



Complaint No. 1102 of 2024

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint No.:	1102 of 2024
Date of Filing:	03.09.2024
First Date of Hearing:	15.10.2024
Date of Decision:	05.12.2025

Shaveta Mahajan
W/o Sh. Vinod Kumar Gautam
R/o Near Telephone Exchange Jassur, Tehsil
Nurpur, Jasur Khas (46), Jassur, Kangra,
Himachal Pradesh-176201

.....COMPLAINANT

VERSUS

Konark Rajhans Estates Pvt. Ltd. through its Director
Village Kot, Sector-14, Panchkula Extension-II,
District Panchkula, Haryana

.....RESPONDENT

Coram: Sh. Chander Shekhar Member

Hearing: 5th

Present: Mr. Arjun Kundra, Advocate, for the Complainant.
Mr. Viren Sibal, Advocate, for the Respondent through
VC.

ORDER:

Present complaint was filed on 03.09.2024 by the complainant
under Section 31 of The Real Estate (Regulation and Development) Act, 2016

(for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

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

Sr. No.	Particulars	Details
1.	Name of the project	Asha Panchkula, Sector-14, Panchkula Extension-II
2.	Nature of the project	Residential
3.	RERA Registered/not Registered	Registered vide Registration No. 173 of 2017 dated 29.08.2017
4.	Details of Unit	Apartment No. B-0809, 8th Floor, Type 2 BHK (corner unit or park facing unit) measuring 1110 sq. ft.
5.	Date of allotment	Provisional allotment letter dated 27.05.2016
6.	Date of Apartment Buyer Agreement	08.08.2016
7.	Possession clause in BBA (Clause 9)	<i>"the company based on the present plans and estimates contemplates to offer possession of the said apartment to the apartment allottee within a period of 36 months from the</i>

		<i>receipt of the first instalment against allotment of the said apartment plus a grace period of 6 months unless there shall be delay or failure due to Force Majeure conditions and due to failure of apartment allottee(s) to pay in time the total sale price and other charges and dues/payments...” Note: The first installment was made on 14.06.2016 as per receipt attached with the complaint.</i>
8.	Due Date of possession	14.06.2019
9.	Total Sale Consideration	₹24,69,800/- (Basic Sale Price- ₹17,99,310/-)
10.	Amount Paid by the Complainant	₹23,36,962/-
11.	Whether occupation certificate received or not.	Not Obtained
12.	Handing over possession/Possession certificate	Possession not offered

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT:

3. The complainant made a booking application on 24.02.2016 and upon the payment of the booking amount of ₹1,88,028/-, she was issued a provisional allotment letter dated 27.05.2016 of a 2 BHK Apartment (corner+park facing) bearing no. B-0809 on the 8th floor. A copy of the provisional allotment letter is annexed as Annexure-C2. Thereafter, the Apartment Buyer Agreement was executed on 08.08.2016 (annexed as Annexure-C3) between the complainant and the respondent at a Basic Sale

Price of ₹1,621/- per sq.ft., total amounting to ₹17,99,310/-. The Total Sale Consideration for the said apartment was fixed at ₹24,69,800/- (as per the payment plan mentioned on page no. 58 of the complaint), including additional charges for EDC, IDC, IFMS, 2BHK power backup and club membership.

4. The complainant has made payment of ₹1,88,028/- on 14.06.2016, which was before execution of the Apartment Buyer Agreement. The complainant disputes the terms of the Apartment Buyer Agreement, being arbitrary and consisting of unilateral terms. It is submitted that when the complainant protested to such terms, she was threatened with cancellation of allotment and forfeiture of the amount already paid. Thus, seeing the loss of any leverage, the complainant signed the Apartment Buyer Agreement.

5. As per Clause 9 of Apartment Buyer Agreement dated 08.08.2016, the possession was to be delivered within a period of 36 months from the date of receipt of first installment against allotment of the said apartment plus a grace period of 6 months from the date of the agreement, unless there is a delay or failure due to force majeure conditions and also due to failure of allottee(s) to pay in time the total sale price and any other charges and dues as mentioned in the agreement or any failure by allottee(s) to abide by all or any of the terms and conditions of the agreement. First installment was made on 14.06.2016, therefore, the possession has been due since 14.06.2019, but the respondent has failed to deliver the possession of the apartment to the complainant.

