

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

Complaint no. : 581 of 2019
First date of hearing : 16.07.2019
Date of decision : 20.08.2019

1. Hitender Singh
2. Jitender Singh
Both R/o: Flat No. A-106, Ashiana Bageeche,
Bhiwadi, Rajasthan-3011019

Complainants

Versus

Magic Eye Developers Pvt. Ltd.
(Through Managing Director/Authorized
Representative)
Registered Office: GF-09, Plaza M6 Jasola
District Centre, Jasola, New Delhi- 110025

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE

Shri Sukhbir Yadav Advocate for complainant
Shri Anup Singh and Ms. Advocate for respondent
Neelam Gupta

ORDER

1. A complaint dated 05.03.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Hitender



Singh and Jitender Singh, against the respondent/promoter Magic Eye Developers Pvt. Ltd., on account of violation of provisions of Real Estate(Regulation and Development) Act, 2016.

2. Since, the buyer's agreement has been executed on 22.07.2013 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the allottees in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint case are as under: -

1.	Name and location of the project	"The Plaza at 106", Sector-65, Gurugram
2.	Nature of the project	Commercial Colony
3.	Project Area	3.725 acres
4.	RERA Registration status.	72 of 2017(valid upto 31.12.2021)
5.	DTCP License no.	65 of 2012
6.	Unit no.	0709, 7 th floor, Tower- B2
7.	Unit area	700 sq. ft.

ANAMIKA AHALAWAT
LEGAL ASSISTANT



8.	Date of execution of buyer's agreement	22.07.2013
9.	Payment plan	Construction linked payment plan
10.	Total sale consideration(as per applicant ledger dated 10.01.2019)	Rs.44,46,132/-
11.	Total amount paid by complainant (as per applicant ledger dated 10.01.2019)	Rs.29,65,932/-
12.	Date of delivery of possession (as per clause 9.1 of buyer's agreement : within 3 years from the date of execution of agreement with two grace period of six months each	22.01.2017 (provided a grace period of 6 months only)
13.	Delay in handing over possession till date	2 years 6 months 29 days

4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A buyer's agreement dated 22.07.2013 is available on record based on which the possession of the apartment was to be delivered by 22.01.2017.

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LEGAL ASSISTANT



5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 16.07.2019. The reply filed by the respondent has been perused.

FACTS OF THE COMPLAINT

6. The complainants submitted that the complainants Mr. Hitender Singh is serving in Indian Air Force and Mr. Jitender Singh is serving in Indian Army, are resident of flat no. A-106, Ashiana Bageeche, Bhiwadi, Rajasthan - 3011019.
7. The complainants submitted the respondent Magic Eye Developers Pvt. Ltd. having registered office at: GF-09, Plaza M6 Jasola District Centre, Jasola, New Delhi - 110025, party is a company incorporated under the Companies Act, 1956 and the project in question is known as The Plaza at 106, Sector - 106, Gurugram, Haryana
8. The complainants submitted that in March, 2012, complainant / petitioner Mr. Hitender Singh received a marketing call from a real estate firm namely "Investor Clinic.", represents him an authorized agent of respondent / builder (Earlier Spire Developers Pvt. Ltd. and Now Magic Eye Developers Pvt. Ltd.),

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for investment in their project "Spire Condominiums / The Plaza at 106" at Sector 106, Gurgaon.

9. The complainants submitted the complainants along with real estate agent, visited to the site office of respondent/ builder, there they meet with the marketing staff of builder and get information about the project. Marketing staff shows rosy picture of project and allure with proposed specification in collusion with real estate agent. Local staff of respondent gave brochure, application form and payment plan and assured that possession of complete unit will be delivered within 3 years.
10. The complainants submitted that on 10.03.2012, complainants issued a cheque of Rs. 2,00,000/- as booking amount, vide cheque no. 697293 dated 10.03.2012. Drawn on Syndicate Bank, for apartment no. B2 -0709 admeasuring 700 sq. ft. and also signed a pre-printed application form. Complainants booked the apartment under construction link plan for total sale consideration of Rs. 41,92,078/-. Respondent issued a payment receipt on 05.04.2012.



