



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

Complaint no. : 3511 of 2021
Date of filing : 31.08.2021
First date of hearing: 28.09.2021
Date of decision : 21.03.2023

Pushp Raj Singh & Shalini Chauhan
Both RR/o:- H. no-4144, Sector 23-A, Gurgaon-122022 **Complainants**

Versus

M/s Vatika Limited,
Office:- A002, INXT City Centre, Ground Floor, Block A,
Sector 83, Vatika India Next Gurugram-122012 **Respondent**

CORAM:

Sh. Vijay Kumar Goyal **Member**
Sh. Sanjeev Kumar Arora **Member**

APPEARANCE:

Sh. K.K. Kohli **Advocate for the complainants**
Sh. Pankaj Chandola **Advocate for the 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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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 and location of the project	"Bellevue Villa", Sector 82, Vatika India Next"
2.	Nature of the project	Residential plotted colony
3.	RERA registered/ not registered	Not registered
4.	Payment plan	Construction linked plan
5.	Buyer's agreement	02.08.2010 (Page 74 of complaint)
6.	Villa no.	39/360/Simplex/BR admeasuring 360 sq. yard. (Page 46 of complaint)
7.	New unit allotted vide addendum to the agreement dated 07.02.2012.	39/360/Simplex/St. 82 D1-7(page 122 of complaint)
8.	Possession clause	<p>11.1 Schedule for possession of the said unit</p> <p>The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said unit within a period of three years from the date of execution of this agreement. However, in case of the company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in clause (12.1), (12.2), (12.3) and clause (38) or due to failure of applicant(s) to pay in time the price of the said unit</p>

		along with all other charges and dues in accordance with the schedule of payments given herein in the company from time to time or any failure on the part of the applicant(s) to abide by any of the terms or conditions of this agreement.
9.	Due date of possession	02.08.2013
10.	Tripartite agreement	13.01.2011 (page 125 of complaint)
11.	Payment plan	Construction Linked Plan
12.	Total consideration	Rs. 1,37,79,858/- as per statement of account dated 17.08.2021 (annexure C7, page 152 of complaint)
13.	Total amount paid by the complainants	Rs. 42,30,793/- as per statement of account dated 17.08.2021 (annexure C7, page 152 of complaint)
14.	Legal notice	24.08.2021 (page 139 of complaint)
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - i. That the grievance of the complainant relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the service committed by the respondent M/s Vatika Ltd. in regard to the residential floor offered to him. The complainant has paid 40% of the amounting to Rs. 41,87,861/-. As per clause 11.1 of the builder buyer's agreements, which was entered upon on 02.08.2010, details of which are attached in the builder buyer's agreement, the possession of the said unit was supposed to be delivered within a period of 36 months from the date of execution of buyer's agreement. It would be noticed that the due date of delivery of the residential

- floor would be on or before 02.08.2013. The complainant has been regularly inquiring about the status of the construction from the respondent after paying colossal amount 40' BSP plus taxes.
- ii. That the complainants should have received the offer of possession of the unit on date 02.08.2013 but were delayed possession by almost 8 years approx. by the respondent and the possession letter was not received till date.
 - iii. That the construction is currently stalled, and there is no clear picture as to the when the project would be ready for possession as the construction is completely abandoned and the pace of the work on site coupled the photos of the existing structure, the possibility of the handing over of the possession, even, by the end of 2021, are non-existent and by then the delay would be above 8 years.
 - iv. That by having intentionally and knowingly inducer and falsely misrepresented to the complainants on the construction activity at site and by giving false delivery schedules and thereby making the complainants to ac in accordance with its misrepresentations and owing to all the deliberate lapses/delays on the respondent's part, it is liable to pay the entire amount collected by it with interest from the date of receipt of the individual payments, to the complainant.
 - v. That the complainant feels that they were being subject to unethical/unfair trade practice. The above said act of the respondent clearly show that it has been indulging in unfair trade practices and also been providing gross deficient services misrepresenting facts to the complainant. All such acts and

omissions on the part of the responder caused an immeasurable mental stress and agony the complainants.

C. Relief sought by the complainants

4. The complainants have filed the present compliant for seeking following reliefs:
 - i. Direct the respondent to refund the total amount paid to them amounting to Rs. 42,30,793.87 along with interest calculated at the rate of Highest MCLR of SBI+ 2% p.a. at the earliest.
 - ii. Litigation cost.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

- i. That the complainant, has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. The complainant is raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
- ii. That the complainant has not the Authority with clean hands and has suppressed relevant material facts. The complaint under reply is devoid of merits and the same should be dismissed with cost.
- iii. That after having keen interest in the project constructed by the respondent the complainants booked a villa bearing no. 3/360/Simplex BR, in the said project for a total sale consideration of Rs. 1,36,71,851/-



and paid an amount of Rs. 3,50,000/- through cheques dated 28.06.2010 for further registration.