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6. Till date, without any default, the complainant has made timely payments of ₹23,36,962/-, which is almost the agreed total sale consideration to the respondent company in the following manner: (Copy of statement of account dated 16.06.2023 and payment receipts are annexed as Annexure-C4)

Sr. No.	Receipt No.	Receipt date	Amount (₹)	Cheque No./ RTGS/NEFT	Cheque date
1.	API/REC/00 022	14.06.2016	1,88,028/-	450648	13.06.2016
2.	API/REC/00 269	16.03.2017	2,82,042/-	PUNBR5201 70316147271 68	16.03.2017
3.	API/REC/00 341	23.05.2017	4,37,391/-	PUNBR5201 70523159331 43	23.05.2017
4.	API/REC/00 413	01.07.2017	4,37,391/-	PUNBR5201 70701165799 97	01.07.2017
5.	API/REC/00 527	31.08.2017	1,93,771/-	PUNBH1723 4881979	31.08.2017
6.	API/REC/00 642	31.10.2017	1,93,771/-	PUNBH1730 4577932	31.10.2017
7.	API/REC/00 729	08.01.2018	1,51,142/-	PUNBH1800 8679921	08.01.2018
8.	API/REC/18 -19/00036	07.01.2019	1,51,142/-	PUNB033720 0	07.01.2019
9.	APREC19-2 0/0022	09.05.2019	1,51,142/-	PUNBH1912 9494388	09.05.2019
10.	APIR21-22/ 022	30.07.2021	1,51,142/-	PUNBI12121 1114751	30.07.2021
	Total:		23,36,962/-		

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7. The complainant had made the booking of the residential apartment for personal residential needs and required immediate possession along with delayed interest as per the terms of the Apartment Buyer Agreement and RERA Act, 2016 on the ground that the respondent has failed to complete construction and development of the project till date. The complainant mentioned Clause 5 of the Apartment Buyer Agreement, which is reproduced as follows:

“5. Timely payment is the possession of this agreement

.....If company fails to give possession of the said apartment as mentioned herein this agreement, then company shall also be liable for compensation at the rate of 12% p.a. simple interest for the entire period of such delay in giving possession beyond the schedule for possession of the said apartment as per clause 9 of this agreement.”

8. That till date, the respondent has never informed the complainant about any force majeure or any other circumstances which were beyond the reasonable control of the respondent and have led to delay in the completion and development of the project within the time prescribed in the Agreement.

9. The complainant cited orders of the Hon'ble Supreme Court, *“Lucknow Development Authority vs. M.K. Gupta 1994 SCC (1) 243”*, wherein it was observed that inordinate delay in handing over possession of the flat clearly amounts to deficiency in service. The complainant opted for a construction-linked payment plan, but the respondent illegally demanded instalments from the complainant without actually reaching the milestones on the actual site of construction.

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C. RELIEF SOUGHT:

10. The complainant in her complaint has sought the following reliefs:-

i) To direct the respondent to deliver immediate possession of the 2BHK apartment to the complainant i.e., B-0809, Floor-8, "Asha Panchkula", Kot Village, Panchkula Extension-2, Sector-14, Panchkula, Haryana, admeasuring 1110 sq ft. after due completion and receipt of occupancy/completion certificate along with all the promised amenities and facilities and to the satisfaction of the complainant after removal of any deficiencies and defects; and

ii) To direct the respondent to pay the prescribed rate of interest as per the Act, on the amount already paid by the complainant from the promised date of delivery i.e., 14.06.2019 till the actual physical and legal delivery of possession after receipt of the Occupancy Certificate/Completion Certificate, etc.; and

In the alternate, to direct the respondent to pay the agreed rate of interest i.e. 12% p.a. on the amount already paid by the complainant from the promised date of delivery i.e. 14.06.2019 till the actual physical and legal delivery of possession after receipt of the occupancy certificate; and

iii) To pass an order/direction restraining the respondent from charging any amount from the complainant which do not form part of the Apartment Buyer Agreement dated 08.08.2016 and/or is illegal and

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arbitrary but not limited to enhanced charges, cost escalation charges, delay penalty/interest charges, GST charges, VAT charges, Club membership charges etc. whatsoever; and/or to direct the respondent to refund/adjust any such charges which they have already received from the complainant;

iv) Any other orders/order as this Hon'ble Authority may deem fit under the facts and circumstances of the matter.

