

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

Complaint no. : 2867 of 2021  
Date of filing 03.08.2021  
complaint:  
First date of hearing: 23.08.2021  
Date of decision : 09.08.2023

1. Sh. Rakesh Jindal R/O - 3097, Floor - 2, Sector - 46, Gurugram, Haryana	<b>Complainants</b>
2. Smt. Ranjana Jindal R/O- 3097, Floor - 2, Sector - 46, Gurugram, Haryana	
versus	
Cosmos Infra Engineering India Pvt Ltd R/O: 5 A,C,D, 5th Floor, Vandhna Building, 11 Tolstoy Marg, New Delhi 110001	<b>Respondent</b>
<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Complainant in person	Complainants
Sh. Virender Singh (proxy) (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees 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.

**A. Unit and project details**

2. The particulars of unit, 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 of the project	Cosmos Express 99 Sector 99, Village Dhankot, Tehsil and Distt., Gurugram
2.	Project area	10.025 acres
3.	Nature of the project	Residential Unit
4.	DTCP License no. & validity status	70 of 2011 dated 22.07.2011 upto 21.07.2024
5.	Name of Licensee	Shivnandan Buildtech Pvt Ltd
6.	RERA Registered / not registered	Registered bearing no. 62 of 2019 dated 14.10.2019 upto 30.09.2021
7.	Unit No.	C - 401 4 <sup>th</sup> floor tower C (Page no. 14 of the complaint)
8.	Unit admeasuring	1970 sq. ft.



		(Page no. 14 of the complaint)
9.	Allotment Letter	28.11.2015 (Page 14 of complaint)
10.	Date of execution of Flat buyer agreement	30.12.2015 (Page no. 24 of the complaint)
11.	Possession clause	<b>3.1</b> 3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of tower/building in which the said flat is to be located, in <b>4 years from the start of construction or execution of this agreement whichever is later</b> (Emphasis supplied).
12.	Due date of delivery of possession	30.12.2019 (Calculated from the date of agreement i.e 30.12.2015 since date of construction is not available)
13.	Total sale consideration (bsp)	Rs 1,04,41,000/- (As per page 25 of complaint)
14.	Total amount paid by the complainant	Rs 1,10,30,466/- (As alleged by the complainant)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Surrender letter	27.09.2019

(page 45 of complaint)

**B. Fact of the complaint**

3. That the complainants had booked a unit in the group housing complex "Express 99" at Village Dhankot, Sector - 99, Tehsil and District - Gurgaon, Haryana for unit No. C-401, Tower - C consisting of 3 BHK and admeasuring Super Area of 1,970 Sq. Ft. with the respondent M/s Cosmos Infra Engineering (India) Ltd.
4. That an allotment letter was issued by the respondent on 28.11.2015, but till date no possession has been given to the complainant. Prior to execution of the flat buyer agreement, the complainant had already made payment of Rs. 12,42,014/- excluding service tax as per the terms of the agreement. The buyer's agreement was executed between the parties on 30.12.2015, the physical possession of the above said residential floor/apartment was supposed to be given by the respondent to the complainant by 30.12.2019 excluding the grace period of 6 months but the respondent has failed to deliver the possession of the above said residential unit to the complainant even after the lapse of the grace period. These terms were mentioned under clause 3.1 and clause 5.1 of the flat buyer agreement.
5. That in the flat buyer agreement, it was also mentioned that if the respondent failed to deliver the possession in time, in that case the complainant will be entitled for compensation for the delayed period which is very less compared to the interest that the complainant has



forgone on the amount paid by the complainant to the respondent against the said unit.

6. That the total cost of the residential unit as per the flat buyer's agreement is Rs. 1,24,20,140/-and as per the demand of the builder the complainant has already paid Rs. 1,10,30,466.86 to the respondent including the amount of loan that has been paid by the HDFC Bank under a subvention scheme on the basis of execution of a tripartite agreement between the complainant, the builder and the bank dated 23.12.2015. The remaining of the total consideration amount has to be paid at the time of possession according to the terms of the flat buyer's agreement.
7. That the complainant had purchased the said unit for which it had taken a huge loan from the HDFC Bank under a Subvention scheme, however, the respondent by not delivering the possession on time has made their life miserable as they had never thought that the possession of the unit will not be delivered by the respondent in time which is causing extreme hardship for the complainant to bear the loss of lakhs of Rupees of additional interest accruing on the bank loan amount on a daily basis. As per the terms of the subvention agreement, the respondent was liable to pay Pre-EMIs to the bank from the date of first disbursement until the possession of the unit to the complainant, however, the builder has only paid the Pre-EMIs for 2 months (i.e. November and December, 2017) and the complainant has paid Pre-EMI's for the period of January-December,

2018 on behalf of the respondent which the respondent is entitled to reimburse.

