

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

Complaint no. :	6755 of 2022
Date of filing complaint:	18.10.2022
First date of hearing:	01.12.2022
Date of decision :	20.04.2023

Sh. Rohit Hooda S/o Sh. Balwan Singh Hooda <b>R/O:</b> House no. C2/18, Prashant Vihar, New Delhi - 110085	<b>Complainant</b>
Versus	
M/s Adani M2K Projects LLP <b>Regd. office:</b> Adani House, Plot no. 83 Institutional Area, Sector 32, Gurugram, Haryana	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Rishabh Jain (Advocate)	Complainant
Sh. Prashant Sheoran (Advocate)	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 allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**



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

S.no	Particulars	Details			
1.	Name of the project	Oyster Grande, Sector 102, Gurugram, Haryana			
2.	Total area of the project	19.238 acres			
3.	Nature of the project	Group Housing Colony			
4.	DTCP license details:				
	<b>S.no.</b>	<b>License no.</b>	<b>Validity</b>	<b>Licensed area</b>	<b>Licensee</b>
	1.	29 of 2012 dated 10.04.2012	09.04.2020	15.72 acres	M/s Aakarshan Estates Pvt. Ltd. C/O M/s Adani M2K Projects LLP
	2.	30 of 2012 dated 10.04.2012	09.04.2020	3.52 acres	M/s Aakarshan Estates Pvt. Ltd. C/O M/s Adani M2K Projects LLP
5.	Registered/not registered	<b>Registered</b> by Adani M2K Projects LLP			
	Registration details				
	<b>S.no.</b>	<b>Registration no.</b>	<b>Validity</b>	<b>Area</b>	
	1.	37 of 2017 dated 10.08.2017	30.09.2024	Tower G (15773.477 sq. mtrs.)	
	2.	170 of 2017 dated 29.08.2017	30.09.2019	Tower J Nursery school-1 & 2, Convenient Shopping,	





				Community Block X-1 & X-2 (19056.69 sq. mtrs.)
	3.	171 of 2017 dated 29.08.2017	30.09.2019	Tower H (17229.629 sq. mtrs.)
6.	Provisional allotment letter		Not provided on record	
7.	Unit no.		A-701, 7 <sup>th</sup> floor, Tower- A (As per page no. 58 of complaint)	
8.	Area of the unit (super area)		1898 sq. ft. (super area) (As per page no. 58 of complaint)	
9.	Date of execution of buyer's agreement		02.12.2013 (As per page no. 31 of complaint)	
10.	Possession clause		<b>As per as per Article 5(A)(i)</b> <i>Subject to the compliance of all terms and conditions of this agreement by the allottee(s) including the timely payment of the sale consideration and other charges and all other applicable taxes/levies/interests/penalties, etc., the developer based on its present plans and estimates and subject to all just exceptions <u>will endeavour to complete construction of said apartment within a period of forty eight (48) months from the date of execution of this agreement or from the date of commencement of construction, whichever is later with a grace period of six (6) months</u>, subject to force majeure events (as defined herein) which shall include events/ circumstances or combination thereof which may prevent / obstruct / hinder / delay the construction</i>	

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		<i>and development of the said project/complex.</i>
11.	Date of start of construction	28.02.2013 (As per SOA dated 11.01.2019 on page no. 65 of complaint)
12.	Due date of possession	02.06.2018 (Calculated from date of agreement i.e.; 02.12.2013, being later) (Grace period of 6 months is allowed being un-conditional) <i>(Inadvertently, mentioned as not allowed in proceedings dated 20.04.2022 whereas allowed in similar cases of same date; ref complaint no. 2408/2021 dated 20.04.2023)</i>
13.	Total Sale Consideration	Rs. 1,30,16,296/- (As per payment plan on page no. 58 of complaint)
14.	Total amount paid by the complainant	Rs. 1,45,44,840/- (As per SOA dated 11.01.2019 on page no. 67 of complaint)
15.	Occupation certificate	20.12.2017 (As per page 14 of the reply)
16.	Offer of possession	25.01.2018 (As per page no. 63 of complaint)

**B. Facts of the complaint:**

3. That the respondent launched a project in 2012 with the promise to deliver the possession on time and published very attractive brochure, highlighting the multi-storeyed residential group housing complex by the name and style



of 'Oyster Grande' situated at Sector – 102/102A, village Khedki Mazra, Gurugram, Haryana. It is submitted that there were fraudulent representations, incorrect and false statements in the brochure violating Section 12 of the Act.

