



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

Complaint filed on:

27.04.2023

Order Pronounced on:

16.10.2025

1. Deepa Chaudhary

2. Lt. Colonel Anil Kumar

Both R/o: B-46, Darshanam Splendora, Vasna Bhayli

Road Vadodra, Gujarat-391410

Complainants

Versus

M/s Ashiana Landcraft Reality Pvt.Ltd

Regd. Office: 8th floor, Vatika Towers, Block B, Golf

Course Road, Sector 54, Gurugram, Haryana

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Gaurav Gupta (Advocate) Shri Pramod Sharma (Advocate)

Complainants 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 to the allottee as per the agreement for sale executed inter se them.
- 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:

S. No.	Particulars	Details
1.	Name and location of the project	"The Centre Court", Sector-88A Gurgaon
2.	Nature of the project	Residential Township
3.	Project area	14.025 acres
4.	RERA Registered/ not registered	
5.	Unit no.	T5/A-2118 (As per page no. 32 of complaint)
6.	Unit area admeasuring	1565 sq. ft (As per page 12 of reply)
7.	Expression of Interest dated	18.06.2013 (Page 12 of reply)
8.	Application form dated	22.04.2014 (Page 20 of reply)
9.	Date of buyer's agreement	Not executed
10.	Reminder for execution of allotment and buyer's agreement	02.01.2015, 20.07.2015 (Page 31 of reply and page 32 of complaint respectively)
10.		6.1 The Company, based on its present plans and estimates and subject to Force Majeure, and all just exceptions and conditions beyond control of the Company and the Allottee making timely payments, shall endeavour to complete the construction of the said Apartment/Building thereof within a period of 42 (forty-two) months from the date of Agreement and a grace period of 6 months and shall thereafter apply for grant of Occupancy Certificate and on receipt of the same will offer the possession of the Apartment to the Applicant, The Company may complete the said Project in part and obtain part Occupation and/or Completion Certificate for the same as the Company may deem fit. The date of making an application to the Competent Authority for issue of Occupation and/or Completion Certificate



		for the Building in which said Apartment is located (in full or in part for certain Buildings only) shall be treated as the date of Completion of Construction of the Project or the part thereof (Completion Date). The Applicant confirms and gives his specific consent to the same and shall not raise any objection in this regard.  (Page 25 of complaint)
11.	Due date of possession	22.04.2018 Calculated 3 years from the date of application form in absence of allotment letter / buyer's agreement.
12.	Total Sale consideration	Rs. 89,72,145/- Rs.1,00,76,355/- (including taxes) (As per page 20 of the complaint)
13.	Amount paid by the complainant	Rs.18,60,966/- (As per page 17-21 of the complaint)
13.	Reminders/ demand letters	16.09.2014, 08.01.2015, 20.05.2015 25.07.2015, 17.08.2015, 30.10.2015 23.11.2015, 16.03.2016, 18.04.2016 17.05.2016, 30.05.2016, 15.06.2016 14.12.2016, 13.01.2017, 18.03.2017
14.	Final reminder dated for execution of BBA	23.07.2017 (Page no 84 of reply)
15.	Cancellation letter dated	19.10.2019 (Page no 86 of reply)
16.	Third-party rights created on	09.10.2024 (As per page 88 of reply)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

# B. Facts of the complaint

- 3. The complainants have made the following submissions:
  - a. The respondent who was desirous to start a new residential project had approached the complainants through its authorized representatives to persuade the complainants into purchasing a flat in their so-called upcoming project.

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- b. That believing on their commitments, the complainants paid advance amount of Rs.5,00,000/- through cheque bearing No.875437 dated 18.06.2013 to take a Flat in the upcoming new project of the respondent namely "The Centre Court" situated at Sector-88A, Gurgaon, Haryana.
- c. The complainants again paid advance amount of Rs.3,31,285/through cheque bearing no.875441 drawn upon HDFC bank dated 27.07.2013 but the receipts of both the payments could only be issued on 28.02.2014 by the respondent.
- d. The respondent got signed the application form dated 22.04.2014 and complainants further made a payment of Rs. 10,29,681/- as advance payment through cheque bearing No.0000001 drawn upon HDFC Bank dated 22.04.2014 to which respondent issued a receipt dated 24.04.2014.
- e. The respondent was not keen to start the construction within the time frame; hence the complainants approached the respondent for refund of the amount along with interest & compensation but respondent did not bother to pay. With ulterior motives, respondent issued reminder letter dated 20.07.2015 for execution of allotment & apartment buyer agreement to the complainants without even starting excavation on the said project knowing fully well that there is an inordinate delay in the said project and therefore complainants were no more interested in continuing with the said project.





