

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

Complaint no. : 4193 of 2022
Order reserved on : 16.06.2022
Order pronounced on : 17.12.2024

Beena Yadav
R/o: RZ-106, Sagarpur East, Lane no.4
Sector-114, Gurugram.

Complainant

Versus

M/s Y B builders pvt Ltd.
M/s Nimai Developers Private Ltd
Both Regd Address: SCO-304, 2nd Floor, Sector-29,
Gurugram-122002.

Respondents

Coram:

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

Appearance:

Shri Gaurav Rawat
Shri Sushil Yadav

Advocate for the complainant
Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

A. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Nimai Place", Sector-114, Gurugram, Haryana.
2.	Nature of the project	Commercial
3.	Area of project	3.015acres
4.	DTCP license	License no. 126 of 2012
5.	RERA Registered	Registered Vide no. 07 of 2019 Dated- 18.11.2019
6.	Allotment letter	Not available
7.	Unit no.	040, Floor-Ground (As on page no. 32 of complaint)
8.	Unit area	512 sq.ft. (As on page no. 32 of complaint)
9.	Date of execution of buyer's agreement	30.03.2014 (As on page no. 31 of complaint)
10.	Possession clause	Clause 26 <i>The Developer shall offer possession of the unit any time within a period of 36 months from the date of sanction of building plans or date of execution of buyer's agreement whichever is later, subject to force-</i>

		<p><i>majeure circumstances such as act of God, fire earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material or supplies, failure of transportation, strike, lock outs, action of labour union, any dispute with any contractor/ construction agency appointed by the Developer, change of law, or any notice, order, rule or notification issued by the Government and/or any other public or competent authority or intervention of Statutory Authorities, or any other reason(s) beyond the control of the Developer. The Allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the Developer. [Emphasis supplied].</i></p> <p><i>(As on page no. 38 of complaint)</i></p>
11.	Due date of possession	<p>30.03.2017</p> <p>[Calculated 36 months from date of execution of agreement as date of sanctioning building plan is not on record]</p>
12.	Payment plan	<p>Construction linked</p> <p>[Note:- At the time of offer of possession:- 5% of BSP + IFMS + Power Back-up + Registration Charges + other charges as applicable]</p>
13.	Total sales consideration	<p>Rs. 69,12,128/-</p> <p>(As on page no. 32 of complaint)</p>
14.	Total amount paid by the complainant	<p>Rs.67,33,402/-</p> <p>(As alleged by the complainant)</p>

15.	Occupational certificate	12.04.2023 (As per site and page no. 33 of reply)
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. In 2012, the respondents company issued an advertisement announcing a commercial project "Nimai Place" situated in the Sector 114, Gurugram, Haryana, in a land parcel admeasuring a total area of approximately on the 3.0125 acres of land, under the license no. 126 of 2012 dated 20.12.2012, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. respondents confirmed that the projects had got building plan approval from the authority.
- ii. That relying on various representations and assurances given by the respondents company and on belief of such assurances, complainant (Husband of the complainant i.e. Mr.Ravi Yadav, booked a flat unit in the project by paying an amount of Rs. 6,20,000/- dated 23.09.2013, the booking of the said unit bearing no. 040, Ground Floor, in Sector 114, having super area measuring 512 sq. ft. to the respondents dated 23.09.2013 and the same was acknowledged by the respondents.
- iii. That the respondents sent, confirming the booking of the unit dated 23.09.2013, allotting a unit no. 040, Ground Floor, in Sector 114, (hereinafter referred to as 'unit') measuring 512 sq. ft. Sq. Ft (super built up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 69,131,280.00, which includes basic price, Plus EDC and IDC, and other Specifications of the allotted unit

and providing the time frame within which the next instalment was to be paid.

