

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

Complaint no.	:	2537 of 2021
Order pronounced on :		30.07.2024

Diplomatic Greens Resident Welfare Association,
Through Mr. Vikas Rana, Vice-President (DGRWA),
R/o Flat no. A4-702, Diplomatic Greens, Sector-110A
-111, Gurugram, Haryana.

Complainant

Versus

1. M/s Puri Constructions Pvt. Ltd.
Regd. Office at: - 4-7B, Ground Floor, Tolstoy House
15 & 17, Tolstoy Road, Connaught Place, New Delhi-
110001.
2. Natureville Promoters Pvt. Ltd.
Regd. Office at: - 112-115, First Floor, Tolstoy House
15 & 17, Tolstoy Road, Connaught Place, New Delhi-
110001.

Respondents

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member
Member

APPEARANCE:

Sanjeev Sharma (Advocate)
M.K Dang (Advocate)
None

Complainant
Respondent no.1
Respondent no.2

ORDER

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act,

2016 (in short, the Act) read with rule 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 provisions of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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.	Project name and location	"Diplomatic Greens", Sector 110A & 111, Gurugram		
2.	Project area	21.01875 acres		
3.	Nature of project	Group Housing		
4.	RERA registered/not registered	Not registered		
5.	DTCP License no.	55 of 2010 dated 25.07.2010	87 of 2012 dated 29.08.2012	33 of 2013 dated 25.05.2013
	Validity status	24.07.2025	28.08.2025	24.05.2024
	Area	15.457 acres	4.268 acres	1.29375 acres
	Name of licensee	Nature Villa Promoters Pvt. Ltd. & 2 Ors.		
6.	Date of approval of building plan	01.12.2011		
7.	Date of approval of revised building plan	19.02.2015		
8.	Occupation Certificate details	OC received dated 29.08.2016 for tower/block-		

		<ul style="list-style-type: none"> ➤ Tower A1 to A5 (Ground floor, 1st floor to 12th floor), ➤ Tower B1 (Ground floor, 1st floor to 12th floor), ➤ Tower B2 (Ground floor, 1st floor to 12th floor), ➤ Tower C1 (Stilt floor, 1st floor to 21st floor), ➤ Tower C2 (Stilt floor, 1st floor to 21st floor), ➤ Tower C3 (Stilt floor, 1st floor to 21st floor), ➤ Tower C4 (Stilt floor, 1st floor to 21st floor), ➤ Tower D (Ground floor, 1st floor to 14th floor), ➤ Villas-E1 & E8 (Ground floor, 1st floor & 2nd floor), ➤ Villa E2 (Ground floor, 1st floor & 2nd floor), ➤ Villas- E3 to E7 (Ground floor, 1st floor & 2nd floor), ➤ Villa E9 (Ground floor, 1st floor & 2nd floor), ➤ Villa E10 (Ground floor, 1st floor & 2nd floor), ➤ EWS (Ground floor, 1st floor & 7th floor), ➤ Community building (H1) (Ground floor & 1st floor), ➤ Community Building (H2) (Ground floor), ➤ Convenient Shopping (Ground floor), ➤ Nursery school (k1 & K2), ➤ Lower Basement, ➤ Upper Basement
9.	Date of revised site plan	06.03.2020

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That this complaint has been preferred by the Residents Welfare Association of the project named "Diplomatic Greens" at Sector 110-A and 111, Village -Chouma, Gurgaon, and Haryana, wherein the residents have formed an association in order to tackle, settle and resolve the disputes between the parties of the said project.
- II. That the present complaint has been instituted against the respondent no. 1 and 2, namely Puri Construction Pvt. Ltd. and Natureville Promoters Pvt. Ltd. respectively, wherein both the respondents are equally involved in the construction, development and possession of the project as well as taking care of the units allotted to the allottees of the said project.
- III. That the respondents have already received the occupation certificate for Tower A1 to A5, B1, B2, C1 to C4, D, Villas E1 & E8, E2, E3 to E7, E9, E10, EWS, community building (H1 and H2), convenient shopping, nursery school (K1 & K2) and 2 basements on 29.08.2016.
- IV. That the respondents have defrauded the complainants of tower A wherein the area so admeasured by it at the time of sale and handing over the possession was 1700 sq. ft. but the owners/complainants of the towers A have been charged for 1780 sq. ft. which was neither mentioned anywhere in the brochure nor was ever stated to them but the same came up only when the amounts were illegally and fraudulently charged by it from them.
- V. That the structure so built/constructed by the respondents is full of various defects and deficiencies which has neither been dealt with till date despite 5 years of obtaining the OC. During the rainy days, the