- f. That time and again, complainants through various calls & visits have approached the respondent for the refund of booking amount with interest, to which complainant received no response.
- g. No agreement was ever executed between the complainants and the respondent. The respondent has issued due payment reminder dated 16.03.2016 knowing fully well that complainants are not interest in the project due to inordinate delay in the project.
- h. The flat bearing no. T5/A-2118, The Center Court, Sector 88A, Gurgaon, was further allotted to one Mrs. Mansi Bhagi Singh on 09.10.2024 for a basic cost of Rs.1,75,28,000/- whereas it was given to the complainants for a basic price of Rs.89,72,145/-. Meaning thereby that respondent did not suffer any loss rather have earned profit from the said flat.
- i. From 2013 till this date, more than 12 years have been elapsed, but till date the project is not complete, the complainants have opted for construction-link plan, hence the respondent just cannot issue demand letters until the time it reached to a particular level of development
- j. The complainants on several occasions visited the office of the respondent at their Gurgaon office with a request of cancellation and refund of amounts paid along with interest in accordance with HRERA notified rate of interest but they were threatened with the dire consequences and forfeiture of the amounts paid by the complainants till date, which is Rs.18,60,966/-, hence this complaint.

C. Relief sought by the complainants:





- The complainant has sought following relief(s):
  - Direct the respondent to refund the amount of Rs.18,60,966/- along with compounding interest @ 24% computed from the date of payment and compensation.
- 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:

- The respondent has made the following submissions:
  - a. The said project was under development, certain financial difficulties arose in that company, due to which one of the creditors of the Company approached the Hon'ble National Company Law Tribunal, Kolkata on 05.03.2020 by filing a Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 and praying that Corporate Insolvency Resolution Process be commenced against the Company.
  - b. The Hon'ble NCLT allowed the said Petition vide its order dated 11.01.2022 and admitted the Company into CIRP. In the said CIRP, various Resolution Applicants willing to rescue the Company from insolvency and take over its affairs submitted their Resolution Plans.
  - c. Finally, on 12.08.2022 the resolution plan submitted by IV County Pvt. Ltd. was approved by the committee of creditors. Thereafter, the said resolution plan was further approved by the Hon'ble NCLT Kolkata vide its order dated 11.08.2023. Resultantly, w.e.f 11.08.2023, the management of the Company was taken over by a wholly new management put in place by IV County Pvt. Ltd., the Successful





Resolution Applicant. The present promoters had formally takeover the management of the said promoter company / project w.e.f. 03.10.2023.

- d. The present complainant is not maintainable as there is no builder buyer agreement has been signed between the parties and even the allotment letter has not been issued in favor of the complainant. Therefore, the complainant herein is not the bonafide allottee at all, Hence the present complaint is liable to be dismiss.
- e. The present complaint is barred by the period of limitation as the respondent has sent the cancellation notice on 19.10.2019 and the complainant has filed the present complaint in 2023. Therefore, the present complaint is liable to be rejected on this ground alone.
- f. The complainant approached the respondent and show her expression of interest in the project "The Center Court" situated in Sector-88A, Village Harsaru, Gurugram being developed by Ashiana Landcraft Realty Pvt. Ltd. by depositing of Rs. 5,00,000/- and Rs. 3,31,285/- vide cheque bearing no. 875437 and 875441 dated 18.06.2013 and 27.07.2013.
- g. Thereafter, based on the above EOI the respondent issued a letter dated 22.03.2014. Through the said letter the complainant was informed that the project has received all the approvals/NOCs from the concerned departments and asked her to choose the apartment and also a priority number 164 had been given to the complainant, it is pertinent to mention here it was informed to the complainant that the provisional allotment shall be issued upon receipt of 20% of BSP



therefore the complainant was requested to deposit the balance amount of Rs. 10,29,681/-.

