

**BEFORE THE HARYANA REALESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no. : 2509 of 2023  
Date of first hearing: 26.10.2023  
Order reserved on : 21.03.2024  
Order pronounced on: 02.05.2024

Smt. Nermeeta

R/o: House No.-644, Sector-5,  
Gurgaon-122001

**Complainant**

Versus

M/s Revital Reality Private Limited  
Regd. office: 1114, 11<sup>th</sup> Floor,  
Hemkunt Chamber, 89, Nehru  
Place, New Delhi-110019

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Sukhbir Yadav (Advocate)

Complainant

Sh. Bhirgu Dhami (Advocate)

Respondent

**ORDER**

1. This 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 28 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**

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

S. No.	Particulars	Details
1.	Name of the project	"Supertech Basera" sector- 79&79B, Gurugram
2.	Project area	12.10 area
3.	Nature of project	Affordable Group Housing Project
4.	RERA registered/not registered	Registered vide no. 108 of 2017 dated 24.08.2017
5.	RERA registration valid up to	31.01.2020
6.	RERA extension no.	14 of 2020 dated 22.06.2020
7.	RERA extension valid up to	31.01.2021
8.	DTPC License no.	163 of 2014 dated 12.09.2014
		164 of 2014 dated 12.09.2014
	Validity status	11.09.2019
	Name of licensee	Revital Reality Private Limited and others
9.	Unit no.	0405, 4 <sup>th</sup> floor, tower/block- 14, (As per page no. 32 of the complaint) (Inadvertently mentioned as 14 <sup>th</sup> floor in proceedings of the day dated 21.03.2024)
10.	Unit measuring	473 sq. ft (carpet area) & 73 sq. ft.(balcony area) (As per page no. 32 of the complaint)
11.	Date of approval of building plans	19.12.2014 [as per information obtained by the planning branch]
12.	Offer of allotment letter	19.09.2015 (As per page no. 21 of the complaint)
13.	Date of execution of flat buyer's agreement	09.12.2015 (As per page no. 31 of the complaint)
14.	Date of grant of environment clearance	22.01.2016 [As per page no. 28 of the reply]
15.	Possession clause	<b>3.1 Possession</b>



		<p><i>Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developer Proposes to offer possession of the said Flat to the Allottee/Buyer 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. (As per page no. 35 of the complaint)</i></p>
16.	Due date of possession	22.01.2020 [Note: - the due date of possession can be calculated by the 4 years from approval of building plans (19.12.2014) or from the date of environment clearance (22.01.2016) whichever is later.]
17.	Total sale consideration	Rs.19,28,500/- (As per payment plan on page no. 19 of the complaint)
18.	Total amount paid by the complainant	Rs.20,27,592/- (As per statement of account issued by the respondent on page no. 48 of the complaint)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -



- I. That in January, 2015 complainant/allottee received a marketing call from the office of a real estate agent, who represented himself as an authorized agent of the respondent and marketed for booking in a residential project "Supertech Basera" situated at sector 79 & 79B Gurugram. The complainant visited the local office and project site of the respondent and consulted with the marketing staff/office bearers of the respondent. The marketing staff showed a rosy picture of the project through glitzy advertisements and colorful brochures, proposing to develop and construct an integrated residential project at the prime location of sector 79 & 79B Gurugram, claiming the same to be spacious and luxurious and a perfect example of modern-day residential complexes under the Affordable Group Housing scheme, 2013 of the Government of Haryana.
- II. That believing in the representation and assurance, the complainant applied for a flat in the project and issued a cheque dated 18.04.2015 for Rs.96,425/- along with the application form. A receipt was issued by the respondent against the said amount on 21.04.2015.
- III. That vide draw dated 04.09.2015, the complainant was successful to become an allottee in the project and the respondent issued an allotment letter on 19.09.2015, confirming the allotment of unit no. 405, in tower-14 admeasuring 546 sq. ft. for a total sale consideration of Rs.19,28,500/-. Thereafter, the complainant continues to pay the balance demands when become due or demanded by the respondent and paid a total amount of Rs.18,32,386/- from 20.11.2015 to 13.12.2019.
- IV. That on 09.12.2015, a pre-printed, unilateral, arbitrary flat buyer's agreement was executed inter-se the respondent and the complainant. According to clause 3.1 of the flat buyer's agreement,

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the respondent has to give possession of the said unit within a period of four years from the date of approval of building plans or grant of environment clearance, whichever is later. It is germane that the building plans of the project were approved on 19.12.2014, therefore the due date of possession was 19.12.2018.

