

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

Complaint no. : 2940 of 2024
Date of complaint : 28.06.2024
Date of Decision : 18.04.2025

Sangeeta Arora
R/o: W-119, 2nd Floor, Uppal Southend, Sohna
Road, Gurugram-122018.

Complainant

Versus

RMG Developers Pvt. Ltd.
Office at: Unit no. SF-05, 2nd Floor, Ninex City
Mart, Sohna Road, Sector-49, Gurugram-122018.

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Shri Jyoti Sawroop (Advocate)
Shri Lokesh (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"RMG Residency" in Sector 37C, Gurgaon.
2.	Nature of the project	Affordable Group Housing
3.	Rera registered or not	206 of 2017 dated 15.09.2017 valid upto 31.12.2019
4.	DTCP License no.	12 of 2015 dated 12.10.2015
5.	Allotment letter	02.06.2016 (page no. 40 of complaint)
6.	Unit no.	708, Type-III, 2BHK, 7 th floor, tower 1, Block F (Page no. 40 of complaint)
7.	Unit admeasuring	618.798 sq. ft. (Page no. 40 of complaint)
8.	Environment clearance	31.01.2017 (page no. 53 of complaint)
9.	Approval of building plans	21.12.2015 (Page no. 32 of complaint)
10.	Possession clause	4 years from the date of approval of building plans or environment clearance, whichever is later.



11.	Due date of delivery of possession	31.01.2021 + 6 months grace period =31.07.2021
12.	Total sale consideration	Rs. 25,15,504/- (as per allotment letter at page no. 40 of complaint)
13.	Total amount paid by the complainant	Rs. 23,23,876/- (as per SOA at page no. 05 of reply)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not Offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- That the complainant is an allottee of 2 BHK apartment no. 708, unit type 3 (2 BHK), tower-1, block F in "RMG Residency", an affordable housing project launched by respondent under affordable housing policy-2013 ("AHP") of Haryana Government.
 - That the complainant booked one 2 BHK apartment with carpet area of 618.798 sq.ft. @ Rs.4,000/- per sq. ft. and balcony area of 80.623 sq. ft. @ Rs.500/- per sq. ft. by signing a registration form for allotment and paid a booking amount of Rs.1,30,335/-.
 - That the complainant has made payment of various instalments from time to time and has paid a total payment of Rs.23,23,876/- by 03.02.2020 which is more than 87% of the cost of apartment.
 - That as per clause 5(iii)(b) of affordable housing policy, the possession of the apartment was to be offered within a period of 4 years from the date of approval of building plans or grant of environmental clearance



("commencement date") whichever is later. The building plans were approved on 21.12.2015 and the environmental clearance was granted by State Environment Impact Assessment Authority, Haryana on 31.01.2017. Accordingly, the commencement date of the project was 31.01.2017 and the possession was to be offered latest by 30.01.2021.

- V. That the respondent is yet to get the occupation certificate ("OC") for this project as it has failed to take appropriate action on various objections raised by the Department of Town and Country Planning, Haryana vide its letter Memo No. LC-3031/JE(S)/2023/13678 dated 09.05.2023 and has accordingly, failed to offer the possession of the apartment to the complainant, till date.
- VI. An inspection of ROC file at Ministry of Corporate Affairs portal in 2023 revealed that while respondent took a loan of Rs.35 crores from Kautilya Finance BV of Netherlands ("Lender") for construction of the project during July 2017 by issuing 35 debentures of Rs.1 crore each in favour of Kautilya Finance BV ("Lender") and hypothecated and mortgaged entire project including land, construction thereon and all its entitlements of the project [*in violation of Section 15(1) of RERA which restraints promoters from transferring or assigning his majority rights and liabilities in a real estate project to a third party without obtaining prior written consent of two third allottees' and without the prior written approval of HRERA*] in favour of debenture trustee M/s Vistra ITCL (India) Limited (a copy of Deed of hypothecation and a copy of Debenture Trustee appointment agreement both dated 11.07.2017. It simultaneously diverted/siphoned off an amount of Rs.24.92 crores by giving loans to related parties in violation of Section



185 & 186(7) of Companies Act during the financial year 2017-18, and the Auditor has qualified the same in its Audit Report dated 03.09.2018.