8. That the complainant many a times requested for final possession of the unit through verbal request, but no satisfactory reply was ever given by the respondent. The complainant has made several telephonic calls to their customer care executive for the possession of the unit but every time they have given false promise that they are providing the possession very soon but till date no possession has been given to the complainant.
9. That the respondent has failed to honour its commitments to hand over the possession in time and make default to honour the commitments, hence the complainant is entitled to refund of the entire amount and also get interest @ 18% on all the amount deposited with the builder along with future interest and the amount of interest payable to the bank under the tripartite agreement. Additionally, the complainant is also entitled to get compensation for the extreme hardships that the complainant and his family have faced due to its money being stuck in a project which has no future.
10. That the respondent has not completed the construction of the said project till now and the complainant has not been provided the possession of the said unit despite all promises done and representation made by the respondent.
11. That the conduct on part of respondent regarding delay in delivery of possession of the said unit has clearly manifested that the respondent



never ever had any intention to deliver the said unit on time as agreed. It has also cleared the dust on the fact that all the promises made by the respondent at the time of sale of the said flat were fake and false. The respondent had made false, fake, wrongful and fraudulent promises just to induce the complainants to buy the said unit on the basis of its false and frivolous promises, which the respondent never intended to fulfill. The respondent in its advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.

12. That the complainant further declare that the matter regarding which the present complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.
13. That the complainants have filed the present complaint for refund of the total paid up amount.

**C. Relief sought by the complainants:**

14. The complainants have sought following relief(s):

- I. Direct the respondent to refund the entire amount paid by the complainant along with interest.
- II. Direct the respondent to pay the amount due to the lender HDFC bank for the loan under the tripartite agreement dated 23.12.2015 along with the full interest due to it because of which the lender bank is sending regular notices to the complainant .

- III. Direct the respondent to reimburse the amount of pre-EMIs to the complainant paid by the complainant to the lender bank on behalf of the respondent i.e for the period of January - December 2018.
  - IV. Direct the respondent to pay compensation of Rs. 20,00,000 for financial hardship and harassment and Rs. 75,000/- for the litigation cost.
15. On the date of hearing, the authority explained to the respondent/promoters 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**

16. The respondent has contested the complaint on the following grounds.
17. That In the present case the delay caused in the construction of the project was not due to the acts of the respondent but due to the factors beyond the control of the respondent. The following factors caused the delay in the construction of the project, which are not within the control of the respondent and are force majeure events:
- That since basic infrastructure and facilities like road, water, electricity supply and sewer were not available, the respondent could not continue with the construction.
  - That the project is located on the Dwarka Expressway which was proposed in the year 2006 and was supposed to be completed by 2010- 11. But, however due to the unfortunate delay in the construction of the Expressway, the construction of



the project got delayed as well since there was no road for commuting. The respondent even filed an RTI application with the NHAI in 2017 inquiring about the estimate time of completion of the Dwarka Expressway to which no date of completion was informed in the reply given by the authority. The respondent had even filed an RTI with the HUDA asking information on water supply to the project, in reply of which it was stated that it would take another 2-3 years for supplying water to the project which again delayed the project as the respondent could not have handed over the possession without basic amenities like water.