4. That the complainant was approached by the sale representatives of respondent, who made tall claims about the project and invited him to the sales office and was lavishly entertained and promised that the possession of his apartment would be handed over in time including parking, horticulture, club and other common areas. The complainant was impressed by the representations and ultimately booked a unit in the project of the respondent and paid booking amount of Rs.10,00,000/- on 05.11.2012.
5. That the respondent violated Section 13 of the Act of 2016 by taking more than 10% cost of the apartment before the execution of the agreement. The total cost of the unit was Rs.1,30,16,296/- inclusive of EDC, IDC, PLC, car parking, club membership, IFMS, power backup etc., while it had collected a total sum of Rs. 32,25,535/- i.e. more than 24% of the total cost till 04.03.2013.
6. That an apartment buyers agreement was executed between the parties on 02.12.2013 for a 3 BHK + servant room (type A) bearing no. A-701 at 7th floor in tower no. A, having super area of 1898 sq. ft. with exclusive right to use the car parking space, for a total consideration of Rs. 1,30,16,296/- inclusive of Rs. 5,82,686/- of EDC & IDC, Rs. 1,50,000/- for power backup charges, Rs.1,89,800/- for Interest Free Maintenance Security (IFMS), Rs.

2,50,000/- for club membership charges, Rs. 6,64,300/- for preferential location charges (PLC) for central green, sector road, club/pool facing and Rs. 7,50,000/- for parking charges

7. That as per Article 5(A) of buyer's agreement date of handing over of possession of the apartment comes out to be 02.12.2017, calculated as 48 months from the date of execution of agreement i.e. 02.12.2013.
8. That the respondent offered the possession of the apartment on 25.01.2018 and issued a demand letter to the complainant wherein demanding payment of Rs.18,98,824/- due at the stage of offer of possession, as per applicable payment plan at annexure B.
9. That the complainant made all payments timely as and when demanded by the respondent and in total, paid a sum of Rs.1,45,44,840/- i.e. more than 100% payable amount to the respondent till date.
10. That the complainant approached the respondent and pleaded for payment of his delay possession charges on various occasions. The respondent did not reply to his letters, emails, personal visits, telephone calls, seeking information about the delay possession charges and thereby violated provisions of Section 19 of the Act of 2016. It has not paid delay possession charges to the complainant since 02.12.2017.
11. That it is responsible and accountable to the terms and conditions prescribed in the agreement. The respondent is bound to pay the interest on the deposited amount to the complainant if there is a delay in handing over the possession of the unit.



12. That the respondent has, in an unfair manner, siphoned off funds meant for the project and utilised same for its own benefit for no cost. The respondent being builder, promoter, colonizer and developer, whenever in need of funds from bankers or investors ordinarily has to pay a heavy interest per annum. However, in the present scenario, it has utilised the funds collected from the complainant and other buyers for its own good in other projects, being developed by it.
13. That the complainant is residing outside India and therefore, executed a Special Power of Attorney, dated 23.09.2022, in which Mr Rohit Hooda authorised Shri Balwan Singh Hooda as his true and lawful Special Attorney, for the purpose of filing court case, pursuing litigation, complaint case or to initiate any such other required process against the respondent with regard to subject unit.
14. That the complainant has lost confidence and in fact has got no trust left in the respondent, as it has deliberately and wilfully indulged in undue enrichment, by cheating the complainant besides being guilty of indulging in unfair trade practices and deficiency in services in not delivering the legitimate and rightful possession of the apartment in time and then remaining non-responsive to his requisitions. That as per the obligations on the respondent-promoter under Section 18 of the Act of 2016 read with Rules 15 and 16, it was under an obligation to pay interest on the delayed possession on the amount deposited by the complainant at the rate prescribed. It has neglected its part of the obligations by failing to offer a legitimate and rightful possession of the unit in time.

15. That the respondent is habitual of making false promises and has deceptive behaviour and has earned enough monies by duping the innocent complainant and other such buyers through unfair trade practices and deficiencies in services and has caused the complainant enough pain, mental torture, agony, harassment, stress, anxiety, financial loss and injury.
16. That the respondent, as per the agreement despite promising the complainant that the apartment would be delivered by 02.12.2017, has offered the possession on 25.01.2018, after a delay of more than one month and has not paid any interest for delay on the paid amount and constituted unfair trade practices & deficiencies in service and cheating.
17. That it has collected huge amount from the complainant and other such buyers, has not utilised said funds for the construction of the project on time as promised by the respondent at the time of booking of the unit in 2012. If it would have followed the construction linked payment plan in its letter and spirit, the group housing complex would have been completed and the delay would not have occurred.
18. That the complainant has suffered financial losses and mental agony & harassment as a result of the aforesaid deficiencies in services.

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

19. The complainant has sought following relief(s):
  - i. Direct the respondent to pay delay possession charges at the prescribed rate from due date of possession i.e. 02.12.2017 till 25.03.2018.



