



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

Complaint no.	1501 of 2019
Date of filing of complaint	23.04.2019
First date of hearing	06.12.2019
Date of decision	22.03.2023

Azad Dabas R/O: 3488, Marmac Cresent, Mississauga Ontario, L5l4z9, Canada	Complainant
Versus	
1. Vsr Infratech Pvt.Ltd Regd. Office: A-22,Hill View Apartments ,Vasant Vihar,New Delhi-110057 2. Valsamma Mathew R/O Plot No. 14, Ground Floor, Sector-44, Institutional Area, 3. Rakesh Rajmal Jain R/O Plot No. 14, Ground Floor, Sector-44, Institutional Area, 4. Pulkit Nagpal R/O Plot No. 14, Ground Floor, Sector-44, Institutional Area,	Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Pradeep K. Khatana (Advocate)

Complainant

Sh. Shriya Takkar (Advocate)

Respondents

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 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 allottee as per the agreement for sale executed inter se

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.	Heads	Information
1.	Name of the project	"68 Avenue", Sector 68, Gurugram
2.	Project area	3.231 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	04 of 2012 dated 23.01.2012
5.	Name of licensee	Sh. Yad Ram and
6.	RERA Registered/ not registered	119 of 2017 dated 28.08.2017
7.	RERA registration valid up to	30.06.2018
8.	Date of Allotment Letter	01.10.2012 (Page 21 of the complaint)
9.	Unit no.	SA8-69, 8 th floor, Tower A



		(Page 34 of the complaint)
10.	Unit area admeasuring (super area)	704.180 sq. ft. (Page 34 of the complaint)
11.	Space Buyer's Agreement	Executed on 25.11.2013
12.	Possession clause	31. Possession Time and Compensation <i>"The company will be based on its present plans and estimates contemplates to offer possession of the said unit to the allottee(s) within 36 months of signing of this Agreement or within 36 months from the start of construction of the said building whichever is later with a grace period of 3 months, subject to force majeure events or governmental action/inaction".</i> (Page 40 of the complaint)
13.	Due date of possession	25.02.2017 (Calculated as per SBA)
14.	Total sale consideration	Rs. 52,94,730/- (Page 34 of the complaint)
15.	Amount paid by the complainants	Rs. 52, 17, 390/- (As per statement of account on page
16.	Occupation certificate /Completion certificate	02.08.2019 (Page 44 of the reply)
17.	Offer of Possession	30.08.2018 (Page 69 of the complaint)
18.	Delay in handing over possession till offer of possession 30.08.2018	1 year 6 months

Facts of the complaint

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3. That the complainants booked a service apartment in the project of the respondent namely "68 AVENUE" located at Sector-68, Gurugram, Haryana for a total sale price of Rs.52,94,730/- and paid a sum of Rs.3,00,000/- on 30-03-2012.
4. That the unit was allotted vide allotment letter dated 01-10-2012 unit bearing no. SA8-69 in 68 Avenue, Sector-68, Gurugram and the same was sent to the complainants along-with payment plan.
5. That the buyer's agreement was executed between the parties on 25-11-2013. Till date, the complainants paid a total sum of Rs.52,17,390.731- in respect of the above said allotted unit.
6. That all the negotiations before the booking of the unit and at the time of making payment to the respondents in the shape of cheques /bank transfer, the complainant was lured by respondents to invest in the project on the pretext that delivery of the apartment will be done within 36 months. As per clause no. 31 of the space buyer's agreement, the possession of the unit be handed over to the complainants within 36 months from the date of signing of the agreement. Therefore, the due date comes out to be 25.02.2017 with a grace period of three months.
7. That the complainant visited the site where the project was being developed by the respondents and shocked to see that the construction work was under construction thereon was very slowly completing and from physical verification at project site, it transpires that the



respondents are unable to deliver or handover the possession of dwelling unit to the complainant in near future.

