

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

Order reserved on:	18.07.2023
Order pronounced on:	08.08.2023

Name of the Builder		Signature Builders Private Limited	
Project Name		Orchard Avenue	
S.n	Complaint No.	Complaint title	Attendance
1.	CR/4561/2021	Ranjeet Jangra V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. J.K. Dang
2.	CR/4571/2021	Sudarshan Samanta V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
3.	CR/4567/2021	Sujit Kumar V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
4.	CR/4572/2021	Nickey Agarwal V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
5.	CR/4557/2021	Gurpreet Kaur V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
6.	CR/4562/2021	Deepak Sadotra V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
7.	CR/4559/2021	Uday veer Singh V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
8.	CR/4553/2021	Kanchan V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
9.	CR/4558/2021	Anureet Kaur V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
10.	CR/4565/2021	Rakesh Pupneja V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
11.	CR/4564/2021	Kapil Garg and Deepti Garg V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.

12.	CR/4560/2021	Shyamal Kishore V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
13.	CR/4570/2021	Ramprakash Morya V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
14.	CR/4563/2021	Ashish Kumar Dwivedi V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
15.	CR/5169/2021	Anjali Sheoran and Upender Singh V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.
16.	CR/5029/2021	Rohit Sinha V/s Signature Builders Private Limited	Mr. Rohit Sharma Mr. Mintu Kumar A.R.

CORAM:

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of all the 16 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Orchard Avenue (Affordable housing project) being developed by

the same respondent/promoter i.e., Signature Builders Private Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: Orchard Avenue, Sector-93, Gurugram
Possession clause: Clause 3.1
Subject to Force Majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later
Note:
1. Date of approval of building plans- 29.04.2016
2. Date of environment clearance - 29.09.2016
3. Grace period- 6 months of grace period on account of COVID-19, in terms of HARERA notification dated 26.05.2020 allowing grace period from 01.03.2020 to 30.09.2020.
3. Due date of handing over of possession- As per clause 3.1 of buyer's agreement, the due date of handing over of possession to be calculated from a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later. Therefore, due date of handing over of possession including 6 months of grace period (COVID) comes out to be 29.03.2021. (calculated from date of environment clearance being later)

4. License no. - 01 of 2016 dated 04.02.2016 valid upto 05.05.2023

5. Occupation certificate- It has been obtained from competent authority i.e., DTCP on 20.04.2021 for towers A, B, C, D, E, F and G

Sr. no	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement	Due date of possession & Offer possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/4561/2021 titled as Ranjeet Jangra V/s Signature Builders Private Limited DOF-25.11.2021	Reply received on 05.04.2022	504, Tower-B admeasuring 543.54 sq.ft. (As per offer of possession)	10.10.2016 (As per page no. 37 of complaint)	29.03.2021 Offer of Possession /Possession certificate-10.08.2021 (As per page no. 168 of the reply)	TSC: Rs.24,41,653/- (As per page no. 72 of the complaint) AP: Rs.24,17,118/ (As per page no. 72 of the complaint)	1. DPC
2.	CR/4571/2021 titled as Sudarshan Samanta V/s Signature Builders Private Limited DOF-25.11.2021	Reply received on 22.06.2022	A-703, Tower -A admeasuring 543.592 sq. ft. carpet area and 86.704 sq. ft. balcony area (As per page no. 45 of complaint)	08.03.2018 (As per page no. 43 of complaint)	29.03.2021 Offer of Possession /Possession certificate-12.07.2021 (As per page no. 6 of the statement of account)	TSC: Rs.24,60,311/- (As per page no. 1 of the statement of account) AP: Rs.24,17,058/- (As per page no. 1 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost

12

3.	CR/4567/ 2021 titled as Sujit Kumar V/s Signature Builders Private Limited DOF- 25.11.2021	Reply recei ved on 22.06 .2022	D-407, Tower -D admeasurin g 543.592 sq. ft. carpet area and 86.704 sq. ft. balcony area (As per page no. 43 of complaint)	27.03.2018 (As per page no. 41 of complaint)	29.03.2021 Offer of Possession /Possession certificate- 08.07.2021 (As per page no. 6 of the statement of account)	TSC: Rs.24,60,311/- (As per page no. 1 of the statement of account) AP: Rs.24,17,058/- (As per page no. 1 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost
4.	CR/4572/ 2021 titled as Nickey Agarwal V/s Signature Builders Private Limited DOF- 26.11.2021	Reply recei ved on 22.06 .2022	C-302, Tower -C admeasurin g 543.592 sq. ft. carpet area and 86.704 sq. ft. balcony area (As per page no. 44 of complaint)	15.03.2018 (As per page no. 42 of complaint)	29.03.2021 Offer of Possession /Possession certificate- 05.08.2021 (As per page no. 6 of the statement of account)	TSC: Rs.24,60,311/- (As per page no. 2 of the statement of account) AP: Rs.24,17,058/- (As per page no. 2 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost
5.	CR/4557/ 2021 titled as Gurpreet Kaur V/s Signature Builders Private Limited DOF- 25.11.2021	Reply recei ved on 22.06 .2022	D-202, Tower -D admeasurin g 543.59 sq. ft. carpet area (As per page 1 of statement of account)	19.09.2016 (As per page no. 40 of complaint)	29.03.2021 Offer of Possession /Possession certificate- 16.06.2021 (As per page no. 6 of the statement of account)	TSC: Rs.24,42,290/- (As per page no. 1 of the statement of account) AP: Rs.23,88,380/- (As per page no. 1 of the statement of account)	1. DPC 2. Refund of illegal maintenanc e charges. 3. Litigation cost

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6.	CR/4562/ 2021 titled as Deepak Sadotra V/s Signature Builders Private Limited DOF- 25.11.2021	Reply received on 22.06 .2022	F-503, Tower -F admeasuring 543.59 sq. ft. carpet area and 86.704 sq. ft. balcony area (As per page no. 42 of complaint)	15.09.2017 (As per page no. 40 of complaint)	29.03.2021 Offer of Possession /Possession certificate- 21.06.2021 (As per page no. 6 of the statement of account)	TSC: Rs.25,04,665/- (As per page no. 1 of the statement of account) AP: Rs.24,57,871/- (As per page no. 1 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost
7.	CR/4559/ 2021 titled as Uday Veer Singh V/s Signature Builders Private Limited DOF- 26.11.2021	Reply received on 22.06 .2022	A-1503, Tower -A admeasuring 543.592 sq. ft. carpet area and 86.704 sq. ft. balcony area (As per page no. 41 of complaint)	13.10.2017 (As per page no. 40 of complaint)	29.03.2021 Offer of Possession /Possession certificate- 18.06.2021 (As per page no. 6 of the statement of account)	TSC: Rs.25,04,665/- (As per page no. 1 of the statement of account) AP: Rs.24,39,496/- (As per page no. 1 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost
8.	CR/4553/ 2021 titled as Kanchan V/s Signature Builders Private Limited DOF- 26.11.2021	Reply received on 22.06 .2022	A-508, Tower -A admeasuring 543.539 sq. ft. carpet area and 85.939 sq. ft. balcony area (As per page no. 44 of complaint)	22.02.2018 (As per page no. 42 of complaint)	29.03.2021 Offer of Possession /Possession certificate- 13.07.2021 (As per page no. 6 of the statement of account)	TSC: Rs.24,59,667/- (As per page no. 1 of the statement of account) AP: Rs.24,16,027/- (As per page no. 1 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost

12



9.	CR/4558/ 2021 titled as Anureet Kaur and Deep pal Singh V/s Signature Builders Private Limited DOF- 26.11.2021	Reply recei ved on 22.06 .2022	C-1208, Tower -C admeasurin g 543.592 sq. ft. carpet area and 86.704 sq. ft. balcony area (As per page no. 46 of complaint)	20.08.2018 (As per page no. 44 of complaint)	29.03.2021 Offer of Possession /Possession certificate- 23.07.2021 (As per page no. 6 of the statement of account)	TSC: Rs.24,68,854/- (As per page no. 2 of the statement of account) AP: Rs.24,25,697/- (As per page no. 2 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost
10.	CR/4565/ 2021 titled as Rakesh Pupneja V/s Signature Builders Private Limited DOF- 26.11.2021	Reply recei ved on 22.06 .2022	C-1203, Tower -C admeasurin g 543.592 sq. ft. carpet area (As per statement of account page 1)	16.11.2016 (As per page no. 37 of complaint)	29.03.2021 Offer of Possession /Possession certificate- 12.07.2021 (As per page no. 6 of the statement of account)	TSC: Rs.24,57,290/- (As per page no. 2 of the statement of account) AP: Rs. 24,57,290/- (As per page no. 2 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost

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11.	CR/4564/2021 titled as Kapil Garg and Deepti Garg V/s Signature Builders Private Limited DOF-26.11.2021	Reply received on 22.06.2022	E-606, Tower -E admeasuring 543.592 sq. ft. carpet area and 86.704 sq. ft. balcony area (As per page no. 44 of complaint)	27.08.2018 (As per page no. 42 of complaint)	29.03.2021 Offer of Possession /Possession certificate-23.07.2021 (As per page no. 6 of the statement of account)	TSC: Rs.26,25,925/- (As per page no. 2 of the statement of account) AP: Rs. 26,25,925/- (As per page no. 2 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost
12.	CR/4560/2021 titled as Shyamal Kishore V/s Signature Builders Private Limited DOF-02.12.2021	Reply received on 22.06.2022	B-1107, Tower -B admeasuring 543.592 sq. ft. carpet area and 86.704 sq. ft. balcony area (As per page no. 41 of complaint)	20.03.2018 (As per page no. 39 of complaint)	29.03.2021 Offer of Possession /Possession certificate-31.08.2021 (As per page no. 6 of the statement of account)	TSC: Rs.24,60,310/- (As per page no. 1 of the statement of account) AP: Rs. 24,17,057/- (As per page no. 1 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost

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13.	CR/4570/ 2021 titled as Ramprakash Morya V/s Signature Builders Private Limited DOF- 02.12.2021	Reply recei ved on 22.06 .2022	C-803, Tower -C admeasurin g 543.592 sq. ft. carpet area (As per page no. 35 of complaint)	15.10.2016 (As per page no. 37 of complaint)	29.03.2021 Offer of Possession /Possession certificate- 18.06.2021 (As per page no. 6 of the statement of account)	TSC: Rs.24,42,290/- (As per page no. 1 of the statement of account) AP: Rs. 23,88,380/- (As per page no. 1 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost
14.	CR/4563/ 2021 titled as Ashish Kumar Dwivedi V/s Signature Builders Private Limited DOF- 02.12.2021	Reply recei ved on 22.06 .2022	F-601, Tower -F admeasurin g 543.54 sq. ft. carpet area (As per page no. 1 of statement of account)	17.09.2016 (As per page no. 40 of complaint)	29.03.2021 Offer of Possession /Possession certificate- 13.07.2021 (As per page no. 6 of the statement of account)	TSC: Rs.24,41,653/- (As per page no. 2 of the statement of account) AP: Rs. 24,13,454/- (As per page no. 2 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost

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15.	CR/5169/2021 titled as Anjali Shoeran V/s Signature Builders Private Limited DOF-30.12.2021	Reply received on 22.06.2022	C-1403, Tower -C admeasuring 543.592 sq. ft. carpet area and 86.704 sq. ft. balcony area (As per page no. 43 of complaint)	19.03.2019 (As per page no. 4 of complaint)	29.03.2021 Offer of Possession /Possession certificate-05.07.2021 (As per page no. 6 of the statement of account)	TSC: Rs.25,71,195/- (As per page no. 2 of the statement of account) AP: Rs. 25,71,195/- (As per page no. 2 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost
16.	CR/5029/2021 titled as Rohit Sinha V/s Signature Builders Private Limited DOF-30.12.2021	Reply received on 22.06.2022	B-301, Tower -B admeasuring 543.592 sq. ft. carpet area and 86.704 sq. ft. balcony area (As per page no. 40 of complaint)	08.03.2018 (As per page no. 42 of complaint)	29.03.2021 Offer of Possession /Possession certificate-21.06.2021 (As per page no. 6 of the statement of account)	TSC: Rs.24,59,667/- (As per page no. 1 of the statement of account) AP: Rs. 24,16,126/- (As per page no. 1 of the statement of account)	1. DPC 2. Refund of illegal maintenance charges. 3. Litigation cost

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

DOF- Date of filing of complaint

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

DPC- Delayed possession charges



4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for seeking award of delayed possession charges and refund of illegal maintenance charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR 4561/2021 titled as Ranjit Jangra Vs. M/s Signature Builders Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges and refund of illegal maintenance charges.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