- V. That from December 2018 the complainant and her husband visited several times to the office and project site of the respondent and made efforts to get physical possession of the unit, but all went in vain. It is pertinent to mention here that CRM staff and office bearers of the respondent always made false promises to hand over the possession of the unit very soon, but the complainant could not see the light at the end of the tunnel.
- VI. That on 14.04.2023, the complainant downloaded the statement of account from the website of the respondent. As per the said statement, the respondent acknowledged receipt of Rs.20,27,592/- against the total sale consideration of Rs.19,28,500/-. The last demand was raised by the respondent in July, 2019 and the same was paid in August, 2019.
- VII. That the complainant sent an email to the respondent on 04.05.2023 and asked the respondent to compensate her since the respondent has failed to deliver the possession of the unit allotted to the complainant on or before the due date of possession. Moreover, the complainant purchased the said unit in the project of the respondent so that she could live in her own flat with her family. It is relevant to mention here that the complainant is a government teacher which is not a remunerative job and it is quite challenging for her to bear the rent of Rs.17,500/- per month with other miscellaneous expenses in the cyber city Gurgaon. Furthermore, during the transfer of the

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complainant's job, the complainant chose her working place near sector-79, Gurugram so that she could easily travel from her residence i.e., the unit of the complainant in the project of the respondent, however, the respondent has failed to deliver the possession and is not ready to pay any delay possession charges as well as compensation on account of the same. That respondent replied to the above-said email and casually gave a new date of possession of the unit i.e., December 2023 and didn't address other issues of the complainant.

- VIII. That the complainant again sent a reminder email to the respondent on 16.05.2023 and lodged her grievance with regards to their response to an email dated 04.05.2023 and mentioned that it is impossible to get the unit ready for the habitation on or before December 2023. Therefore, the complainant again presses on the hardship faced by her due to the negligence of the respondent in not fulfilling the terms of the BBA.
- IX. That the main grievance of the complainant in the present complaint is that despite the complainant having paid more than 100% of the basic price of the unit, the possession is not handed over to her till now, even after a lapse of more than four years from the due date of possession.
- X. That the facts and circumstances as enumerated above would lead to the only conclusion that service is deficient on the part of the respondent and as such, he is liable to be punished and compensate the complainant.
- XI. That due to the acts of the above and the terms and conditions of the Affordable Housing Policy, 2013, the complainant has been unnecessarily harassed mentally as well as financially, therefore the

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opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.

- XII. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent and much more a smell of playing fraud with the complainant and others and is prima facie clear on the part of the respondent which makes them liable to answer this Authority.
- XIII. That for the first time cause of action for the present complaint, arose in December 2015, when the unilateral, arbitrary, and one-sided terms and conditions were imposed on complainant. The second time the cause of action was arose in December 2018, when the respondent fails to hand over the possession of the unit after obtaining occupation certificate. Further, the cause of action again arose on various occasions, including in May, 2020; April, 2021; April, 2022; April, 2023 and on many times to date, when the protests were lodged with the respondent about its failure to deliver the project and also to pay assured return as per assurance made that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time, as this Authority restrains the respondent by an order of injunction and/or passes the necessary orders.
- XIV. That although the present complaint is not for seeking compensation, without prejudice, the complainant reserves her right to file a complaint to Adjudicating Officer for compensation. The complainant suffered the loss of her hard-earned money and the possession of the unit is also not offered where the complainant could have personally used the premises.

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- XV. That the complainant does not want to withdraw from the project. The respondent has not fulfilled his obligation therefore as per obligations of the respondent/promoter under sections 11(4), 12, and 18, the respondent/promoter is obligated to pay delayed possession interest to the allottee.

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

4. The complainant has sought following relief(s):
- Direct the respondent to handover the physical possession of the unit after obtaining occupation certificate.
  - Direct the respondent to pay the delayed possession interest from the due date of possession till the actual handover of the unit, with all amenities as specified in the brochure and flat buyer's agreement.
5. 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:**

6. The respondent contested the complaint on the following grounds:-
- That on 04.09.2015, the complainant vide draw was allotted an apartment bearing no. 405, 4<sup>th</sup> floor, Tower-14, having a carpet area of 473 sq. ft. and balcony area of 73 sq. ft. for a total consideration of Rs.19,28,500/-. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the flat buyer's agreement dated 09.12.2015.
  - That as per clause 2.3 of the flat buyer's agreement, it was agreed that an amount of Rs.25,000/- shall be treated as earnest money which shall be liable to be forfeited in the event of withdrawal of allotment by the allottee/ buyer and/or cancellation of allotment on

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account of default/ breach of the terms and conditions of allotment/transfer contained herein, including non-payment of instalments. In the eventuality of withdrawal/cancellation, the earnest money will stand forfeited and the balance amount paid, if any, will be refunded to the allottee/buyer, without any interest and such refund shall be made only when the said flat is re-allotted/sold to any other person(s) and a consideration exceeding the refund amount is received from the new allottee/ buyer. Further, vide clause 3.5 of the agreement it was agreed that the developer shall endeavor to handover possession of the said flat within a period of four years from the commencement date, subject to timely payment by the allottee/buyer towards the basic sale price and other charges, as demanded in terms of this agreement. The time frame for possession provided hereinabove is tentative and shall be subject to force majeure and timely and prompt payment of all instalments and completion of formalities required.