11. The complainants submitted that it is pertinent to mention here that as per application form clause no. 8, Developer has given the possession of apartment within 3 years. On 18.04.2012 complainants issued a cheque of Rs. 4,00,000/- in favour of respondent vide cheque No. 382698 drawn on Axis Bank dated 18.04.2012.
12. The complainants submitted that on 18.05.2012 & 31.05.2012 complainants issued two cheque of Rs. 2,00,000/- each in favour of respondent vide cheque No. 697297 drawn on Syndicate Bank dated 18.05.2012 and vide cheque no. 231545 drawn on Axis Bank dated 31.05.2012. Respondent issued payment receipts on 04.07.2012.
13. The complainants submitted that on 19.07.2013, complainants have taken housing loan from Allahabad bank to pay future instalments / demand of respondent.
14. The complainants submitted that on 22.07.2013, a pre-printed, arbitrary, unilateral and one sided apartment buyer's agreement was executed between respondent and complainants on 22.07.2013. As per clause no. 9.1 of apartment buyer's agreement the respondent has to give the



possession of unit "within a period of three years from the date of execution of this agreement" therefore due date of possession was 22.07.2016 .

15. The complainants submitted that on September, 2013, respondent sends construction update, which shows that construction of tower -B was commenced in January, 2012 and foundation was made in May, 2013.

16. The complainants submitted that complainants continued to pay the remaining instalment as per the payment schedule of the builder buyer agreement and have already paid more than 80% amount till date along with interest and other allied charges of actual purchase price, but when complainants observed that there is no progress in construction of subject Apartment for a long time, they raised their grievance to respondent, but all time complainants received false assurance and fake promises.

17. The complainants submitted that complainants are always ready and willing to pay the remaining instalments provided that there is progress in the construction of apartment. Thereafter also complainants paid all further demands raised



by the respondent. That since July 2016 complainants are regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted apartments but all in vain, in spite of several visits by the complainants . The complainants never been able to understand/know the actual status of construction.

18. The complainants submitted that on 24.05.2018, respondent sent a letter addressing several issues and informing that project is Haryana RERA registered.
19. The complainants submitted that on 10.01.2019, respondent issued a statement of account which shows that till date 30.01.2017 complainants have already paid Rs. 29,65,932/- i.e. 80% of total sale consideration.
20. The complainants submitted that the complainants had purchased the apartment with intention that after purchase, they will live in their own apartment with modern amenities or it will generate good rental income for economic security for complainants. Due to inordinate delay on delivery of apartment, respondent caused huge financial losses to complainants.

21. The complainants submitted that there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainants and others is prima facie clear on the part of the respondent party which makes them liable to answer this Hon'ble Authority.

ISSUES TO BE DECIDED:

22. The complainants have raised the following issues:
- Whether the respondent allottee has violated the terms and conditions of buyer's agreement?
 - Whether the complainants are entitled for interest for every month of delay from due date of possession till the handing over of the possession under section 18 of RERA Act?
 - Whether complainant(s) are entitled for refund along with prescribed interest per annum from date of booking to till the date of refund under section 19(4) of RERA Act., if Respondent / Builder fail to give the possession of Apartment by 31.12.2021?
 - Whether complainant(s) are entitled for compensation for mental agony and harassment? If yes, what amount?



- e. Whether complainant(s) are entitled for compensation as penalty for delayed possession? If yes, what amount?

RELIEFS SOUGHT

23. The complainants are seeking the following reliefs:

- i. Pass an appropriate award directing the respondent party to pay interest at the prescribed rate for every month of delay from due date of possession till the handing over the possession, on paid amount (as per section 18 of Real Estate (Regulation and Development) Act, 2016.
- ii. Respondent party may kindly be directed to provide for third party audit to ascertain / measure accurate areas of the flats and facilities, more particularly, as to the "super area" and "built-up area".