- iv. That a buyer's agreement was executed between complainant and respondents on 30.03.2014. As per clause 26 of the buyer's agreement the respondents had to deliver the possession within a period of 36 months period from the date of execution of agreement or date of sanction building plans, whichever is later. The date of agreement is 30.03.2014. Therefore, the due date of possession is calculated from the date of agreement i.e. 30.03.2017.
- v. That as per the demands raised by the respondents, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs. 67,33,402/- towards the said unit against the total sale consideration of Rs. 69,131,280.
- vi. That respondents sent confirmation letter dated 13.07.2021 to the complainant mentioning that they have made necessary changes in their records, based on request of the complainant and now the said unit stands in the name of the complainant.
- vii. That the respondents confirmed the booking of the said unit to complainant and also mentioning the moonshine reputation of the company and the location of project. Further, providing the details of payment to be made by the complainant.
- viii. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants approached the respondents and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have

not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.

- ix. That the complainant contacted the respondents on several occasions and were regularly in touch with the respondents. The respondents were never able to give any satisfactory response to the complainants regarding the status of the construction and were never definite about the delivery of the possession. The complainant kept pursuing the matter with the representatives of the respondents by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc.
- x. That the complainant after losing all the hope from the respondents company, having their dreams shattered of owning residential unit & having basic necessary facilities in the vicinity of the Nimai Place Project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.

C. Relief sought by the complainant

4. The complainant has filed the present compliant for seeking following reliefs:
 - i. Direct the respondent to pay interest at 24% per annum, being the interest claimed by the respondent in case of delayed payments from the complainant, on the amount paid by the complainant on account of the delay in delivery of possession of the unit to the complainant with effect from the date of delivery of the unit promised in the

- buyer's agreement till the date of actual payment as decided by this Authority in the present complaint.
- ii. Direct the respondents to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BA.
 - iii. It is most respectfully prayed that the Authority be pleased to order the Respondents not to force the complainants to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
 - iv. It is most respectfully prayed that the Authority be pleased to order the respondents to quash the illegal demands on account of delay interest charged @ 18% p.a from the complainant.
 - v. It is most respectfully prayed that the Authority be pleased to order the Respondents not to charge anything due to increase in floors from 9th to 12th Floor.
 - vi. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the respondents to provide the exact lay out plan of the said unit.
5. On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent no. 1 and 2.

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects in and around NCR region such as Nimai Greens , Nimai Hills, and Nimai Arcade and in these projects large number of families have already shifted after having taken possession and Resident Welfare Associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
- ii. That the complainant, after checking the veracity of the project namely, "Nimai Place", Sector 114, Gurugram had applied for allotment of a shop and were accordingly allotted shop number 040 in Ground Floor having super built up area of 512 square feet for a total sale consideration of Rs. 73,43,560/-. The complainants agreed to be bound by the terms and conditions of the documents executed by them with the respondent.
- iii. That the complainant has failed to make timely payments as per the agreed payment plan. It is most pertinent to submit that, despite numerous opportunities, reminders, and additional chances, the complainant has failed to fulfil their promise of paying the total consideration amount as mutually agreed upon and thus, with no fault on the part of the respondent.
- iv. It is humbly submitted that the project in question have been completed by the respondent. Moreover respondent have received the Occupation certificate from the Director General, Town and Country Planning, Chandigarh , Haryana , vide letter dated 10.02.2023

- v. That it is pertinent to mention here that civil suit (CS-5592-2022) was initiated in the Hon'ble Court of Sh. Anil Kumar Yadav , Civil Judge (Jr.Dv) , Gurugram on the said unit between complainant and her family members where respondent was also made party as defendant no 2 where that application under Order 39 Rule 1 & 2 of CPC was allowed against the complainant on dated 16.01.2023.
- vi. That complainant filed appeal (CRA/49/2023) against the order of Hon'ble Court of Sh. Anil Kumar Yadav , Civil Judge (Jr.Dv) , Gurugram on dated 16.01.2023 and respondent receive notice from the Hon'ble Court of Dr. Virender Parshad, ADJ, Gurugram to appear on 28.02.2023.
7. All other averments made in the complaint were denied in toto.
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 these undisputed documents and submissions made by the parties.
- E. Jurisdiction of the authority**
9. The authority observed 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, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with office 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 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:

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 as per provisions of section 11(4)(a) of the Act 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 reliefs sought by the complainant

F.I Direct the respondent to pay interest at 24% per annum, being the interest claimed by the respondent in case of delayed payments from the complainant, on the amount paid by the complainant on account of the delay in delivery of possession of the unit to the complainant with effect from the date of delivery of the unit promised in the buyer's agreement till the date of actual payment as decided by this Authority in the present complaint.