18. That in July 2017, the RERA Act came into force which barred the developers from accepting the bookings or receiving any payments from the buyers unless and until the project was registered with the Haryana RERA. The application for registration was immediately filed with the HRERA by the Respondent on 31/07/2017 at the Panchkula Office. However, on 03.01.2018 an order was received by the respondent wherein it was stated that a copy of duly renewed license by the Director Town & Country Planning (DTCP Haryana, was to be filed for the registration. That on 16.03.2018 the renewed license was submitted with the concerned authority but however no registration was granted by HARERA for reasons not known to the Respondent. Thereafter, the respondent came to the knowledge that Haryana Real Estate (Regulation

& Development) Rules 2017 were superseded by Haryana Real Estate regulatory authority Gurgaon (Registration of projects) Regulation 2018 & had to submit a fresh application that required many permissions from DCP Haryana which took up a lot of time of the respondent. Furthermore, the respondent even sent a reminder dated 28.03.2018 to the principal secretary cum DRA to Government of Haryana Chandigarh to register the project as soon as possible as all the conditions under the Act and application had been met. On 15.03.2018 the respondent received the reply to the said reminder, in which it was stated that as per the new regulation of 2018, the Gurgaon office had the authority to register the project rather than the Panchkula office and a fresh application to be filed with the Gurgaon Office. That a fresh application was again filed with the Gurgaon office on 23.04.2018 and the registration was granted only on 14.10.2019 which is almost 27 months after the very first application was filed.

19. That the construction of the project was in full swing and the respondent expected it be completed within the timeframe promised to the buyers but however due to the changes in law, the construction of the project suffered an unfortunate delay. On top of that, when the respondent tried to mobilize the construction of the project after receiving the registration, the world was struck by the pandemic in the year 2020 and a nationwide lockdown was imposed due to which many workers went back to their hometowns and have not returned till date.





20. That the bank accounts of the respondent were blocked due to the RBI circular RBri2020-21/20D0R.No. BP. BC/7/21.04.048/2020-21 dated August 6, 2020 and hence the respondent could not use the funds for the development of the project. As per the notification dated 26.05.2020, issued by HARERA Gurugram, an extension period of 6 months has been granted to projects that are expiring in 25.05.2020 or after. Since, the date of completion for the subject project is 30.09.2021, thus the extension is available for the respondent as well. Therefore, the construction of the project will be completed well within the time frame.
21. That the delay in the construction of the project due to the force majeure events, does not go against the provisions of the Flat Buyer's Agreement and the agreement itself allows the delays that are caused by the factors beyond the control of the respondent. The present complaint is liable to be dismissed as the complainants have failed to show that the delay caused was due to the acts of the respondent that are against the provisions of the flat buyer's agreement and hence, the present complaint is liable to be dismissed.
22. That the respondent even sent a reminder dated 28.03.2018 to the principal secretary cum DRA to Government of Haryana Chandigarh to register the project as soon as possible as all the conditions under the Act and application had been met. On 15.03.2018 the respondent received the reply to the said reminder, in which it was stated that as per the new regulation of 2018, the Gurgaon office had the authority to register the

project rather than the Panchkula office and a fresh application to be filed with the Gurgaon Office. That a fresh application was again filed with the Gurgaon office on 23/04/2018 and the registration was granted only on 14.10.2019 which is almost 27 months after the very first application was filed.

23. That the construction of the project was in full swing and the respondent expected it be completed within the timeframe promised to the buyers but however do to the changes in Law, the construction of the project suffered an unfortunate delay. On top of that, when the respondent tried to mobilize the construction of the project after receiving the registration, the world was struck by the pandemic in the year 2020 and a nationwide lockdown was imposed due to which many workers went back to their hometowns and have not returned till date.

24. That in so far as it relates to the allotment letter, payment and the flat buyers agreement, are a matter of record and hence need no reply. However, it is stated that the Clause 3.1 specifically states that the timely delivery of the possession of the flat is subject to force majeure. Since the present case the delay was caused by the event of force majeure, the respondent has committed no breach of the same.

25. That it is denied that the respondent by not delivering the possession on time has made their life miserable. It is stated that respondent was only liable to pay the pre-EMIs only till 31 October 2017 as per Clause 3 of the TPA dated 23.12.2015, however, the respondent paid the Pre-EMIs for the

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month of November and December 2017, which it was not even liable to pay. It is further stated that the complainants are a speculative buyer and now want to back out of the transaction as the real estate industry is facing a crunch. It is explicitly denied that the respondent has an intention of cheating and defrauding the complainants at the time of launching the project. It is stated that the delay in the project was never caused by the actions of the respondent but due to factor that were beyond the control of the respondent like change in law, pandemic, lack of labour, financial meltdown etc. It is also pertinent to note that despite facing such obstacles the respondent tried its best to keep the construction going in order to honour its promise of time delivery of the flat.