- VII. The respondent after having siphoned off Rs.68.53 crores in blatant violation of applicable laws as detailed above, has brazenly reported to National Anti-Profiteering Authority (GST) at point 3 of its reply dated 16th June 2022 (page no. 208 of the complaint) that it is in severe financial stress and on the verge of collapse but pretended to trying to protect the interests of allottees of the project by admittedly having given possession to 400 allottees without having obtained OC.
- VIII. Section 15(1) of RERA provides that "the promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoters, and without the prior written approval of the Authority.
- IX. That respondent has transferred/assigned all his rights in the project including the project land and all buildings constructed or to be constructed thereon and the development right of the project and all its right on the project land etc. in favour of M/s Vistra ITCL (India) Limited without obtaining the prior written consent from two-third allottees and without the prior written approval of the Authority thereby violating Section 15(1) of RERA.
- X. In view of the Respondent having violated the provisions of Section 15(1) of RERA, this Hon'ble Authority may please declare assignment of all the rights in the project including the project land and all buildings constructed or to be constructed thereon and the development right of the project and all its right on the project land





etc. by Respondent in favour of M/s Vistra ITCL (India) Limited illegal and therefore, unenforceable against the complainant.

- XI. The Hon'ble Authority has also issued various show cause notices/orders to respondent vide its orders dated 31.05.2022, 01.06.2022, and 03.06.2022 about various violations of RERA and its regulations but respondent appears to have failed to comply with these directions/orders.
- XII. The Hon'ble Authority may please note that above actions of respondent {diversion of funds, license and building plans having expired, creating third party interests in the project land and all buildings constructed thereon in violation of Section 15(1) of RERA, delay in obtaining OC, etc.} have jeopardized the interests of the complainant.
- XIII. After admittedly having siphoned off Rs.68.53 crores of the home buyers' funds, respondent claims that it has no funds to pay back input credit tax of Rs. 8,42,24,980/- illegally recovered from the buyers and pay the fees and dues of DTCP for obtaining OC and getting proper electricity, water and sewage connection and maintaining the project, etc.
- XIV. The Hon'ble Authority would agree that if siphoned off funds of Rs.68.53 crores are restored back in the respondent company, these funds shall be used to meet the legal obligations of the respondent including payment of license fee/interest/penalty for obtaining OC, payment of input tax credit to home buyers, payment of compensation awarded by HRERA, payment of compounding fee/penalty, etc.

C. Relief sought by the complainant:

4. The complainant sought following relief(s).





- i. To order forensic audit of the respondent for its admitted diversion of Rs. 68.53/- crores so as to restore back this home buyers fund in the company to enable it to discharge its legal obligations of obtaining OC/electricity connection, payment of input tax credit to home buyers as concluded/investigated by Director General of National Anti-Profiteering Authority, maintenance of the project and payment of delayed possession charges.
 - ii. Direct the respondent to obtain OC and make valid offer of possession to the complainant.
 - iii. Direct the respondent to grant interest for the delay in offering possession by the respondent with effect from 31.01.2021 till the date of valid offer of possession.
 - iv. Declare assignment of all rights in the project including the project land and all buildings constructed or to be constructed thereon and the development right of the project and all its right on the project land etc. by the respondent in favour of debenture trustee illegal as requisite statutory prior written consent from two- third allottees as well as prior written approval of this Hon'ble Authority has not been obtained under Section 15(1) of RERA.
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 vide reply dated 19.05.2023 contested the complaint on the following grounds: -
- I. That the complainant had not come before this Hon'ble authority with clean hands and have not stated that true facts in the complaint filed. The present complaint is filed after concealing the true facts and information, with an intention to harass the respondent and want to extort money from the respondent.