- entire water gets clogged in the common areas starting from the entry gate/entrance, entering the entire basement area and other common areas.
- VI. That the respondents have levied huge escalation charges upon the complainants at the time of offer of possession due to escalation in the cost of construction which has been illegally and unjustifiably charged.
 - VII. That complainants/allottees had been charged with the amount of the HVAT but the same continues to lie with the respondents even till date.
 - VIII. That the respondents have installed a substandard automation system in the project due to which there arises various defects in the system as the electricity runs out suddenly or the ACs running in the common areas, gyms, etc. stops working and many more.
 - IX. That after obtaining the occupation certificate from the competent authority, the respondents have demolished the K2 area of the nursery school which was constructed in K1 and K2 block/tower in order to construct a new phase of the project and create more apartments which was never informed or consulted with them.
 - X. That the entire project has been constructed upon the high-tension wires which is completely unsafe for the residents and the same can lead to major accidents which the residents/complainants were never informed before the signing of the agreement for sale.
 - XI. That the respondents have not provided any deed of declaration to the complainants.
 - XII. That the promoter shall execute the conveyance deed of the common areas of the project and handover the project completely to the association after transferring the sum collected by it till date towards IFMS with interest to the complainant

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - I. Direct the respondents to provide the deed of declaration.
 - II. Direct the respondents to provide details of the amount deposited by the allottees under IFMS, electricity charges, HVAT, EDC/IDC, advance maintenance charges etc.
 - III. Direct the respondents to transfer the amount of IFMS to RWA.
 - IV. Direct the respondents to pay the delay possession charges.
 - V. Direct the respondents to refund the escalation charges.
 - VI. Direct the respondents to rectify the unauthorised and illegal sale of the shopping area/convenient store.
 - VII. Direct the respondents to set up a garbage collection area and compost plant as provided in the project area.
 - VIII. Direct the respondents to pay compensation of Rs.1,00,000/- on account of harassment and litigation cost.
5. On the date of hearing, the authority explained to the respondent /promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent/promoters.

6. The respondent no.1 contested the complaint by filing reply dated 09.11.2021 on the following grounds: -
 - i. That the respondent has developed the project named "Diplomatic Greens" at Sector 110-A and 111, Gurgaon, Haryana and received the occupation certificate on 29.08.2016. Thereafter it offered possession of the apartments to all the allottees on 16.01.2017.

- ii. That there are 437 allottees in the said project but the complainant/DGRWA has not even 100 members till date. Out of said 437 allottees, almost 350 allottees have got their respective apartments registered in their favour by executing and registering the conveyance deed in their favour. Further, the majority of the allottees are residing in the complex for last 5 years and no such issue was ever raised by them till date.
- iii. That the OC was obtained much prior to the RERA Act and Rules and conveyance deeds of various apartments were also executed and registered before coming into force of the act and rules. In view of the facts and circumstances this complaint is not maintainable and is liable to be rejected.
- iv. That the complainant has filed the present complaint and has claimed delay possession charges, which is an individual right and cannot be construed as common right as the various allottees have executed the respective buyer's agreement at various points of time and no details of the same has been provided in the present complaint.
- v. That the respondent has always been ready and willing to hand over the administration of the said project to the complainant. The parties have held several meetings and detailed audit process was also undertaken and at the time of conclusion of the audit process the complainant backed out from taking over the administration of the complex and has filed the present false and frivolous complaint.
- vi. That there is no seepage in any area as alleged by the complainant and there is no clogging of water during rainy days and there is effective system of drainage in the complex.

- vii. That the respondents have never refused to hand over the copy of deed of declaration to the complainant. Further, the same being is a registered public document and anyone can obtain a certified copy of the same from the office of Registrar Gurugram.
- viii. That the complainant has raised several of the issues mentioned in this complaint before the office of Town and Country Planning also, hence the present complaint is liable to be rejected.
- ix. That the complainant does not enjoy the majority amongst the allottees as till date there are not even 100 members out of 437 allottees, hence the complainant cannot be said to represent the common cause.
7. Neither the respondent no. 2 put in appearance nor pleaded any written reply till date with regard to the present complaint. Therefore, in view of the above, the matter is proceeded ex-parte against respondent no. 2. Hence, the present complaint will be decided as per documents available on record and submission made by the parties.
8. 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 those undisputed documents and submissions made by the parties.
9. The complainant and respondent have filed the written submissions on 30.06.2023 and 21.06.2023 respectively which are taken on record. No additional facts apart from the complaint or reply have been stated the written submissions.

E. Jurisdiction of the authority

The respondent no. 1 raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The

objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

10. 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

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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:

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.

12. 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 no.1.

F.1 Objection regarding jurisdiction of authority w.r.t. occupation certificate obtained, and conveyance deed executed prior to coming into force of the Act.