**CR/4561/2021 titled as Ranjit Jangra Vs. M/s Signature Builders
Private Limited**

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Sr. No.	Particulars	Details
1.	Name of the project	Orchard Avenue, Sector - 93, Gurugram
2.	Unit No.	504, Tower- B (As per offer of possession)
3.	RERA Registration	11 of 2017 dated 30.06.2017 valid upto 29.09.2020 <u>Registration expired</u>
4.	DTCP License no.	1 of 2016 dated 04.02.2016 valid upto 05.05.2021
5.	Date of Approval of Building plan	29.04.2016 (As per BBA on page 38 of complaint)
6.	Date of environmental clearance	29.09.2016 (Page no. 20 of complaint)
7.	Date of builder buyer agreement	10.10.2016 (As per page 37 of complaint)
8.	Possession clause - 3.1	Subject to Force Majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but

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		not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later
9.	Due date of possession	29.03.2021 (Calculated from the date of environment clearance+6 months of grace period of COVID-19)
10.	Total Sale Consideration	Rs. 22,17,126/- (As per BBA on page no. 39 of complaint) Rs. 24,41,653/- (As per page no. 72 of complaint)
11.	Amount Paid	Rs. 24,17,118/- (As per page no. 72 of complaint)
12.	Occupation certificate	20.04.2021 (As per page no. 97 of reply)
13.	Offer of possession/possession certificate	10.08.2021 (As per page no. 168 of reply)

B. Facts of the complaint

- I. That the respondent has represented themselves as one of the renowned brands in the market of affordable Housing. That the respondent has

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launched the orchard avenue project and invited applications from the general public by advertising the same in various newspapers of the state as per the Affordable Housing Policy, 2013.

- II. That based on the invitation of the respondent the respective allottee(s) has submitted his application vide application number 06824 along with 5% of the total cost i.e., Rs.1,15,845/- as per the Affordable Housing Policy, 2013 for participating in the draw of the apartments. That after conducting the scrutiny of the files by the DTCP office, on 17.08.2016 the draw of the project was conducted in the presence of the officials of the DGTCP/DC, Gurugram and the flat bearing number B-504 (2 BHK type b) on 5th Floor was allotted to the Allottee(s).
- III. That after getting the allotment of the respective apartment, the allottee(s) has paid the next instalment of 20% of the total cost as per the payment plan agreed between the parties and subsequently the apartment buyer agreement was executed between the parties on 10.10.2016.
- IV. That as per the flat buyer's agreement both i.e., the developer and the respective flat buyer were liable to fulfil their part of obligations. that the allottee(s) had fulfilled all their commitments/obligations as per the flat buyer agreement i.e., making the timely payment as per the payment schedule agreed between the parties but the respondent has failed to keep his commitment of handing over the physical possession of the respective apartment on 30.09.2020.

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- V. That the allottee(s) has taken a bank loan and is residing in the rented accommodation as a result of which the allottee (s) is suffering immensely. That after getting delay in getting the possession of the respective apartment the Allottee(s) started following up with the respondent over phones, E-mail and even visited their office for so many days Allottee(s) has not received any response.
- VI. That failing which the Allottee(s) was left with no option but to explore legal remedy and on the advice of the advocate has got a legal Notice dated 19.04.2021 issued on his behalf wherein, the Allottee(s) has sought possession & interest towards the delay in possession @ 15% P.A. as per the flat buyer agreement. That meanwhile after the delay of more than (8) Eight months the respondent has got the occupation certificate and same was communicated to the respective Allottee(s) and the Final Demand Notice was issued.
- VII. That later on 03.05.2021, the allottee(s) has received the final demand notice and the allottee(s) got shocked to see the final demand notice as same has a component of maintenance charges/operational cost/utility charges even though as per the affordable housing policy the respondent has to maintain the colony free-of-cost for a period of five years from the date of grant of occupation for which the government has provide 4% commercial component. Since there were fault in the final demand notice (fdn) revised final demand notice (fdn) was issued on 16.07.2021.