D. REPLY:

11. Upon receipt of notice, the respondent has filed reply on 26.05.2025, wherein the respondent submits that the complainant wrongly seeks to proceed on the basis that time was the essence of the contract and consequently, ignores the provisions of Clause 9 of the Apartment Buyer Agreement, which has to be read in its totality to gauge the intention of the parties, which clearly is not to treat delivery of possession clause as being the essence of the contract.

12. The respondent submits that as per the mandate of the Constitution Bench of the Hon'ble Supreme Court in the case of *Chand Rani Vs. Kamal Rani 1993-1-SCC-519 (Para 25)* and other decisions, namely, *Gomathinayagam Pillai Vs. Palaniswami Nadar 1967-1-SCR-227* and *Govind Prasad Chaturvedi v. Hari Dutt Shastri 1977-2-SCC-539 (Para 5)*, it was held that the fixation of period within which contract has to be performed does not make the stipulation as to time the essence of the contract and when a contract relates to a sale of immovable property, it will normally be presumed that time is not the essence of the contract.

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The respondent submits that no question of refunding arises in any form of interest.

13. The respondent denies that he was to hand over the possession of the allotted unit by 14.06.2019. It is submitted that as per Clause 9 of the Apartment Buyer Agreement, the estimated time for delivery of possession of the apartment was subject to other terms and conditions of the said Agreement. Clause 9 is reproduced as follows:

“The company based on the present plans and estimates contemplates to offer possession of the said apartment to the apartment allottee within a period of 36 months from the receipt of the first instalment against allotment of the said apartment plus a grace period of 6 months unless there shall be delay or failure due to Force Majeure conditions and due to failure of apartment allottee(s) to pay in time the total sale price and other charges and dues/payments mentioned in the agreement or any failure on the part of the Apartment allottee to abide by the terms and conditions of this agreement”

14. The respondent submitted that the present complaint is liable to be dismissed as the delay in offering possession of the said unit was due to force majeure events and not due to the willful negligence of the respondent. The respondent listed the following three force majeure events, which took place during the period of development of the said project:

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- i. Due to the non-supply of raw material and illegal forfeiture of the respondent's money by M/s Fortune Metals Ltd., (i.e. the supplier) the development of the said project was hampered. On 14.01.2020, an arbitral award, copy of which is annexed as Annexure R-1, was passed in favour of

the respondent and the supplier was directed to return the amount to the respondent alongwith interest at the rate of 12%.

ii. Due to the non-completion of construction work by the main contractor of the project i.e. 'M/s Bucon Infratech Pvt. Ltd.', the project got delayed and this delay was beyond the control of the respondent company. Copy of consent decree between the contractor and the respondent is annexed as Annexure-R2.

iii. In March 2020, due to COVID-19 pandemic, all the construction activities across the country came to a halt. Due to unforeseen circumstances which were totally beyond their control, they are not liable for prayers as sought by the complainant.

15. That the present complaint is liable to be dismissed as in case titled as *Ramesh Malhotra & Ors. v. Emaar MGF Land Ltd. and Anr: 2019*, the National Consumer Disputes Redressal Commission has held that some delay in large housing projects is inevitable and cannot be termed as unreasonable.

16. The respondent is not in a position to give immediate possession of the said apartment to the complainant or pay a per-month interest till delivery of possession, as it would stall the whole project and would hamper the interests of the rest of the allottees.

17. Further, the respondent states that this complaint is not admissible before the Hon'ble Authority as Clause 30 of the Apartment Buyer Agreement clearly provides a binding Arbitration Clause. The Authority does not have

jurisdiction to entertain the purported consumer complaint, as the said agreement specifically states that all disputes shall be referred to an arbitrator to be appointed as per the provisions of the Arbitration and Conciliation Act, 1996 (as amended).

18. The respondent submits that the construction work of the project is presently at full swing and the respondent is ready to deliver the possession of the units to its allottees as soon as the development work is completed; therefore, no indulgence of this Hon'ble Authority is required in the present case.

19. The respondent denies that it has made false and incorrect representations and has not fulfilled the promises and has in any way lured the complainant or engaged itself in illegal, arbitrary and unfair-trade practices.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND THE RESPONDENT:

20. Learned counsel for the complainant reiterated the facts of the case as stated in the complaint. Ld. counsel for the respondent argued that the project is still incomplete and the respondent is not in a position to complete it and deliver the possession thereof in near future.