- h. The complainant thereafter applied for a residential apartment vide application dated 22.04.2014 and deposited an amount of Rs. 10,29,681/-. The total sale consideration of the flat under sale has been agreed at Rs. 1,09,77,355/-.
- i. At the time of application for the residential unit it was informed to the complainant that the applicant i.e. complainant herein have to sign the builder buyer agreement when called upon to do so by the company and return all the copies duly signed and executed to the company within 30 days from the date of dispatch, failing which the application for allotment is liable to be cancelled/terminated at the sole discretion of the company. It was also informed to the complainant that in event of such cancellation earnest money, brokerage and taxation shall be forfeited and the applicant/complainant shall be left with no right, interest, claim in the said application/allotment.
- j. As per terms of the application form the applicant/complainant had to come to the office of the respondent company to sign the allotment letter/builder buyer agreement and initiate the allotment process. However, the complainant had not approached the respondent company, the respondent company time and again had requested the complainant to complete the allotment formalities.
- k. When the complainant had not come to the office of the respondent, the respondent as gesture of goodwill, despite having the opportunity

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to reject the application of the complainant and forfeit the earnest money, had sent two copies of the builder buyer agreement through speed post vide letter dated 24.09.2014. The respondent company through the said letter had requested the complainant to return the signed copy within 30 days for further processing.

- I. However, the complainant had not returned the signed copy of the builder buyer agreement for further process, therefore the process for the allotment of the unit had not been started. The respondent company had sent numerous reminders to the complainant and time and again requested the complainant to return the signed copy.
- m. On the one hand the complainant had not returned the signed copies of the BBA and on the other hand the complainant had not deposited single penny after the payment deposited by her during application form. The respondent company had sent several demand letters/ reminders and asked him to deposit the installments. It is pertinent to mention here that the complainant had deposited the last payment on 24.04.2014 of Rs. 10,29,681/-, the total amount which the complainant had deposited was Rs. 18,60,966/-.
- n. The complainant had paid no heed to the demand letters and several requests to sign the BBA, the respondent as goodwill gesture vide its letter dated 23.07.2017 had sent a final reminder for execution of allotment and builder buyer agreement. It is pertinent to mention here that through the said letter it is also reiterated once again by the respondent that in case of non-compliance of sending back the signed copies and clearing the outstanding the respondent will be



constrained to proceed as per clause 1.9 and 2.19 of the application form signed by the complainant.

- o. As the complainant had not signed the builder buyer agreement therefore by just forwarding the agreement to the allottee/complainant by the respondent/promoter does not create binding obligation on the part of the respondent or the complainant. It is well settled principle that until the allottee does not sign the builder buyer agreement and does not make the payment due as stipulated in the payment plan, it does not create any binding effect on the parties.
- p. As the complainant has failed to make the payments of above said several consecutive demands/reminders and violates the section 19(6) & (7) of RERA Act, 2016, hence falls under the category of the default. Therefore, the respondent had cancelled the booking of the unit by letter dated 19.10.2019. It is pertinent to mention here that as promoter/respondent herein has right [as per the format of Agreement for Sale annexed as Annexure-A of Rule 8 (1) of Haryana Real Estate (Regulation and Development) Rules, 2017] to forfeit the booking amount paid for the allotment and also interest component on delayed payment, therefore after deducting of the said amount nothing remains pending to return to the complainant.
- q. After cancellation of the booking the respondent had allotted the said unit in favor of Mrs. Mansi Bhagi Singh. It is apparent as per the above said provisions that the present complaint is not maintainable and liable to be dismissed



## E. Jurisdiction of the Authority

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

## E. I Territorial jurisdiction

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 completed 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

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decided by the adjudicating officer if pursued by the complainant at a later stage.

11. 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."

- 12. 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 objections raised by the respondent
  - F.I Objection regarding the compliant is barred by limitation
  - 13. The respondent-promoter raised a contention that the present complaint is barred by limitation as the respondent has sent the cancellation notice

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on 19.10.2019 and the complainant has filed the present complaint in the year 2023. As far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

- 14. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020 have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
- 15. In the present matter, the cause of action arose on 19.10.2019, when the respondent terminated the unit. The complainant subsequently filed the present complaint on 21.04.2023 i.e., after a period of 3 years, 6 months, and 2 days from the date of the cause of action. Notably, the period from 15.03.2020 to 28.02.2022, is to be excluded from this calculation. In light of these considerations, the Authority finds that the present complaint has been filed within a reasonable time frame and is therefore not barred by the statute of limitations.
- G. Findings on the relief sought by the complainant





- G. I Direct the respondent to refund the amount of Rs. 18,60,966/- along with compounding interest @ 24% computed from the date of payment.
- 16. The complainants were allotted a unit in the project of respondent "The Centre Court" at sector 88 A, Gurgaon vide application form dated 24.04.2014 for a total sum of Rs. 1,00,76,355/-. The complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 18,60,966/-. The respondent has neither issued the allotment letter in favor of complainant nor buyer's agreement was executed between the parties. The complainant intend to withdraw from the project and are seeking refund of the paid-up amount as provided under the 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. —

 (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand of the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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."