8. That, thereafter, complainant repeatedly followed-up with the officials of the respondents for compensating them for delayed possession but the respondents evaded the complainant on lame excuses. While executing space buyer's agreement with complainants, the respondents falsely promised and assured the complainants that no completion certificate and occupation certificate is required from any authority.
9. That the respondents ignored all the lawful and genuine requests of the complainants to compensate them. It is pertinent to mention here that the terms of the agreement are completely unilateral and favoured only the company and the same have been formulated in a way that they can take undue advantage of their dominant position in respect of the project to be developed by them. However, the complainant was constrained by the respondents to sign the one-sided agreement with a threat that amount paid by them in shape of booking and other modes would be forfeited, in case complainant do not put their signatures on the agreement.
10. That now on 30-08-2018, a possession letter in respect of the above said unit was sent to the complainant through post, demanding the sum of Rs.17,15,935.03/- from complainant on account of electric supply, maintenance fee, GST, stamp duty, registration charges, advocate charges etc., but the respondents are nowhere to handover the actual physical possession to the allottees as the construction work of the



project is still going on. It is worthy to draw the kind attention of this Hon'ble Authority that the respondents have not yet obtained the completion and occupation certificates from the competent authority.

11. That from the date of booking and till today, the respondents have raised various demands for the payment of instalments on complainant towards the sale consideration of the said unit and complainant has duly paid and satisfied all those demands without any default or delay on their part and have also fulfilled otherwise also their part of obligations but the respondents having fraudulent intention of not to deliver the possession of the dwelling unit to the complainant, delivery date of which was February 2017.
12. That the complainant through various modes of communication not limited up-to e-mails tried to find out from respondents if they have received completion and occupation certificate, however, respondents never responded the complainants about the same.
13. That the respondents have recently introduced OYO Leasing Terms and Conditions which include minimum rent only of Rs.11,000/- per month for a period of nine years of the lease. However, these terms are/were not part of the original agreement executed between complainants and respondent. That as per the original term sheet attached to the contract document of unit to be managed by royal orchid. As per the term sheet of the royal orchid the Management Fee as per item No.9, the basic



management fee shall be 2% of gross total revenue of the Service Apartment, if the gross operating profit within (GOP) is less than 40%.

14. That the complainant is retired NRI personnel and want to use the unit for their personal use, as the complainant at present have to reside with other relatives. That the cause of action accrued in favour of the complainant and against the respondents on 05.04.2012, when the complainant had booked the said unit and it further arose when respondents failed to deliver the possession of the unit within agreed timeline, The cause of action is continuing and is still subsisting on day-to-day basis as the respondents have yet not delivered the possession of the unit to the complainants even after various repeated requests made by the complainant to the respondents in this regard.
15. That the complainant has approached the respondent- builder to know the status of the project and also the complainant came to know that the construction is going at a very slow pace but the respondent- builder never gave any concrete reply and has not got the delayed possession leading to filing this complaint seeking delay possession charges and possession of the deposited amount

C. Relief Sought

This Authority may be pleased to direct the respondent as follows:

- Direct the respondent to pay the interest on the amount received by respondent from the complainant in respect of the unit allotted.



- Direct the respondent to pay an amount of Rs. 1,00,000/- as litigation cost and cost of the present complaint may also be awarded in favour of the complainant and against the respondent.

D. Reply by the respondent

That the respondent has contested the complaint on the following grounds:

16. That the complainant was allotted the unit bearing No. SA8-59, 8th Floor, Tower A vide allotment letter dated 01.10.2012. It is submitted that the complainant opted for the construction linked payment plan. That the space buyer agreement was executed between complainant and the respondents on 25.11.2013. The price of the property for an area measuring 704.180 sq. ft. is Rs. 45,38,772/- plus taxes, duties, levies and other charges. It is submitted that the amount paid by the complainant till date is Rs.52,17,390/-. It is submitted that all the demands have been raised as per the terms and conditions of the SBA and the payment plan opted by the Complainant. It is submitted that the complainant defaulted in making timely payments. The complainant has not paid the final demand till date.
17. That in the present case the complainant, was allotted unit vide allotment letter dated 01.10.2012 . The buyer's agreement was executed between the parties on 25.11.2013 and as per clause 31 of the space buyers agreement the respondent was supposed to hand over the possession within a period of 36 months from the date of the signing of agreement or within 36 months from the date of start of construction