- ii. Direct the respondent to pay sum of Rs. 1,00,000/- towards litigation cost.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:-

20. That the respondent launched a residential project under the name and style of "Oyster Grande" in Sector 102/102A in Gurugram, Haryana ("said project"), wherein the complainant approached it and applied for allotment of an apartment in the said prestigious project of the respondent. Thereafter, they That the claims made and reliefs claimed by the complainant are barred by law of limitation and estoppel. The complaint has been filed by one Balwaan Singh under special power of attorney of complainant and annexed as Annexure 5 along with the complaint alleged to be special power of attorney on behalf of complainant who is a non-resident Indian. It is submitted that present complaint cannot be filed on the basis of said power of attorney since said power of attorney is neither registered nor endorsed by Indian Embassy or sub-registrar. Thus, such power of attorney holds no authentication, accordingly no complaint can be filed on the basis of such power of attorney.
21. That the present complaint has been filed after four years of offer of possession, thus clearly an afterthought. Since offer of possession has already made four years ago, and that too within the prescribed time limit thus present complaint is not maintainable at this stage. Moreover, by way of present complainant, he has claimed compensation of Rs. 1,00,000 in form of litigation charges, which itself in not maintainable before the

Authority in view of Newtech judgment passed by Hon'ble supreme court and further claimed delayed possession charges. That even the delayed possession charges is not maintainable in view of following facts and circumstances.

22. That complainant himself stated that date of possession was 02.12.2017 and respondent has obtained occupation certificate on 20.12.2017. Thus, as per his own admission there left no scope for delayed possession charges. The fact has been concealed by complainant that after obtaining occupation certificate, it has immediately sent offer of possession to him vide letter dated 25.01.2018 as admitted by himself. Thus, if complainant himself did not take possession than it cannot be made liable for the same.
23. That the respondent launched a residential project under the name and style of "Oyster Grande" in Sector 102/102A in Gurugram, Haryana wherein the complainant approached the respondent for allotment of a unit in the said prestigious project of the respondent. Thereafter, he was allotted a unit bearing no. A-701 in the project.
24. That the said unit was allotted to the complainant for a total sale consideration of Rs. 1,30,16,296/- plus taxes. Out of his own accord, he has chosen to make the payment of sale consideration of the said unit by way of construction linked plan attached with the apartment buyer agreement executed between the parties on 02.12.2013.
25. That admittedly the apartment buyer agreement was executed between the parties on 02.12.2013. The said agreement was signed by the complainant



after completely understanding and after agreeing with the terms and conditions of the agreement. Further, as per the terms and conditions of buyer's agreement, the complainant is under a bounden duty to pay the amount as per the payment plan within time period without making any delay.

26. That as per clause 5(a) of the said agreement it was agreed that the developer would complete the construction of the said apartment within a period of 48 months from the date of execution of this agreement. It is further submitted that another period of 6 months was included as grace period. As per above noted clause the construction of the tower in question was to be completed by 02.06.2018. Whereas, the construction was completed much prior to Dec 2017. It is submitted that on 20.12.2017 occupation certificate was granted by the concerned department which in itself proves that construction was completed much prior to the date of completion.
27. That as far as question of time period for delivery of possession is concerned, clause- 5(A)(h)(ii) is important. It was agreed that the developer shall also be entitled for reasonable extension in time for delivery of possession of the apartment to the allottee in the event of any default or negligence attributable to the allottee's fulfilment of conditions of the allotment and /or this agreement.
28. That as per the agreement, the allottee would be entitled for possession only after payment of all the stages in timely manner as mentioned in the

payment plan annexed with the apartment buyer agreement. However, he has miserably failed to pay the installments on time and since day one complainant kept on defaulting in payment as evident from account statement of complainant. That it is clear as per account statement that he has never made payment on time and thus, the time period of delayed payment shall also be included while calculating date of possession. Thus, respondent in present case has offered possession after obtaining occupation certificate much prior to date of actual delivery of possession and if complainant himself does not took possession than respondent cannot be made liable for the same. It is submitted that after obtaining occupation certificate, respondent offered possession of the subject unit on 25.01.2018.