REPLY ON BEHALF OF RESPONDENT

24. The respondent submitted that the complainants have no locus to file the instant complaint as they themselves have committed default in making the timely payment of instalments, as the same agreed by them. It is submitted that the buyer's agreement dated 22.07.2013 had been executed between the parties whereby the complainants duly agreed



that time is the essence with respect to allottees obligation to pay the consideration of the unit in accordance with schedule of payment as per the construction linked payment plan opted by them.

25. The respondent submitted that as per the accounts, maintained by the respondent in the usual course of business, the total amount of Rs. 8,39,057/- including the principle sum of Rs. 7,71,400/- plus interest of Rs. 67,657/- is due as on date, and payable by the complainants to the respondent.

26. The respondent submitted that the complainants have started committing defaults even before the date of possession as per the buyers agreement i.e. 22.07.2017 therefore, they otherwise fall under the exception to the timely possession clause and have no right/locus to demand timely possession of the project/unit and therefore on this ground alone, the instant complainant is liable to be dismissed as not maintainable.

27. The respondent submitted that there are many other allottees who have failed to make payments of instalments as per the payment schedule which has affected the progress of



construction as contemplated by the respondent and hence, the non-payment of the instalments timely by the complainants as well as other allottees have acted as a catalyst in the delay in offer of possession at the end of respondent and for such acts of omission on the part of complainants, respondent cannot be held liable for in any manner whatsoever.

28. The respondent submitted that entitlement of allottees of ongoing projects on the date of commencement of Act, to claim possession of their respective apartments/units is as per declaration given by promoter under sub-clause(c) of clause (1) of sub-section(2) of section 4. Here it may be noted that as per declaration given by respondent under sub-clause(c) of clause (1) of sub-section(2) of section 4, the date of completion of subject matter project is 31.12.2021.
29. The respondent submitted that the buyer's agreement dated 22.07.2013 executed between the complainants and respondent is 'sacrosanct' and nothing can be added or deleted in the terms agreed thereupon.

DETERMINATION OF ISSUES:

30. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under :

- i. In respect of **first and second issues**, the authority has observed that the project is registered under the RERA as 72 of 2017 and valid upto 31.12.2021 and as per declaration given by promoter under sub-clause(c) of clause (1) of sub-section(2) of section 4, the date of completion of subject matter project is 31.12.2021. However, the buyer's agreement dated 22.07.2013 the respondent is liable to deliver the unit within a period of 3 years from the date of execution of buyer's agreement with two grace periods of six months each. Grace period of 6 months has been given to the respondent due to exigencies beyond the control of the respondent. Thus the due date shall be computed from date of buyer's agreement i.e. 22.07.2013 and the possession date comes out to be 22.01.2017. Clause 9.1 is reproduced below:



“..within a period of three years from the date of execution of this agreement, with two grace period of six months each, unless ..”

As such the complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f 22.01.2017 till the date of decision as per the provisions of section 18 (1) proviso of the Act ibid read with rule 15 of the rules ibid.

FINDINGS OF THE AUTHORITY:

31. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district. 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.

ANAMIKA AHALAWAT

LEGAL ASSISTANT



Argument heard

It has been reported by the counsel for the respondent that they have already applied for occupation certificate on 20.06.2019 and offer of possession shall be made very shortly. Both the parties are directed to reconcile their accounts at the time of final taking over/handing over possession of the unit.

As per clause 9.1 of the Builder Buyer Agreement dated 22.7.2013 for unit No.0709,7th Floor, Tower B-2, in project "The Plaza at 106" Sector- 65, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of the agreement i.e. 22.7.2013 + 6 months grace period which comes out to be 22.1.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 29,65,932/- to the respondent against a total sale consideration of Rs. 44,46,132/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f 22.1.2017 as per the provisions of section 18

(1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

DIRECTIONS OF THE AUTHORITY:

32. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- (i) The respondent is directed to pay delayed possession charges for every month of delay at the prescribed rate of interest of 10.45% per annum from due date of delivery of possession i.e. 22.01.2017 till actual offer of possession.
- (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- (iii) The promoter shall not charge anything from the complainant which is not part of the buyer's agreement.
- (iv) Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45%

by the promoter which is the same as is being granted to the complainant in case of delayed possession.