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- VIII. That the allottee(s) has objected to the said maintenance charges/operational cost/utility charges, but the respondent has not paid any heed to the objection and rather warned the allottee(s) either to clear all the dues or face more delay in delivering the possession of the apartment. Since the allottee(s) was left with no option has cleared all the dues as stated in the final demand notice without prejudice to his right for seeking legal relief under the proper provisions of the law before respective Authority/Tribunal/Court or any other. It is also pertinent to note that the Allottee(s) per the Affordable Housing Policy are allowed to get 5-year free maintenance services from the date of possession. That even after clearing all the dues as per the final demand notice, the allottee(s) has not received any communication regarding the handing over of the physical possession of the apartment.
- IX. That thereafter, on the request of the allottee(s) the advocate has sent another reminder through e-mail dated 25.05.2021.
- X. That the respondent has not completed the construction work at site and even after delay of approx. (11) eleven months, on 10.08.2021, the physical possession of the apartment was handed over to the allottee(s) although the apartment is still having several deficiencies and same is not rectified till date and the company is making one or the excuse to remove from their liabilities. That the complainant has not filed any other or similar complaint before any other court/forum/authority seeking identical reliefs. That the

project is situated within the territorial jurisdiction of this Hon'ble Authority. Hence, this Hon'ble Authority is competent to try and adjudicate the present complaint.

C. Relief sought by the complainants:

8. The complainant has sought following relief(s):

- i. Direct the respondent to refund the illegal maintenance charges/operational cost/utility charges charged from the allottee(s).
- ii. Direct the respondent to pay interest towards the delay in giving the physical possession of the respective apartments @ 18% p.a., till handing over the physical possession of the respective apartment from the due date.
- iii. Direct the respondent to rectify all the snags in the apartment in terms of the flat buyer agreement.
- iv. Direct the respondent to complete all pending work and provide all amenities, facilities as per the builder buyer agreement.
- v. Direct the respondent to pay litigation cost of Rs.1,00,000/- (rupees one lakh) each to the respective complainant.

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9. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

10. The respondent has contested the complaint on the following grounds.
- That the complainant as well as other allottees of the project had made detailed and elaborated enquiries with regard to the location of the project, sanctions accorded by the concerned statutory authorities, specifications of the project as well as capacity, competence and capability of the respondent to successfully undertake the conceptualisation, promotion, construction, development and implementation of the project. Only after being fully satisfied in all respects, the complainant and other allottees proceed to submit their applications for obtaining allotment of apartments in the affordable group housing project.
 - It is wrong and denied that complainant had fulfilled all its commitment/obligations as per flat buyer agreement dated 10th of October 2016. Even the complainant has not made timely payment of consideration as per the agreed payment schedule.
 - It is respectfully submitted that possession of allotted unit was offered within the agreed period as per contractual covenants and further in accordance with applicable proposition of law. This assertion of the complainant emerges to be an afterthought which has been put forth with malafide intention entirely to prejudice this Hon'ble Authority against the

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respondent. As such, respondent cannot be made liable for any consequences/financial liabilities accruing on account of availing of loan by the complainant. The complainant had not followed up the matter with the respondent with regard to delivery of physical possession. That as per him, respondent was supposed to offer the possession, of the apartment in question upto 30th of September 2020. However, the said period would have been applicable provided no disturbance/hindrane had been caused either due to force majeure circumstances or on account of intervention by statutory Authorities etc.

- d. That prior to the expiry of said period the deadly and contagious Covid-19 pandemic had struck. The same had resulted in unavoidable delay in delivery of physical possession of the apartment. In fact, Covid 19 Pandemic was an admitted Force Majeure event which was beyond the power and control of the respondent. That for all real estate projects registered under real estate regulation and development act, where completion date, revised completion date or extended completion date was to expire on or after 15th of March 2020, the period of validity for registration of such projects had been ordered to be extended by Haryana Real Estate Regulatory Authority vide order dated 27th of March 2020. The Haryana Real Estate Regulatory Authority, Gurugram had issued order/direction dated 26th of May 2020 whereby the Hon'ble Authority

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had been pleased to extend the registration and completion date of Real Estate Projects by 6 months, due to outbreak of Covid-19 (Corona Virus).

- e. Moreover, it is pertinent to mention that the agreement of sale notified under the Haryana Real Estate (Regulation and Development) Rules, 2017 categorically excludes any delay due to "force majeure", Court orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project. That in addition to the aforesaid period of 9 months, the following period also deserves to be excluded for the purpose of computation of period available to the respondent to deliver physical possession of the apartment to the complainant as permitted under the Haryana Real Estate (Regulation and Development) Rules, 2017: -

1. *Date of Orders: - 9th of November 2017 (Annexure - R5) and 7th of November 2017 (Annexure - R6)*

Directions: - National Green Tribunal had passed the said order dated 9th of November 2017 completely prohibiting the carrying on of construction by any person, private or government authority in the entire NCR till the next date of hearing (7th of November 2017).