- iv. The respondent vide welcome letter dated 16.07.2010, a villa bearing no. 3/360/Simplex BR admeasuring to 2161 Sq. Ft. was allotted to the complainants. Thereafter, on 28.07.2010, the complainants at their free will paid an amount of Rs. 6,12,185/- through cheque towards the agreed sale consideration for the said villa.
- v. That after much pursuance of the respondent, on 02.08.2010, a builder buyer agreement was executed between the parties, wherein, a villa bearing no. 3/360/Simplex BR was allotted to the respondent. It is to note, that as per the agreement the construction of the villa was estimated to be completed within 36 months but the same was subject to the midway hindrances which were beyond its control.
- vi. It is submitted that the complainants were aware of terms and conditions under the aforesaid agreement and post being satisfied with each and every terms agreed to sign upon the same with free will and consent without any demur. Also, they knew that in case the project is delayed due to any event/reason beyond the control then the respondent would be entitled for extension of time period in handing over the possession.
- vii. That the complainant has filed the complaint on baseless and absurd grounds. Under clause 11 of the agreement so signed and acknowledged by the complainant, the respondent, clearly mentioned that the possession would be granted within 3 years unless there would be delay



in the midway of the development of the said project for the reasons beyond its control as mentioned in other clauses in the agreement.

- viii. It is a matter of fact, that inspite after knowing that during the construction of the aforesaid project the respondent had faced several obstacles which were beyond the control and the construction of the project was ought to be interrupted due to the same. However, it is necessary to brought into the knowledge of the Authority that as on date the complainant has only paid one partial amount of the total sale consideration and the complainant while concealing such fact has filed this complaint with malafide intention.
- ix. It is submitted that as per the agreement so signed and acknowledged, the complainants knew that the respondent would not be liable for any events beyond the control of the respondent and further extension time would be granted for completion of the project.
- a. Apart from the above, the progress of the construction of the project was also effected due to various other unforeseen circumstances such as:
- Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the respondent. Under this new development NH 352 W was initially supposed to be developed as sector roads by Haryana Urban Development Authority (HUDA) which took around 3 years in completing the land acquisition process.*
 - The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45 (1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act) vide its Notification dated 11.04.2018 makes the transfer scheme for transferring the properties falling within the ambit of NH 352 W acquired by the HUDA to GMDA for development and construction of NH 352 W.*
 - The GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for construction and development of NH 352 W to the National*



- Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.*
- d. *Further, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 mtrs. was uplifted. Before start of the acquisition and construction process, the respondent had already laid down the services according to the earlier sector road level. However, due to upliftment caused by the HUDA in NH 352 W the company has been constrained to raise and uplift the same within the project, which not only result in deferment of construction of project but also attract costing to the respondent.*
- e. *Re-routing of High-Tension lines passing through the lands resulting in inevitable change in the layout plans.*
- f. *Direct impact on project due to policy of NILP and TOD issued on 09.02.2016.*
- x. It is submitted that the time schedule for handing over the possession given under clause 11 of the agreement was subject to other terms and conditions of the agreement such as timely payment of the instalments by the complainants and reasons of delay which are beyond control of the respondent. The main reasons behind the delay in project was due to the non-acquisition of sector roads by HUDA, Initiation of GAIL corridor passing through the "Vatika India Next" Project, Non-shifting of High-tension lines passing through the project by DHBVN. It is submitted that the "Vatika India Next" is large township and respondent has already given possession more than approx. 5000 Apartments in the past few years which includes plots, villas, independent floors, group housing flats and commercial. Due to extraneous reasons which is beyond its control, the respondent was unable to execute and carry out all necessary work for completion in some part of the project. There was change in the master layout plan of the project by the concern govt. agencies because of which the entire plot cluster map changed, and due to this there was a delay in the handing over the possession.