17.Furthermore, the respondent, in its reply, has submitted that the allotment of the unit in question was cancelled on account of non-payment of dues by the complainant, despite issuance of multiple reminders. It was further contended by the respondent that a total amount of Rs.18,60,966/- has been paid by the complainant till date, which constitutes 18% of the total sale consideration. The respondent has argued that in view of the said cancellation, and after deduction of the earnest money, no amount remains refundable to the complainant.





- 18. The complainants, in the present matter, have contended that as per clause 6 of the Expression of Interest (EOI) dated 18.06.2013, the respondent-promoter was under an obligation to issue an allotment letter in favour of the complainants. However, the respondent failed to issue allotment letter of the said unit within one year from the date of booking. It has further been submitted that no reminder or demand letter was ever received by the complainants from the respondent with respect to the said allotment. The clause 6 of EOI is reproduced below for ready reference:
  - 6. "I/WE agree in the event allotment is not made within 12 months for any reason whatsoever, the Company shall be liable to refund the amount paid by the me/us under this EOI along with interest at the rate of 12% per annum for the period from date of payment of the said amount till refund thereof".
- 19.Upon perusal of the documents placed on record and careful consideration of the aforesaid clause, the Authority is of the view that the respondent-promoter has failed to adhere to the terms and conditions stipulated in the Expression of Interest dated 18.06.2013. The promoter was obligated to issue the allotment letter in favour of the complainants within one year of booking, which was not complied with. Further, the respondent-promoter did not refund the booking amount upon non-issuing the allotment letter of the said unit. Accordingly, the complainants have sought refund of the amount deposited by them along with applicable interest, as per the provisions of the Real Estate (Regulation and Development) Act, 2016.
- 20. Admissibility of refund at prescribed rate of interest: The complainant is seeking refund of amount at the prescribed rate of interest on the amount already paid by them. However, allottees intends to withdraw from the project and is seeking refund of the amount paid by him in respect





of the subject unit with interest at prescribed rate as provided 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]
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%:

- 21. 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.
- 22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rule, 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.
- 23.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., 16.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
- 24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default.
- 25. Upon perusal of the case record, it was observed that the present matter had been listed for hearing on 22.05.2025. On the said date, arguments were duly heard and the matter was disposed of. However, during the preparation of the detailed order, it came to the notice of the Authority that M/s Ashiana Landcraft Realty Pvt. Ltd. had undergone an insolvency process and the company had been taken over by a new management





entity, namely M/s Perfect Megastructure Pvt. Ltd. In view of these developments, the Authority deemed it appropriate to initiate *suo motu* rehearing of the matter for the limited purpose of determining and clarifying the entity upon which the liability in the present case legally rests.

- 26. The respondent has placed on record an application dated 18.09.2025, clarifying the status and liability of the company's management. Through the said application, it has been stated that, in law, M/s Ashiana Realty Pvt. Ltd. continues to exist as the same corporate entity, and only its management has undergone a change pursuant to the approved insolvency resolution plan. It has further been clarified that the Resolution Plan submitted by IV County Pvt. Ltd. was approved by the Hon'ble NCLT, Kolkata vide order dated 11.08.2023, and that the occupation certificate dated 12.08.2025 has been obtained by the respondent company, i.e., M/s Ashiana Realty Pvt. Ltd. itself
- 27.In view of the above-noted facts and circumstances, the Authority is satisfied that the liability in the present matter squarely rests upon M/s Ashiana Realty Pvt. Ltd. Accordingly, the respondent company is held liable to refund the amount received by it i.e., Rs. 18,60,966/- with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

### H. Directions of the Authority

28. 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):

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- a. The respondent is directed to refund the entire paid-up amount of Rs. 18,60,966/- to the complainants along with prescribed rate of interest @ 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
- b. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
- 29. Complaint stands disposed of.
- File be consigned to registry.

(Phool Singh Saini) Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 16.10.2025

HARERA