Period of Restriction/ Prohibition: - 9th of November 2017 to 7th of November 2017

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Days Affected: - 9 days

2. *Date of Order: - 29th of October 2018*

Directions: - Haryana State Pollution Control Board, Panchkula had passed the order dated 29th of October 2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27th of October 2018. By virtue of order dated 29th of October 2018 all construction activities involving excavation, civil construction

Period of Restriction/ Prohibition: - 1st November 2018 to 10th November 2018

Days Affected: - 10 Days

3. *Date of Order: - 11th of October 2019*

Directions: - Commissioner, Municipal Corporation, Gurugram had passed order dated 11th of October 2019(Annexure - R8) whereby construction activity had been prohibited from 11th of October 2019 to 31st of December 2019.

Period of Restriction/ Prohibition: - 11th of October 2019 to 31st of December 2019

Days Affected: - 81 days

- f. That the period of 100 days mentioned hereinabove was consumed on account of circumstances beyond the power and control of the respondent

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owing to passing of orders by statutory authorities affecting the regular development of the real estate project. Since, the respondent was prevented for the reasons stated above from undertaking construction activity within the periods of time already indicated hereinbefore, the said period ought to be excluded, while computing the period availed by the respondent for the purpose of raising construction and delivering possession.

- g. In the light of fact stated in previous paragraphs, it emerges that the same was got done by the complainant to collect false evidence to the prejudice of the respondent. The complainant was well aware that the delay had occurred on account of force majeure circumstances already mentioned hereinbefore. Thus, it could not have been claimed by the complainant that any delay could be attributed to the respondent. That complainant is not neither entitled to seek any interest for alleged delay in delivery of physical possession nor entitled to claim interest at the rate of 15% per annum or any other rate from the respondent. The dispatch of the notice dated 19th of April 2021 does not confer any right whatsoever in favour of the complainant and the same does not adversely affect the rights of the respondent in any manner whatsoever. Further, the complainant was well aware of the reasons for delay which were completely beyond the power and control of the respondent.

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- h. It is pointed out that the application for grant of occupation certificate had been submitted by the respondent in the office of Directorate of Town & Country Planning, Haryana, Chandigarh on 11-12-2019. That the occupation certificate was eventually issued by Directorate of Town & Country Planning, Haryana, Chandigarh vide Memo bearing number ZP-—1110/AD(RA)/2021/10234 dated 20-4-21. It is submitted that the delay in the issuance of occupation certificate cannot be attributed to the respondent. It needs to be appreciated that once any application for grant of any permission or procurement of any certificate/sanction is submitted by the respondent in the office of the concerned statutory authority, the respondent ceases to have any control over the eventual grant of sanction/issuance of certificate. That the respondent has got absolutely no control over departmental delay. It is respectfully submitted that possession of the apartment was offered by the respondent to the complainant immediately after receipt of occupation certificate well within the period provided in the flat buyer's agreement dated 10th of October 2016 for delivery of physical possession of the apartment.
- i. It is reiterated that the complainant is not entitled to seek any legal relief under any provision of law against the respondent. The allegations labelled by the complainant are absolutely baseless and unfounded. Any demand of the respondent is not contrary to affordable housing policy. The complainant be asked to put strict proof of the allegations levelled by him



as the complainant has failed to enclose the documentary proof in support of its allegations set out in the para under reply. As stated by complainant that even after clearing all dues as per final demand notice, the complainant did not receive any communication regarding delivery of physical possession of the apartment. In fact, the complainant has admitted that physical possession of the apartment has been duly delivered to him by the respondent. It is submitted that the email referred to above sent by the complainant so as to collect false evidence to the prejudice of the respondent.

11. 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

12. 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, 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.

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

E. II Subject-matter jurisdiction

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)(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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

So, in view of the provisions of the Act of 2016 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.1 Objection regarding delay due to force majeure circumstances.

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13. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of building plan is 29.04.2016 and environment clearance is 29.09.2016 as mentioned in the reply. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 29.09.2020. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 29.09.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to

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outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to **29.03.2021**.