12. Another contention of the respondent no.1 is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties as the occupation certificate was obtained much prior to coming into force of the Act and conveyance deed of several allottees has also been done prior to it. However, as per submissions made by the parties as well as documents available on record it is evident that completion certificate has not been issued to the project in question by the competent authority till date. Therefore, the project will be treated as an ongoing project as per section 3 of the Act of 2016 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder:-

"Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act."

13. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. It is important to note that till date, the respondent/builder has not obtained the completion certificate from the competent Authority till date. After taking note of the statutory provisions of Section 3 of the Act

of 2016, it is observed that the Act of 2016, is retroactive in nature and covers all ongoing projects for which completion certificate has not been issued.

14. Further, the Hon'ble Supreme Court of India in *Civil Appeal No(s). 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Private Limited vs. State of U.P and Ors.* Observes that:

52. *The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act*

15. Therefore, in view of the same, objection w.r.t to jurisdiction of the authority stands rejected.

G. Findings on the relief sought by the complainant.

G.1 To provide the deed of declaration.

13. Section 2 of the Haryana Apartment Ownership Act, 1983 provides for execution and registration of declaration within a period of ninety days after obtaining occupation certificate/part occupation certificate. Further, section 17(2) of the Act says that after obtaining OC and handing over physical possession to the allottees in terms of sub section (1), it shall be the responsibility of the promoter to handover the necessary documents, plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws. However, the respondent no.1 has submitted that the same has been executed and registered in the office of Registrar, Gurugram and it has never refused to hand over the copy of

Deed of Declaration to the complainant. Thus, in view of the above factual as well as legal facts, the respondent/promoters are directed to supply a copy of deed of declaration to the complainant/RWA.

G.II To provide details of the amount deposited by the allottees under IFMS, electricity charges, HVAT, EDC/IDC, advance maintenance charges etc.

14. The amount charged in the above head from the allottees of the project shall be as per the terms and conditions agreed in the builder buyer agreement being in conformity with the provisions with the law and if any allottee has any grievance against the amount so collected, he/she may seek such details from the respondents and the respondents are bound to provide the same to the aggrieved upon the request so made by the allottee.

G.III To transfer the IFMS amount in the account of RWA.

15. The authority vide orders dated 25.02.2022 appointed CA of the authority to conduct IFMS audit of the project in question. Thereafter, he submitted his report dated 20.03.2023 after conducting an audit based upon the information provided by the respondent/promoters. As per the said IFMS audit report dated 20.03.2023, net unutilized IFMS left with the promoters as on date was Rs.63,81,268/-. The counsel for complainant vide written submissions dated 30.06.2023 submits that the HRERA, Panchkula vide its order dated 12.10.2021 in case bearing no. 464 of 2019, allowed interest on IFMS amount collected by promoters at the prevailing rates applicable on the fixed deposits in a scheduled bank till date of actual handing over the amount for the undue delay caused in handing over of that amount to association. Therefore, the same view may be taken by this authority. He further

- objects the adjustment of funds from IFMS in maintenance of the day-to-day requirements by it.
16. However, the counsel for respondent no.1 vide written submissions dated 21.06.2023 submits that as per IFMS audit report dated 20.03.2023, the unutilized IMFS left with the promoters is Rs.63.82 Lacs and hence only this amount can be ordered to be transferred. However, neither any interest on the IFMS amount was agreed between the parties nor any agreement in this regard was executed between them. Hence, no interest is payable on said amount. He further submits that the respondent/promoters have not earned any interest on the said amount as the amounts were received in the current account and expenses were also made from the current account and hence no interest was earned by it.
 17. Further, vide proceedings dated 11.07.2023, the counsel for complaint place on record an application for rehearing of arguments and submitting certain documents alleging that the IFMS report dated 20.03.2023 is biased and requests for appointment of another LC for conducting IFMS audit. However, the counsel for respondent stated that the present application is not maintainable at this stage as the authority has already taken on record the audit report dated 20.03.2023 as well as written submission made by the parties. On considering the arguments as well submissions made by the parties, the authority is of view that the objections if any should be raised by the complainant at the earliest and cannot be allowed at this very stage.
 18. The Act mandates under section 11(4)(d), that developers would be responsible for providing and maintaining the essential services, on reasonable charges, till the time the same is taken over by the

association of the allottees. Further, section 11(4)(g), provides that the developer will be responsible to pay all outgoing until it transfers the physical possession of the real estate project to the allottees or the association of allottees, as the case may be, which it has collected from the allottees, for the payment of outgoing (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project. It is further provides that where any promoter fails to pay all or any of the outgoing collected by it from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoing and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefore by such authority or person.

19. A quick glance at the provisions of the Act may be taken in this respect to the responsibility of the promoter or project developer for providing and maintaining essential and common services at a reasonable charge payable by the flat purchasers till the time the co-operative housing society or RWA is formed. Section 17(2) of the Act says that after obtaining OC and handing over physical possession to the allottees in terms of sub section (1), it shall be the responsibility of the promoter to handover the necessary documents, plans, including common areas, to the association of the allottees or the competent authority, as the case



may be, as per the local laws. The clause is reproduced below for reference.