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whichever is later along with a grace period of 3 months. It is submitted that the agreement was executed between the parties on 25.11.2013 and the construction of the project started on 16.08.2012. It is submitted that in the present case the project was delayed due to force majeure conditions beyond the control of the respondent and the same are covered under clause 31.

18. That the answering respondent had from time to time obtained various licenses and approvals and sanctions along with permits, if any which are annexed herewith for reference of this Hon'ble Authority. Evidently respondent had to obtain all licenses and permits in time before starting construction
19. That it is submitted that the complainant is a defaulter. it is further submitted that the respondent vide reminder letter dated 15.06.2017 informed the complainant to clear the remaining/pending dues and also to take the possession of the said Unit. it is mentioned that the complainant still owes the respondent Rs 17,15,935 plus interest on delayed payments of Rs 2,43,638/-.
20. That without prejudice to the above submissions with respect to the certificate of registration under the Act. That despite exercising diligence and continuous pursuance of project to be completed, project of answering respondent could not be completed as prescribed for the following reasons mentioned .
21. That on 19.02.2013 the office of the executive engineer, Huda Division No. II, Gurgaon vide Memo No. 3008-3181 had issued instruction to all



developers to lift tertiary treated effluent for construction purpose for Sewage Treatment Plant Berhampur. Due to this instruction, the company faced the problem of water supply for a period of 6 months. Time and again various orders were also passed by the NGT staying the construction.

22. The orders passed by the Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available seaweed treatment plants. That however there was no sewage treatment plant available which led to scarcity of water and further delayed the project. That said order coincided with launch of project and caused a huge delay in starting project itself.
23. That evidently there was lot of delay on part of government agencies in providing relevant permissions, licenses approvals and sanctions for project which resulted in inadvertent delay in the project which constitute a force majeure condition, as delay caused in these permissions cannot be attributed to respondent, for very reason that respondent, for very reason that respondent has been very prompt in making applications and replying to objections if any raised for obtaining such permissions.
24. That delay has also been caused as the occupation certificate could not be issued since there was an order passed by the Hon'ble Punjab and Haryana in the matter titled as: Mukesh Sharma vs. State of Haryana and Ors. (CWP No. 23839 of 2014) that no Occupation Certificate be issued



in the sector/area or for building where water supply connection has not been made available by HUDA. It is clarified that these directions are in relation to Sectors 68-80, Gurgaon only.

25. That the sudden surge requirement of labour and then sudden removal has created a vacuum for labour in NCR region. That the projects of not only the respondent but also of all the other developers/builders have been suffering due to such shortage of labour and has resulted in delays in the project's beyond the control of any of the developers. In addition the respondent states that this further resulted in increasing the cost of construction to a great extent.
26. That it is submitted that even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of labour shortage on which the whole construction industry so largely depends and on which the Respondent have no control whatsoever. That the Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Sand which is the most basic ingredient of construction activity. That said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks be done within a radius of 50 km from coal and lignite- based thermal power plants without mixing 25% of ash with soil.
27. That shortage of bricks in region has been continuing ever since and the

28. respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project. That sand which is used as a mixture along with cement for the same construction activity was also not available in the abundance as is required since mining Department imposed serious restrictions against manufacturing of sand from Aravali region. This acute shortage of sand not only delayed the project of the answering Respondent but also shot up the prices of sand by more than hundred percent causing huge losses to respondent.
29. That in addition the current Govt. has on 08.11.2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourers not accepting demonetized currency after demonetization. That in July 2017 the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owing to lack of clarity in its implementation. That ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on



various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.