14. Further in the judgement of the Hon'ble Supreme Court of India in the case of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Civil Appeal no. 6745-6749 of 2021), 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***

G. Findings on the relief sought by the complainant:

(i) Direct the respondent to refund the illegal maintenance charges/operational cost/utility charges charged from the allottee(s).

15. Vide proceeding dated 12.07.2023, the counsel for the complainant stated that the complainant does not want to press the issue of maintenance and

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quoted a DTCP order which deals with the same issue. He further stated that he wants to continue the present matter seeking delayed possession charges as the main relief.

- (ii) Direct the respondent to pay interest towards the delay in giving the physical possession of the respective apartments @ 18% p.a., till handing over the physical possession of the respective apartment from the due date.
- (iii) Direct the respondent to rectify all the snags in the apartment in terms of the flat buyer agreement.
- (iv) Direct the respondent to complete all pending work and provide all amenities, facilities as per the builder buyer agreement.

16. The common relief of delayed possession charges & interest are involved in all these cases.

G.I Direct the respondent to pay interest towards the delay in giving the physical possession of the respective apartments @ 18% p.a., till handing over the physical possession of the respective apartment from the due date.

17. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the provisions of section 18(1) of the Act which 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

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delay, till the handing over of the possession, at such rate as may be prescribed."

18. The apartment buyer's agreement was executed between the parties. As per clause 3.1 of the agreement, the possession was to be handed over within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later with a grace period of 6 months (COVID-19). The clause 3.1 of the buyer's agreement is reproduced below:

3.1 Possession

*Subject to Force Majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later
(Emphasis supplied)*

19. So also, in view of the above judgement the complainant can seek interest if he does not wish to withdraw from the project. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause

and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

20. **Admissibility of grace period:** As per clause 3.1 of buyer's agreement, the respondent promoter has proposed to handover the possession was to be handed over within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later with a grace period of 6 months (COVID-19). Accordingly, the authority in view of notification no. 9/3-2020 dated 26.05.2020, on account

of force majeure conditions due to outbreak of Covid-19 pandemic allows the grace period of 6 months to the promoter at this stage.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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.

The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.

22. 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***

23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 08.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

24. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

- Explanation. —For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
 - (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

25. On consideration of the documents available on record and submissions made 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 3.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later with a grace period of 6 months (COVID-19). As such the due date of handing over of possession comes out to be 29.03.2021 in all the cases as detailed in para no. 03 of order. However, no interest shall be charged from the complainant in case of delayed payment during this 6 months COVID period from 01.03.2020 to 01.09.2020.

26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In these complaints, the occupation certificates were granted by the competent authority on 20.04.2021. The respondent has offered the

possession of the subject unit(s) to the respective complainants after obtaining occupation certificate from competent authority, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. In the *case bearing no. Cr/4561/2021 titled as Ranjeet Jangra V/s Signature Builders Private Limited*, the possession was offered on 10.08.2021 after receiving occupation certificate. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 29.03.2021 till the expiry of 2 months from the date of offer of possession (10.08.2021) i.e., upto 10.10.2021.

27. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's 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 allottees shall be paid, by the promoter, interest for every month of delay

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from due date of possession i.e., 29.03.2021 till offer of possession plus two months (i.e., 10.10.2021), at the prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II Direct the respondent to pay a sum of Rs. 30,000/- as cost of present litigation.

28. 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.*, 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.

G.III Direct the respondent to refund the illegal maintenance charges/operational cost/utility charges charged from the allottee(s).

29. The above-mentioned relief has been sought in **serial no. 2-16 complaint number mentioned in para 3 of this order.** In *CR/ 4068/2021 Pardeep*

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Kumar Through V/s Pareena Infrastructure Pvt. Ltd. 09.12.2022, this Authority held that w.r.t maintenance charges, an email has been received from DTCP intimating that the issue of free maintenance of the colony in terms of Section 4 (v) of Affordable Housing Policy stands referred to the Government and clarification will be issued by DTCP as and when the approval is received from the Government. Therefore, the issue of maintenance charges shall be regulated in terms of the orders of the Government as and when issued.

H. Directions of the Authority

30. Hence, the authority hereby passes this order and issue 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 at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 29.03.2021 till offer of possession i.e., 10.08.2021 plus two months i.e., upto 10.10.2021 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.

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- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
32. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.
33. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)
Member

Dated: 08.08.2023