CoR 21. Learned counsel for the complainant submits that he has filed the present complaint seeking relief of possession along with delayed interest from the promised date of delivery till valid offer of possession after receipt of occupation certificate. Ld. counsel for the respondent rebuts the said claim of the complainant by submitting that the complainant is not entitled to relief of possession as the respondent never assured or guaranteed an offer of possession by June 2019.

Furthermore, he has argued that while calculating the due date of possession, grace period of 6 months must be considered as such period will additionally entitle the respondent company to Covid-19 grace period as allowed by the Supreme Court in such cases of construction and delivery of immovable property.

F. ISSUE FOR ADJUDICATION:

22. Whether the complainant is entitled to relief of possession along with delay interest for delay in handing over the possession in terms of Section 18 of RERA Act, 2016?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY:

23. Findings on the objections raised by the respondent with regard to deemed date of possession.

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i. As per Clause 9 of the Apartment Buyer Agreement dated 08.08.2016, the possession of the apartment was to be delivered within a period of thirty six (36) months from the date of receipt of first instalment against allotment of the said apartment plus a grace period of 6 months unless there shall be delay or failure due to Force Majeure conditions and also due to failure of allottee(s) to pay in time the total sale price and any other charges and dues/payments mentioned in the agreement or any other failure on the part of the allottee to abide by the terms and conditions of the said Agreement. It is pertinent to note that first installment was received on 14.06.2016; therefore, the respondent was liable to deliver possession of said flat by 14.06.2019(i.e. 36 months from the date of first instalment).

Therefore, the question arises as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project. The respondent has submitted that there are three reasons, mentioned in Para 14 of this order, that attribute to delay in completion of the project in such a period. Herein it would be appropriate to address the reasons cited by the respondent one by one.

a. The Authority has considered the promoter's contention that the delay in completing the project occurred due to non-performance or default of the certain contractors and suppliers. However, this defence is not acceptable under the RERA Act, 2016 as the law clearly places the responsibility on the promoter respondent for timely completion of the project and this responsibility cannot be shifted to a third party. Any internal arrangements between the promoter and contractor or supplier do not affect the promoter's statutory obligations towards the allottees. This has been affirmed in M/s Sare Gurugram Pvt. Ltd. vs. RERA, Harvana where it was held that the promoter cannot escape liability by blaming contractors or suppliers. Further in DLF Homes Panchkula Pvt. Ltd. vs. Dinesh Kumar, 2019, the Authority reiterated that the deficiencies or defaults by the contractor are attributable to the promoter alone. Therefore, any delay on the part of the contractors/suppliers is legally treated as

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a delay on the part of the promoter/respondent who is liable for the consequences under RERA Act, 2016.

b. Secondly, the due date for handing over possession was 14.06.2019, a point in time when the Covid-19 pandemic had not even commenced. The nationwide lockdown was imposed only in March 2020. Accordingly, the promoter/respondent cannot attribute delays that had already materialised prior to March 2020 to the Covid-19 situation. In regard to the plea that the construction was hindered due to the outbreak of Covid-19, it is pertinent to note that the Hon'ble High Court of Delhi, in M/s Halliburton Offshore Services Inc. vs. Vedanta Ltd. & Anr., OMP (I)(Comm.) No. 88/2020 and I.A. Nos. 3696-3697/2020, decided on 29.05.2020, has held that the invocation of force majeure on account of Covid-19 must be examined strictly with reference to the actual timelines and the demonstrable impact of the pandemic. In the present case, since the delay preceded the onset of Covid-19, the promoter cannot legitimately rely upon the pandemic to justify such default. The Hon'ble Supreme Court has observed that:

"69.The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

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The respondent was obligated to complete the construction of the project and hand over the possession of the allotted apartment by June 2019. However, the respondent seeks to claim the benefit of the Covid-19 lockdown, which came into effect only in March 2020. It is evident that the due date for handing over possession was well before the outbreak of the Covid-19 pandemic. Accordingly, the Authority is of the considered view that the onset of the pandemic cannot be invoked as an excuse for non-performance of contractual obligations whose deadlines had already expired prior to the occurrence of the said event. Therefore, the respondent cannot be extended the benefit of any default in work attributable to the Covid-19 pandemic. The respondent has merely made false assertions regarding force majeure conditions without demonstrating any substantiated impact of the pandemic on the timelines relevant to the project in question.

ii. The Authority has considered the objection that the complaint is not maintainable in view of the Arbitration Clause 30 of the Apartment Buyer Agreement. The presence of such a clause does not divest this Authority of the jurisdiction expressly conferred under the Real Estate (Regulation and Development) Act, 2016. The Hon'ble Supreme Court in Imperia Structures Ltd. vs. Anil Patni (2020) SC 822, held that statutory remedies under special legislations like RERA cannot be ousted by an arbitration clause.