17. Transfer of title.—(1) *The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) *After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:*

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the [completion] certificate.

20. Further, STP, Gurugram vide memo no. 421-456 dated 21.02.2013, directed all the colonizers including the M/s Puri Constructions Pvt. Ltd. to hand over and transfer the administration of the project to the resident welfare associations after receipt of OC and execution and registration of deed of declaration (DOD) under section 2 of the Haryana Apartment Ownership Act, 1983. Section 2 of the Haryana Apartment Ownership Act, 1983 provides for execution and registration of declaration within a period of ninety days after obtaining occupation certificate/part occupation certificate. After execution and registration of Deed of Declaration (DOD), the administration of that

part of the condominium for which occupation certificate has been granted is to be transferred to the Board of Managers of the association. Not only this, by virtue of these provisions, the respondent/promoters *ipso facto* becomes liable to transfer the amount which it has collected from the allottees on account of IFMS along with the interest accrued thereon to the association. The promoter cannot treat this money as his own or be free to utilize it for any purpose he considers appropriate. However, if any money out of this is spent on the project, an account thereof along with justifications has to be provided to the association of allottees. The authority considers that the IFMS collected by the developer from the allottees of the project is not a part of the sale consideration of the apartment/plot. This charge is charged in addition to the consideration of the unit for future contingencies of the project which is meant to be handed over to the association whenever a lawful association is created, and the project is handed over to them. However, it has been observed that even after execution and registration of the deed of declaration, the administration is still being run by the promoters themselves, or their agency which is totally against the spirit of the Apartment Ownership Act, 1983. Thus, the respondent /promoters are directed to handover the maintenance of the project and transfer the unutilized IFMS deposit of Rs.63,81,268/- left with it to the association within a period of thirty days from the date of this order. In so far as, the amount that has been spent by the promoter from the IFMS so collected from the allottees is concerned, the promoter shall give the justification with respect to such expenditure incurred and if any such expenditure is found to be in conflict with the permissible deductions as per law, the same shall also be transferred to the

association. It is further clarified that the amount so collected under the head of IFMS is concerned, no amount can be spent by the promoter for the expenditure it is liable to incur to discharge its liability under section 14 of the Act.

G.IV. To pay the delay possession charges and refund of the escalation charges.

21. These issues are to be adjudicated by the authority in individual cases and not as a relief to RWA. The complainant is not competent to seek such type of relief on behalf of homebuyers. Hence, the complaint is not maintainable qua these reliefs against the respondent/promoters.

G.V. To rectify the unauthorised and illegal sale of the shopping area/convenient store.

22. As per section 14(1) of the Act of 2016, the proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authority. However, any alteration or addition in area of any part of building would not be considered as minor additions or alterations under explanation to section 14(2)(i) of the act. Therefore, the respondent/promoters are directed that no alteration in the area of shopping area/convenient store shall be done without getting approval from the competent authority.

G.VI. To set up a garbage collection area and compost plant as provided in the project area.

23. Section 14 of the Act of 2016 mandates the promoter to develop and complete the proposed project in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authority. Thus, the respondent/promoters are directed to provide all the

requisite facilities as per plan approved by DTCP, Haryana and proposed to be provided as per BBA.

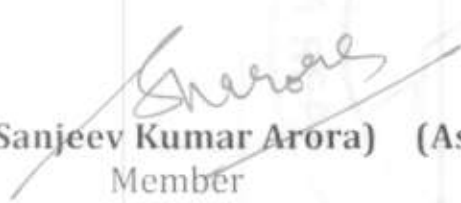
G.VII To pay compensation of Rs.1,00,000/- on account of harassment and litigation cost.

24. The complainant is seeking above mentioned relief w.r.t. compensation. 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. (supra)*, has held that an allottee is entitled to claim compensation and 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 and 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.


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/promoter is directed to handover the maintenance of the project and transfer the unutilized IFMS deposit of Rs.63,81,268/- to the association of allottees within a period of thirty days from the date of uploading this order.
 - ii. The respondent is further directed to give justification of expenditure incurred out of the IFMS deposit to the association and if any expenditure is found to be in conflict with the permissible

- deductions as per law, the same shall also be transferred to the association.
- iii. The respondent shall handover necessary documents and plans, including common areas, to the association of allottees or the competent authority, as the case may be, within 30 days after obtaining the completion certificate in terms of proviso to section 17(2) of the Act of 2016.
- iv. A period of 90 days is given to the respondent/promoters to comply with the directions given in this order and failing which legal consequences would follow.
26. Complaint as well as applications, if any, stands disposed off.
27. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.07.2024