30. That it is further submitted that there was a delay in the project also on account of violations of the terms of the agreement by several allottees. That because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.
31. All the other averments made in the complaint were denied in toto.
32. Copies of all the relevant do have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district.

Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

34. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) 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.

35. 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 the respondent

F.I Objection regarding delay due to force majeure



36. That it is pertinent to mention here that delay has also been caused as the OC could not be issued since Hon'ble Punjab and Haryana . The authority is of the considered view that if there is lapse on the part of any competent authority concerned in granting the occupation certificate within reasonable time then the respondent should approach the competent authority for getting the time period be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for the delay in handing over possession as per provisions of the Act.
37. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization , water supply for a period of 6 months , Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available sewage treatment plants , stay of construction by order of National Green Tribunal , and non-payment of instalment by different allottee of the project , banned construction in Delhi NCR , demonetization, various orders passed by NGT but all the pleas advanced in this regard are devoid of merit. First of all the unit in question was allotted in the year 2012. The agreement to sale was executed between the parties on 25.11.2013 and as per terms and conditions of the said agreement for sale the due date of handing over of possession was 25.02.2017 These periods were for very short

duration of time. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to pay the interest on the amount received by respondent from the complainant in respect of the unit allotted.

38. The complainant is admittedly the allottees of respondent – builder of a commercial unit for a total sum of Rs. 52,94,730/-. A buyer's agreement was executed between the parties in this regard on 25.11.2013. The due date for completion of the project was fixed as 25.02.2017 So, in this way, the complainant paid a total sum of Rs. /- 52,17,930/- against the allotted unit. The occupation certificate of the project was received on 02.08.2019 and the possession was offered to the complainants on 30.08.2018.
39. At this stage, the authority would express its views regarding the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:



- i. Possession must be offered after obtaining occupation certificate.
 - ii. The subject unit should be in habitable condition.
 - iii. Possession should not be accompanied by unreasonable additional demands.
40. In the case at hand, the offer of possession was made on 30.08.2018 without the occupation certificate being obtained. The occupation certificate was obtained later on i.e on 02.08.2019. Thus, the offer of possession is invalid per se.
41. In the present complaint, the complainants 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."

42. Clause 23 of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

31. Possession Time and Compensation

*"The company will be based on its present plans and estimates contemplates to offer possession of the said unit to the allottee(s) within **36 months of signing of this Agreement or within 36 months from the start of construction of the said building whichever is later** with a **grace period of 3 months**, subject to force majeure events or governmental action/inaction".*

43. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, 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.

44. 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.
45. 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., 13.10.2021 is @7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.





46. The definition of term 'interest' as defined under section 2(z) 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. 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;"*

47. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

48. The on consideration of the documents available on record and submissions made by both the parties regarding contravention of 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 as per the agreement. By virtue of clause 31 of the agreement executed between the parties on 25.11.2013, the possession of the subject apartment was to be delivered within stipulated time i.e., by 25.02.2017. As far as grace period is concerned,

the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 25.02.2017. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 25.02.2017 till the occupation certificate i.e 02.08.2019 plus two months which comes to 02.10.2019 at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

49. Since the respondent offered the possession without obtaining the occupation certificate so the respondent is directed to offer the possession within one month to the complainant .

G.II Direct the respondent to pay an amount of Rs. 1,00,000/- as litigation cost and cost of the present complaint may also be awarded in favour of the complainant and against the respondent.

50. The the complainant is seeking above mentioned relief with regard to compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022 (1) RCR (c) 357*, has held that an allottee is entitled to claim compensation & 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 & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

G. Directions of the authority

51. 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 delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e 25.02.2017 till the occupation certificate i.e 02.08.2019 plus two months which comes to 02.10.2019 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent is directed to handover the possession of the allotted unit to the complainant completes in all aspects as per specifications of buyer's agreement within two months from date of this order.
 - iii. The rate of interest chargeable from the allottee by the promoter, in case



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of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

52. Complaint stands disposed of.

53. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.03.2023



HARERA
GURUGRAM