- xi. It is pertinent to bring the attention of the Authority after such obstacles in the construction of the said project the respondent, relocated the unit of the complainants and offered another unit of the same specification vide re-allotment letter dated 15.12.2017. However, the same was left unanswered by the complainants.
- xii. That the respondent committed to complete the development of the project and deliver the unit of the allottees as per the terms and conditions mentioned under the agreement. It is pertinent to appraise the Authority that the developmental work of the said project was slightly delayed due to the reasons other than mentioned herein above which were beyond its control. Due to the impact of the Goods and Services Act, 2017 which came into force after the effect of demonetisation in the last quarter of 2016, which left long lasting effect on various real estate and development sector even in 2019. The respondent has to undergo huge obstacle due to adverse effect of demonetisation and implementation of GST.
- xiii. That in the recent years, various construction activities in the real estate sector were stayed due to constant ban levied by various courts/tribunals/authorities/ to curb pollution in Delhi-NCR Region. It is pertinent to mention, that recent years the Environment (Pollution and Control) Authority, NCR (EPCA) vide its notification dated 25.10.2019, bearing no. EPCA-R/2019/L-49 banned the construction activities in NCR during night hours (6:00 PM to 6:00 AM) from 26.10.2019 to 30.10.2019 and, subsequently the EPCA vide its



notification bearing no. R/2019/L-53, dated 01.11.2019, converted the same into a complete ban 01.11.2019 to 05.11.2019. The Hon'ble Apex Court in the writ petition vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "*MC Mehta vs. Union of India*" has completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Court vide its order dated 14.02.2020. That due to ban levied by the competent Authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Even after lifting of ban by the Hon'ble Court the construction activities could not resume at full throttle due to such acute shortage.

- xiv. Despite, after such obstacles on the construction activity in the real estate sector and before the normalcy could resume, the entire nation was hit by the Worldwide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the period shall be excluded while computing the delay. Subsequently, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. It is to note, various State Governments, including the Government of Haryana have also imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to



the issuance of advisory by the GOI vide office memorandum dated May 13, 2020, regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.

- xv. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. During the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was halted in the state due to the adverse effect of the pandemic.
- xvi. It is a matter of fact, that despite after lifting the restrictions the respondent was bound to resume with the construction activity in a hybrid mode i.e., only with the labours that were available within the region and nearby to the construction site and, due to such acute shortage of labour the project was deemed to be delayed due to above said circumstances which were not in control of neither the respondent nor the complainant.
- xvii. That, it is evident that the entire case of the complainants is nothing but a web of lies, false and frivolous allegations made against the

Respondent. The complainants have not approached the Ld. Authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. It is brought to the knowledge of the Authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of intention of the complainants.

xviii. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Authority. The present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

6. Copies of all the relevant documents have been filed and placed on the 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

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

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

8. Section 11(4)(a) of the Act 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.

9. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent.

F.I Objection w.r.t. force majeure

10. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as, shortage of labour, various orders passed by NGT, weather

conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 02.08.2010 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 02.08.2013. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on the record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent- builder. Though some allottees may be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

11. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 observed as under:

69. The past non-performance of the Contractor cannot be condoned due to the 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 a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself

12. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 02.08.2013 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas, the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the reliefs sought by the complainants

G. I Direct the respondent to refund the paid amount along with interest

13. The complainants have submitted that they booked a unit in the respondent's project namely "Bellevue Villa". A buyer's agreement was executed between the parties on 02.08.2010 and allotted a villa bearing no. 3/360/Simplex/BR admeasuring 360 sq. yards. for a total sale consideration of Rs. 1,64,75,741/- against which they paid an amount of Rs. 1,37,79,858/- against which the complainants paid an amount of Rs. 42,30,793/-. As per clause 11.1 of the said agreement the due date of handing over of possession was 02.08.2013. Thereafter, vide addendum to the agreement dated 07.02.2012, a new villa bearing no. 39/360/Simplex/ST. 82 D1-7 was allotted to the complainant.

Neither the respondent has yet completed the project nor made any offer of possession. So, the complainant does not want to continue with the project.

14. Keeping in view the fact that the allottee/complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on its failure to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
15. The due date of possession as per agreement for sale as mentioned in the table above is 02.08.2013 and there is delay of 8 years 29 days on the date of filing of the complaint. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019*, decided on 11.01.2021
- "" The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*
16. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)* 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. It was observed:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

17. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
18. This is without prejudice to any other remedy available to the allottee including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

19. The authority hereby directs the promoter to return to the complainants the amount received by him i.e., Rs. 42,30,793/- with interest at the rate of 10.70% (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 realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.II Litigation charges

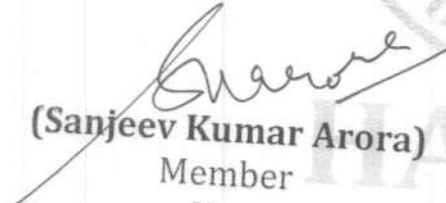
20. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & 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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority

21. 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) of the Act:


- i. The respondent is directed to refund the entire amount of Rs. 42,30,793/- paid by the complainant along with prescribed rate of interest @ 10.70% 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 realization of the amount.
 - ii. 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.
22. Complaint stands disposed of.
23. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.02.2023


(Vijay Kumar Goyal)

Member