10% of the sale consideration i.e., Rs.54,48,800/- being earnest money along with an interest @11% (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 on the refundable amount, from the date of surrender/withdrawal i.e., 10.02.2021 till actual

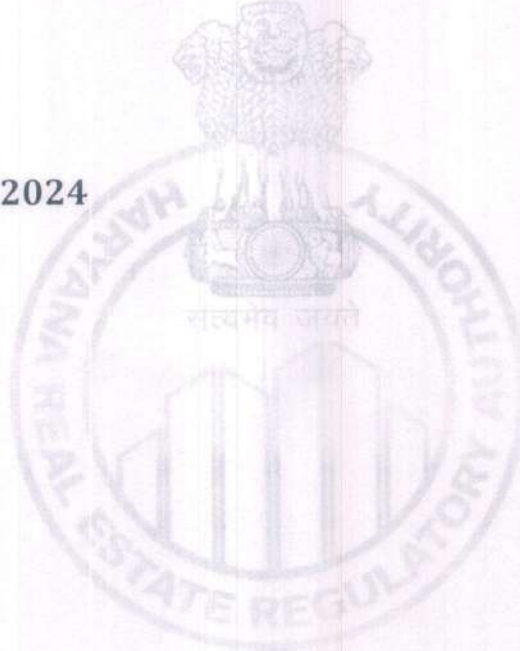
refund of the amount after adjusting the amount/pre-handover amount paid by respondents, if any within the timelines provided in Rule 16 of the Haryana Rules, 2017 *ibid*.

II. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.

20. The complaint stands disposed of.

21. File be consigned to the registry.

**Dated: 29.05.2024**



**Ashok Sangwan**  
(Member)  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
**GURUGRAM**