29. That from the above stated facts it is clear that he has defaulted at many stages in payment of the installments in his own chosen plan and did not paid any heed to the communications and notices of the respondent.
30. That the present complaint is based on falsehood and suppression of material facts and hence he, has not approached the Authority with clean hands. It is settled law that any litigant who approaches the court of law with unclean hands, is disentitled to any relief whatsoever. On this short ground itself, the present complaint deserves to be dismissed.
31. All other averments made in the complaint were denied in total.
32. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on



the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

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

**E. I Territorial jurisdiction**

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

**E. II Subject matter jurisdiction**

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*



So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding non-payment of timely installments by the complainant-allottee.**

34. The respondent has raised an objection that as per clause 5(A)(h)(ii), it is specifically mentioned that in the event of delay in paying any installments as required to be paid under the agreement, the time period for delivery of the apartment shall stand extended in equal measure to the delay in payment of all the installments and there has been various instances where complainant has defaulted in making payment towards sale consideration.
35. The Authority observes that the plea of the respondent regarding delay in payments towards consideration of allotted unit is devoid of merits as, no doubt that the complainant has made some defaults towards consideration of allotted unit but any such delay would attract delay payment interest at the equitable rate of interest. Moreover, as per given facts the complainant have already made payment of Rs. 1,45,44,840/-/- against total sale consideration of Rs. 1,30,16,296/- i.e. more than total sale consideration of subject unit. Hence, the plea taken by the respondent is devoid of merits.

**F.II Objection w.r.t SPA filed by the complainant.**

36. The respondent has raised an objection that the complaint has been filed by one Balwan Singh under special power of attorney of complainant who is a non-resident Indian and the same holds no authentication as the same is neither registered nor endorsed by Indian Embassy or sub-registrar. It is



observed that by Authority that the complainant has filed Special Power of Attorney dated 23.09.2022, duly notarized by State of Texas, County of Travis, United States of America. Further, admittedly the complainant is an allottee in the said project. Hence, the plea advanced by respondent in this regard is devoid of merits and hence, rejected.

**G. Findings on the relief sought by the complainant:**

**G.I Direct the respondent to pay delay possession charges at the prescribed rate from due date of possession i.e. 02.12.2017 till 25.03.2018.**

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

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

38. Clause 5(A)(i) of the buyer's agreement 02.12.2013 provides for handing over of possession and is reproduced below:

***"Article 5(A)(i)***

*Subject to the compliance of all terms and conditions of this agreement by the allottee(s) including the timely payment of the sale consideration and other charges and all other applicable taxes/levies/interests/penalties, etc., the developer based on its present plans and estimates and subject to all just exceptions will endeavour to complete construction of said apartment within a period of forty eight (48) months from the date of execution of this agreement or from the date of commencement of construction, whichever is later with a grace period of six (6) months, subject to force majeure events (as defined herein) which shall include events/ circumstances*





*or combination thereof which may prevent / obstruct / hinder / delay the construction and development of the said project/complex...."*

39. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of forty-eight months from the date of execution of agreement or commencement of construction, whichever is later; with a grace period of six months. In the present case, the buyer's agreement inter-se parties was executed on 02.12.2013 and date of start of construction as per statement of account dated 11.01.2019 is 28.02.2013; as such the due date of handing over of possession is calculated from date of agreement i.e. 02.12.2013, being later; which comes out to be 02.12.2017 before considering admissibility of grace period.
40. **Admissibility of grace period:** As per Article 5(A)(i) of buyer's agreement dated 02.12.2013, the respondent-promoter proposed to handover the possession of the said unit within a period of forty-eight months and six months grace period. The said clause is unconditional. The Authority is of view that the said grace period of six months shall be allowed to the respondent being unconditional. Therefore, as per Article 5(A)(i) of the buyer's agreement dated 02.12.2013, the due date of possession comes out to be 02.06.2018.
41. **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 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.*

42. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
43. 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., 20.04.2023 is @ 8.70 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
44. 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;"*

45. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70 % by the respondent/promoters which is the same as is being granted to them in case of delayed possession charges.
46. By virtue of article 5(A)(i) of buyer's agreement executed between the parties on 02.12.2013, the possession of the subject apartment was to be delivered within a period of forty-eight months and six months grace period from date of execution of such agreement i.e. 02.12.2013 or commencement of construction i.e. 28.02.2013, whichever is later. The due date of possession is calculated from the date of execution of buyer's agreement i.e.; 02.12.2013, being later; which comes out to be 02.06.2018. However, the respondent has already offered the possession of the allotted unit on 25.01.2018 after obtaining occupation certificate from competent Authority on 20.12.2017. In the instant complaint, the respondent has already offered the possession of the allotted unit on 25.01.2018 i.e. before due date of handing over of possession i.e. 02.06.2018. Therefore, there is no delay on part of respondent-builder in handing over of possession. Hence, no case of delay possession charges is made out.
47. 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 not in contravention of the section 11(4)(a) of the Act and has already offered the possession of the allotted unit after obtaining occupation certificate on 25.01.2018 i.e. before due date of offer of possession i.e. 02.06.2018. Therefore, there is no delay on part of



respondent-builder in handing over of possession. Hence, no case of delay possession charges is made out.

**G.II Direct the respondent to pay sum of Rs. 1,00,000/- towards litigation cost.**

48. 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..
49. Complaint stands disposed of.
50. File be consigned to the registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 20.04.2023**