Accordingly, the Authority holds that it is competent to hear and decide the present matter and this objection of the respondent is rejected.

24. Therefore, facts set out in the preceding paragraph demonstrate that construction of the project had been delayed beyond the time period stipulated in the Apartment Buyer Agreement. The Authority observes that the respondent has failed to fulfil its obligation stipulated in Apartment Buyer Agreement dated 08.08.2016. The possession of the apartment should have been delivered by 14.06.2019. Now, even after a lapse of 6 years, the respondent is not in a position to offer possession of the apartment since the respondent company has yet to receive occupation certificate in respect of the project in question. Fact remains that the respondent in his written statement has not specified as to when the possession of a booked apartment will be offered to the complainant. The complainant, however, does not wish to withdraw from the project and is rather interested in getting the possession of her booked apartment. In these circumstances, the provisions of Section 18 of the RERA Act, 2016 clearly come into play by virtue of which while exercising the option of taking possession of the apartment, the allottee/complainant is entitled to interest for the entire period of delay caused at the rate prescribed. It is observed that the respondent in this case has not made any valid offer of possession to the complainant till date.

25. The Authority concludes that the complainant is entitled for delay interest from the deemed date of possession i.e. 14.06.2019 up to the date on which a valid offer is sent to the complainant after receipt of occupation

certificate. As per Section 18 of RERA Act, 2016 interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(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; Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15: "Rule 15.Prescribed rate of interest-(Proviso to Section 12, Section 18 and sub-section (4) and sub-section (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.. "

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26. Consequently, as per website of the State Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date of order i.e. 05.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e. 10.85%.

27. Hence, the Authority directs the respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost lending rate (MCLR)+2% which as on date works out to 10.85% (8.85%+2.00%) from the due date of possession i.e. 14.06.2019 till the date of a valid offer of possession.

28. The Authority has got calculated the interest on total paid amount from due date of possession i.e. 14.06.2019 till the date of this order i.e. 05.12.2025 which works out to ₹16,09,412/- and further monthly interest of ₹20,841/- as per detail given in the table below:

Sr.No.	Principal Amount (in ₹)	Deemed date of possession or date of payment, whichever is later	Interest Accrued till 05.12.2025 (in ₹)
1.	21,85,820/-	14.06.2019	1,32,299/-
2.	1,51,142/-	30.07.2021	71,436/-
Total	23,36,962/-		16,09,412/-
Monthly interest		20,841/-	

29. It is pertinent to mention here that the complainant has claimed to have paid an amount of ₹23,36,962/- which can be proved from the receipts attached with the complaint. The same is not rebutted by the respondent. It is an established fact that the admittance is a proof of admission. Therefore, the said

payment is proved to be made by the complainant in favor of the respondent and hence eligible to delay interest.

H. DIRECTIONS OF THE AUTHORITY:

30. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA Act, 2016 to ensure compliance of obligation cast upon the promoter/respondent as per the function entrusted to the Authority under Section 34(f) of the RERA Act, 2016:

(i) Respondent is directed to pay upfront delay interest of ₹16,09,412/- (till date of order i.e. 05.12.2025) to the complainant towards delay already caused in handing over the possession within 90 days from the date of passing of this order and further monthly interest ₹20,841/- till the date of valid offer of possession after receipt of occupation certificate.

(ii) Complainant will remain liable to pay balance consideration amount, if any, to the respondent at the time of valid offer of possession.

(iii) The rate of interest chargeable from the allottee by the respondent/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 respondent/promoter shall be liable to pay to the allottee/complainant.

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(iv) The respondent shall not charge anything from the complainant which is not part of the Apartment Buyer Agreement.

31. **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.

05.12.2025
Monika
(Law Associate)


.....
(CHANDER SHEKHAR)
MEMBER