- iii. That it is submitted that the project "Basera" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 108 of 2017 dated 24.08.2017. The Authority had issued the said certificate which is valid for a period commencing from 24.08.2017 to 31.01.2020 and the respondent has already applied for due extension.
- iv. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not close any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.

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- v. That the present complaint deems to be prima facie dismissed on the very ground that the complainant has neglected to file the necessary affidavit, duly attested in support of her complaint, which is a material defect, which if not cured shall lead to the dismissal of the complaint.
- vi. That the present complaint further deems to be prima facie dismissed as the complainant has failed to place on record the necessary proof with respect to alleged payment of Rs.20,27,592/-. It is trite law that the complainant has to provide necessary documents to prove his/her case on merits and the complainant has failed to do so.
- vii. That the possession of the said premises was proposed to be delivered by 21.01.2020. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. However, the project got delayed due to force majeure circumstances which were beyond the control of the respondent. Further, due to orders passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period due to high rise in pollution in Delhi-NCR. Furthermore, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. Moreover, shortage of labour, water and other raw materials and various stay orders issued by various courts, authorities, implementation of NREGA and JNNURM schemes etc. caused delay in completion of the project. Unfortunately, circumstances have worsened for the respondent in the pandemic of Covid-19.

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viii. That the project is an ongoing project and orders of delayed possession interest at a time when the real-estate sector is at its lowest point, would severally prejudice the development and the interest of the other allottees of the project.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

8. The authority has complete territorial and 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 Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

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*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.*

10. 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-filing of duly attested affidavit by the complainant required to proceed further with the complaint**

11. The respondent has raised a contention that the present complaint is not maintainable as the complainant has not filed the duly attested affidavit which is necessary to proceed further with the complaint. The same has been duly placed on record by the counsel for the complainant on 27.03.2024. Therefore, the said contention of the respondent stands rejected.

**F.II Objection regarding the project being delayed because of force majeure circumstances.**

12. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as demonetisation, orders/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders, shortage in supply of raw material and major spread of Covid-19 across worldwide. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 22.01.2020. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on basis of aforesaid

reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

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

**G.I Direct the respondent to handover the possession of the unit and pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016**

13. The above-mentioned relief(s) sought by the complainant are taken together being-connected.

14. 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."***

***(Emphasis supplied)***

15. Clause 3.1 of the apartment buyer's agreement provides for handing over of possession and is reproduced below for ready reference:

**3. POSSESSION**

***"3.1 Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developer Proposes to offer possession of the said Flat to the Allottee/Buyer 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)***

16. The due date of possession of the apartment as per clause 3.1 of the flat buyer's agreement is to be calculated as 4 years from the date of

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environmental clearance i.e., 22.01.2016 being later. Therefore, the due date of possession comes out to be 22.01.2020.

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prevailing rate of interest. 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.*

18. 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.
19. 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., 02.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
20. 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;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to the complainant in case of delayed possession charges.
22. On consideration of the documents available on record and submissions made by both the parties 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. The due date of handing over possession is 22.01.2020. No document is placed on record to show that after completing the unit, OC has been obtained or even applied to the competent Authority and no offer of possession has been made to the complainant-allottee.
23. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the 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 respondent is established. As such the allottee shall be paid, by the 22.01.2020 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or

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actual handing over of possession, whichever is earlier, at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

24. The counsel for the complainant vide proceedings of the day dated 21.03.2024 stated that the validity of registration of the project has been expired and requested the Authority to initiate penal proceedings against the respondent for not completing the project within the time declared under the policy as well as in the registration. However, the respondent has already applied for the extension of the project under section 7(3) of the Act of 2016 on 22.03.2023 itself which is under consideration of the Authority including levy of penalty for not completing the project within the time framework.

**H. Directions of the authority:**

25. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay delay interest on the paid-up amount of **Rs.20,27,592/-** by the complainant at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till valid offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.
- ii. The arrears of such interest accrued from 22.01.2020 till the date of this order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order. Thereafter, interest for every month of delay shall also be paid by the promoter to the allottee(s) before 10<sup>th</sup> of the subsequent month as per

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rule 16(2) of the rules till a valid offer of possession is made to the complainant/allottee(s) after obtaining occupation certificate.

- iii. The complainant is directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondent shall handover the possession of the allotted unit on obtaining of occupation certificate.
- iv. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
- v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.

26. Complaint stands disposed of.

27. File be consigned to registry.

*V.1 - 5*  
**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.05.2024