33. The order is pronounced.

34. Case file be consigned to the registry.

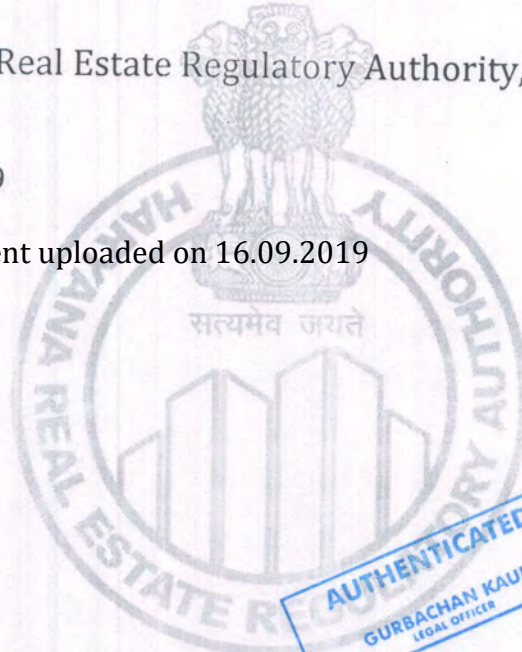

(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:20.08.2019

Corrected judgement uploaded on 16.09.2019



AUTHENTICATED
GURBACHAN KAUR
LEGAL OFFICER

HARERA
GURUGRAM

ANAMIKA AHALAWAT
LEGAL ASSISTANT

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2. Since, the buyer's agreement has been executed on 22.07.2013 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the allottees in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint case are as under: -

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5.	DTCP License no.	65 of 2012
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8.	Date of execution of buyer's agreement	22.07.2013
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4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A buyer's agreement dated 22.07.2013 is available on record based on which the possession of the apartment was to be delivered by 22.01.2017.

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5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 16.07.2019. The reply filed by the respondent has been perused.

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by the respondent. That since July 2016 complainants are regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted apartments but all in vain, in spite of several visits by the complainants . The complainants never been able to understand/know the actual status of construction.

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ISSUES TO BE DECIDED:

22. The complainants have raised the following issues:
- Whether the respondent allottee has violated the terms and conditions of buyer's agreement?
 - Whether the complainants are entitled for interest for every month of delay from due date of possession till the handing over of the possession under section 18 of RERA Act?
 - Whether complainant(s) are entitled for refund along with prescribed interest per annum from date of booking to till the date of refund under section 19(4) of RERA Act, if Respondent / Builder fail to give the possession of Apartment by 31.12.2021?
 - Whether complainant(s) are entitled for compensation for mental agony and harassment? If yes, what amount?



- e. Whether complainant(s) are entitled for compensation as penalty for delayed possession? If yes, what amount?

RELIEFS SOUGHT

23. The complainants are seeking the following reliefs:

- i. Pass an appropriate award directing the respondent party to pay interest at the prescribed rate for every month of delay from due date of possession till the handing over the possession, on paid amount (as per section 18 of Real Estate (Regulation and Development) Act, 2016.
- ii. Respondent party may kindly be directed to provide for third party audit to ascertain / measure accurate areas of the flats and facilities, more particularly, as to the "super area" and "built-up area".

REPLY ON BEHALF OF RESPONDENT

24. The respondent submitted that the complainants have no locus to file the instant complaint as they themselves have committed default in making the timely payment of instalments, as the same agreed by them. It is submitted that the buyer's agreement dated 22.07.2013 had been executed between the parties whereby the complainants duly agreed



that time is the essence with respect to allottees obligation to pay the consideration of the unit in accordance with schedule of payment as per the construction linked payment plan opted by them.