- II. That the respondent had completed the major part of the construction and development of the project by the year 2021. Due to the covid-19 pandemic and subsequent lock down imposed by the Government all activities most specifically construction related were banned w.e.f. from march 2020 till October 2020.
- III. Thereafter, the respondent company further lost precious time for completion of the project due to ban on construction activities in month of October to December for two years i.e. 2019-2020 by the Hon'ble NGT to control worsening air pollution. Thus the respondent lost about 18 months of valuable time to complete its obligation with regards to the license granted by D.T.C.P for development and construction of the affordable group housing colony, resulting in the respondent company to deposit more than Rs. Four Crores to the office of D.T.C.P for renewal of the license beyond the period of four years.
- IV. That M/s RMG Developers Private Limited is 100% subsidiary company of M/s Ninex Developers Limited was subject to C.I.R.P proceedings under the I.B.C Code, 2016 from 25.07.2019 till 15.02.2024 pursuant to the orders of honorable NCLT Court. During this period the promoters of RMG developers were badly entangled in various legal matters.
- V. That, at this point of time the home buyers/allotees of the project developed by the RMG developers had lost patience and started pressing hard for handing over the possession to the respondent company. Due to this coercive attitude of the home buyers the respondent was compelled to hand over the possession to over 500 homebuyers without obtaining the occupation certificate from the



competent authority, needless to mention was always willing to pay the compounding charges for handing over of possession with obtaining the occupation certificate for the project.

- VI. That the forensic audit sought by the complainant for the respondent company has already been order Hon'ble Authority vide order dated 05.02.2024. Forensic auditor has already been appointed who has been conducting the audit of the books of accounts and other related documents of the respondent company. The respondent has been fully cooperating with the auditors who has almost concluded audit and would be filing its report before Hon'ble Authority shortly.
- VII. That the respondent company has already applied for grant occupancy certificate more than one year ago, and the same is pending consideration in the office D.T.C.P, Haryana. The office of the D.T.C.P highlighted certain financial deficiencies which have been duly completed. The permanent connection for electricity and water is already operational at site. The respondent had to deposit about Rs. 4 crores towards license renewal fees which was FOUR TIMES more than the normal fee, the unreasonable fee demanded by D.T.C.P without giving consideration for covid-19 pandemic and ban by N.G.T was challenged by the respondent before the Hon'ble Court of Punjab and Haryana which is pending for consideration, and the DEPARTMENT considered our request and there would have been no need to renew the license since we would have availed moratorium for 18 months for covid 19 and NGT ban the said fees was deposited to renew the license which is a precondition to obtain occupancy certificate.

VIII. That the complainant as per order by the Hon'ble authority dated 13.10.2021 first had to pay the outstanding dues to the respondent thereafter, the complainant was legally eligible to receive the delayed possession charges. Hence the complainant is liable to pay the amount of Rs. 8,83,913/- to the respondent RMG DEVELOPERS PVT. LTD. and the respondent is liable to pay an amount of Rs. 8,56,192/- as calculated till date towards delayed possession charges to the complainant.

IX. Thus, the complainant is liable to pay an amount of Rs. 27,721/- in terms of the order of the Hon'ble authority dated 13.10.2021.

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 those undisputed documents and submissions made by the complainant.

E. Jurisdiction of the authority

7. The respondent in its reply has raised an objection that the Authority has no jurisdiction to adjudicate the matter. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

9. 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:

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.

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 the objections raised by respondent:

F.I Objection regarding force majeure conditions:

11. The respondent-promoter pleaded that the completion of the construction of the project was delayed due to Covid-19 as there was no labourers, contractors etc. for the construction of the project due to complete lockdown. The Government of India ordered a complete lockdown in the entire country. The Authority is of the view that due to Covid 19, there was complete lockdown for a number of days resulting in the labour moving to their native places and the construction activities coming to a standstill. **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 allotted to the complainant is 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 31.07.2021.

G. Findings on the relief sought by the complainant.

- i. **Direct the respondent to obtain OC and make valid offer of possession to the complainant.**
 - ii. **Direct the respondent to grant interest for the delay in offering possession by the respondent with effect from 31.01.2021 till the date of valid offer of possession.**
12. In the present complaint, the complainant intends 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, till the handing over of the possession, at such rate as may be prescribed."***

12. Clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:

1 (iv)

"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental

clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy."

13. **Due date of handing over of possession:** As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.* The respondent has obtained building plan approval and environment clearance in respect of the said project on 21.12.2015 and 31.01.2017 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later which comes out to be 31.01.2021 plus grace period of 6 months due to covid-19 which comes out to be 31.07.2021.

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., 18.04.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

17. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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 delayed payments from the complainant shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to him in case of delay possession charges.

13. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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. By virtue of clause 1(iv) of the Affordable Housing Policy, 2013, the possession of the subject unit was to be delivered within stipulated time i.e., by 31.07.2021 including the grace period of 6 months due to covid 19. However, till date no occupation certificate has been received by respondent and neither possession has been handed over to the allottee till date.

14. The complainant is also seeking relief of possession. It is observed that the occupation certificate/part occupation certificate or completion certificate/part completion certificate has not been obtained by the respondent so far from the competent authority. The respondent is directed to offer the possession of the allotted unit in strict compliance of section 11(4)(b) of the Act after obtaining the completion certificate or occupation certificate from the relevant competent authority. Further, the complainant is also directed to take the possession of the allotted unit in compliance of obligation conferred upon them under section 19(10) of Act within two months of the occupation certificate after payment of such outstanding dues.
15. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer possession of the allotted unit to the complainant. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period.
16. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay on the amount paid by the complainant from the due date of possession i.e., 31.07.2021 till



the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

17. Furthermore, the respondent, in its reply, has erroneously contended that vide order dated 13.10.2021, the Authority directed the complainant to pay the outstanding dues. However, it is pertinent to note that the present complaint is a fresh and independent complaint, and no such order has ever been passed in these proceedings. The orders dated 13.10.2021 were passed in complaint cases bearing no. CR/5013/2020 and CR/5011/2020, which pertain to different allottees and have no bearing or relevance to the present matter.
- iii. **To order forensic audit of the respondent for its admitted diversion of Rs. 68.53/- crores so as to restore back this home buyers fund in the company to enable it to discharge its legal obligations of obtaining OC/electricity connection, payment of input tax credit to home buyers as concluded/investigated by Director General of National Anti-Profiteering Authority, maintenance of the project and payment of delayed possession charges.**
18. The complainant is seeking forensic audit of the project. It is pertinent to note that the Authority has already directed the conduct of a forensic audit in the same project vide order dated 07.02.2024 passed in complaint no. 779/2023. Therefore, no order is required to be passed in this regard.
- iv. **Declare assignment of all rights in the project including the project land and all buildings constructed or to be constructed thereon and the development right of the project and all its right on the project land etc. by the respondent in favour of debenture trustee illegal as requisite statutory prior written consent from**



two- third allottees as well as prior written approval of this Hon'ble Authority has not been obtained under Section 15(1) of RERA.

19. It is observed that the complainant has neither pressed for the said relief during the course of the proceedings nor placed any material document on record in support thereof. In view of the aforesaid, no finding is being rendered by this Authority on this aspect.

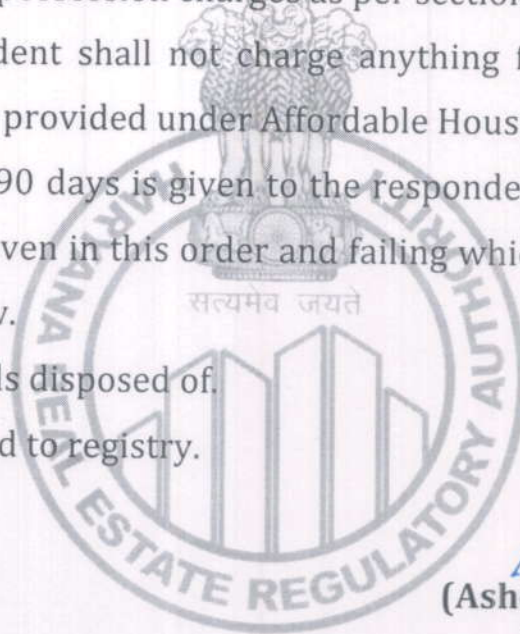
H. Directions of the authority

20. 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):

- i. The respondent is directed to pay delay possession charges at prescribed rate i.e., 11.10% p.a. for every month of delay on the amount paid by the complainant from the due date of possession i.e., 31.07.2021 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the completion certificate or occupation certificate from the competent authority.
- iii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and

thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.

- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 11.10% by the respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.
 - v. The respondent shall not charge anything from the complainant which is not provided under Affordable Housing Policy, 2013.
 - vi. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
21. Complaint stands disposed of.
22. File be consigned to registry.



(Ashok Sangwan)

Member

Haryana Real Estate Regulatory
Authority, Gurugram

Dated: 18.04.2025

HARERA
GURUGRAM