26. That it is further stated that almost 70% of the construction is already complete and the project will be soon ready for handing over of possession. It is stated that the construction of the project is almost complete. As per the Local commissioner's report appointed by the Hon'ble Court in the case of Teena Sood & Ors. v. Cosmos Infra Engineering (India) Pvt. Ltd. and the Architect's certificate. showing quarterly progress, majority of the construction is completed.

27. All other averments made in the complaint were denied in toto.

28. 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 submission made by the parties.

**E. Jurisdiction of the authority**

29. 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**

30. 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**

31. 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:**

*AS*



*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.*

32. 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 complainants at a later stage.

33. 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*

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*officer under Section 71 and that would be against the mandate of the Act 2016."*

34. 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. Objections raised by the respondent:**

**F.1 Delay due to force majeure**

35. The respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and basic infrastructure and facilities like road, water, electricity supply and sewer were not available. The authority put reliance judgment of 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 which has observed that-

*"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."*

36. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 30.12.2019. The respondent 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 relief sought by the complainants**

**G.I Direct the respondent to refund the entire amount paid by the complainant along with interest.**

**G.II Direct the respondent to pay the amount due to the lender HDFC bank for the loan under the tripartite agreement dated 23.12.2015 along with the full interest due to it because of which the lender bank is sending regular notices to the complainant.**

**G.III Direct the respondent to reimburse the amount of pre-EMIs to the complainant paid by the complainant to the lender bank on behalf of the respondent i.e for the period of January - December 2018.**

37. The complainants were allotted a unit in the project of the respondent detailed above on 28.11.2015 for a total sale consideration of Rs. 1,04,41,000/-. The buyer's agreement got executed between the parties on 30.12.2015. According to clause 3.1 the developer shall, under normal conditions, subject to force majeure, complete construction of

tower/building in which the said flat is to be located, in 4 years from the start of construction or execution of this agreement whichever is later. Therefore, in the absence of date of start of construction the due date is calculated from 30.12.2015 and the same comes out to be 30.12.2019.

38. That in the present case no occupation certificate has been obtained by the respondent and no possession has been offered till date to the complainants . However, the complainants send a letter on 27.09.2019 regarding surrender of the booked unit and the said letter was sent before the due date of possession i.e 30.12.2019. The said letter was sent by the complainants and is evident from the page no. 45 of the complaint.

39. Even keeping in view, the principle laid down by the Hon'ble Apex Court of the land, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, framed regulation 11 provided as under-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

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40. It is evident from the above mentioned facts that the complainants paid a sum of Rs.1,10,30,466/- against basic sale consideration of Rs.1,01,41,000/- of the unit allotted on 28.11.2015. The respondent was bound to act and respond to the pleas for surrender/withdrawal and refund of the paid-up amount accordingly.
41. Thus, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the allotted unit and is directed to refund the same in view of the agreement to sell for allotment by forfeiting the earnest money which shall not exceed the 10% of the basic sale consideration of the said unit and shall return the balance amount along with interest at the rate of 10.75% (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 surrender i.e., 27.09.2019 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
42. The complainant got the unit under subvention scheme. The Authority observes that as tri-partite agreement was executed between the parties and financier, the respondent was under obligation to make payments towards pre-EMI till offer of possession. The Authority is of considered view that out of amount so assessed the respondent is entitled to deduct the amount, if any, paid towards pre-EMI/re-payment of such loan.

**G.IV Direct the respondent to pay compensation of Rs. 20,00,000 for financial hardship and harassment and Rs. 75,000/- for the litigation cost.**

43. The complainants are 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., 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 complainants 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**

44. 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 refund to the complainants the paid-up amount of Rs.1,10,30,466/- after deducting 10% as earnest money of the basic sale consideration of Rs.1,07,41,000/- with interest at the prescribed rate i.e., 10.75%, from the date of surrender i.e 27.09.2019 till date of actual refund.
- ii. Out of total amount so assessed, the amount paid by the bank/payee be refunded in the account of bank and the balance amount along with interest will be refunded to the complainant.
- iii. Out of amount so assessed, the respondent is entitled to deduct payment made towards pre-EMI/ repayment of such loan.
- iv. 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.

45. Complaint stands disposed of.

46. File be consigned to registry.



**(Ashok Sangwan)**  
**Member**

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 09.08.2023**