25. The respondent submitted that as per the accounts, maintained by the respondent in the usual course of business, the total amount of Rs. 8,39,057/- including the principle sum of Rs. 7,71,400/- plus interest of Rs. 67,657/- is due as on date, and payable by the complainants to the respondent.

26. The respondent submitted that the complainants have started committing defaults even before the date of possession as per the buyers agreement i.e. 22.07.2017 therefore, they otherwise fall under the exception to the timely possession clause and have no right/locus to demand timely possession of the project/unit and therefore on this ground alone, the instant complainant is liable to be dismissed as not maintainable.

27. The respondent submitted that there are many other allottees who have failed to make payments of instalments as per the payment schedule which has affected the progress of



construction as contemplated by the respondent and hence, the non-payment of the instalments timely by the complainants as well as other allottees have acted as a catalyst in the delay in offer of possession at the end of respondent and for such acts of omission on the part of complainants, respondent cannot be held liable for in any manner whatsoever.

28. The respondent submitted that entitlement of allottees of ongoing projects on the date of commencement of Act, to claim possession of their respective apartments/units is as per declaration given by promoter under sub-clause(c) of clause (1) of sub-section(2) of section 4. Here it may be noted that as per declaration given by respondent under sub-clause(c) of clause (1) of sub-section(2) of section 4, the date of completion of subject matter project is 31.12.2021.
29. The respondent submitted that the buyer's agreement dated 22.07.2013 executed between the complainants and respondent is 'sacrosanct' and nothing can be added or deleted in the terms agreed thereupon.

DETERMINATION OF ISSUES:

30. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under :

- i. In respect of **first and second issues**, the authority has observed that the project is registered under the RERA as 72 of 2017 and valid upto 31.12.2021 and as per declaration given by promoter under sub-clause(c) of clause (1) of sub-section(2) of section 4, the date of completion of subject matter project is 31.12.2021. However, the buyer's agreement dated 22.07.2013 the respondent is liable to deliver the unit within a period of 3 years from the date of execution of buyer's agreement with two grace periods of six months each. Grace period of 6 months has been given to the respondent due to exigencies beyond the control of the respondent. Thus the due date shall be computed from date of buyer's agreement i.e. 22.07.2013 and the possession date comes out to be 22.01.2017. Clause 9.1 is reproduced below:



“..within a period of three years from the date of execution of this agreement, with two grace period of six months each, unless ..”

As such the complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f 22.01.2017 till the date of decision as per the provisions of section 18 (1) proviso of the Act ibid read with rule 15 of the rules ibid.

FINDINGS OF THE AUTHORITY:

31. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district. 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.

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LEGAL ASSISTANT



Argument heard

It has been reported by the counsel for the respondent that they have already applied for occupation certificate on 20.06.2019 and offer of possession shall be made very shortly. Both the parties are directed to reconcile their accounts at the time of final taking over/handing over possession of the unit.

As per clause 9.1 of the Builder Buyer Agreement dated 22.7.2013 for unit No.0709,7th Floor, Tower B-2, in project "The Plaza at 106" Sector- 65, Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of the agreement i.e. 22.7.2013 + 6 months grace period which comes out to be 22.1.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 29,65,932/- to the respondent against a total sale consideration of Rs. 44,46,132/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f 22.1.2017 as per the provisions of section 18

(1) of the Real Estate (Regulation & Development) Act, 2016 till offer of possession.

DIRECTIONS OF THE AUTHORITY:

32. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:


- (i) The complainants are directed to pay delayed possession charges for every month of delay at the prescribed rate of interest of 10.45% per annum from due date of delivery of possession i.e. 22.01.2017 till actual offer of possession.
- (ii) The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.
- (iii) The promoter shall not charge anything from the complainant which is not part of the buyer's agreement.
- (iv) Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45%

by the promoter which is the same as is being granted to the complainant in case of delayed possession.

33. The order is pronounced.

34. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:20.08.2019

Judgement uploaded on 02.09.2019



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