13. The respondent-builder states that Beena Yadav (the present complainant) is not the sole legal heir of the late Ravi Yadav i.e. original allottee. Beena Yadav has neither included the other legal heirs, such as her mother-in-law or children in array of parties to the complaint. Despite

being asked by the respondent to provide a legal heir certificate, Beena Yadav has continuously evaded the matter and failed to present the necessary documentation.

14. In this regard, it is also observed the Hon'ble High Court of Punjab and Haryana in *CWP No. 15837 of 2024 titled as Mrs Dhanwanti Ahuja v/s State of Haryana and Ors* decided on 16.07.2024, has explicitly held that the requirement for obtaining a legal heir certificate is not a prerequisite for the continuation of proceedings under the Real Estate (Regulation and Development) Act, 2016 (RERA). The Hon'ble Court observed that the absence of such a certificate would not hinder the proceedings before the Real Estate Regulatory Authority (RERA), thereby clarifying the legal position in this regard. However, the complainant during the course of proceeding dated 20.08.2024, placed on record the surviving member certificate dated 30.10.2021 issued by Revenue Department, Govt of NCT of Delhi office of the District Magistrate Delhi Cantonment.
15. Further, it is important to note that vide letter dated 13.07.2021, the respondent specifically endorsed the said unit in favour of the complainant (Beena Yadav) and now the said unit stands in the name of the complainant. The second objection of the respondent in relation to civil suit by the mother-in-law of the complainant already stands dismissed as withdrawn vide order dated 14.12.2023 passed by Sh. Anil Kumar Yadav, CJ/JD, Gurugram. In view of the above, the objection taken by the respondent with regard to the maintainability of the complaint is devoid of merit.
16. 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."

17. Clause 26 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"11. POSSESSION

(a) Time of handing over the Possession

*The Developer shall offer possession of the unit any time **within a period of 36 months from the date of sanction of building plans or date of execution of buyer's agreement whichever is later**, subject to force-majeure circumstances such as act of God, fire earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material or supplies, failure of transportation, strike, lock outs, action of labour union, any dispute with any contractor/ construction agency appointed by the Developer, change of law, or any notice, order, rule or notification issued by the Government and/or any other public or competent authority or intervention of Statutory Authorities, or any other reason(s) beyond the control of the Developer. The Allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons."*

18. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning.

19. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months *from the date of sanction of building plans or date of execution of buyer's agreement whichever is later*. The buyer agreement was executed on 30.03.2014 but the date of sanctioning of building plan is not on record. Therefore, the due date would be calculated from the date of execution of buyer agreement. So, due date of possession comes out to be 30.03.2017.
20. **Admissibility of delay possession charges at prescribed rate of interest:** The 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.
21. The legislature in its wisdom in the subordinate legislation under the 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.
22. 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., 17.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

23. 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;"

24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

25. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 26 of the buyer's agreement executed between the parties, the possession of the said unit was to be delivered within a period of 36 months **from the date of sanction of building plans or date of execution of buyer's agreement whichever is later**. Therefore, the due date of handing over possession comes out to be 30.03.2017. In the present case, there is nothing on record which shows that the respondent builder offered possession to the complainant after obtaining occupation certificate dated 12.04.2023 from the competent

- authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement.
26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 12.04.2023 but there is nothing on record which shows that respondent-builder offered possession to the complainant. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e 30.03.2017 till valid offer of possession after obtaining occupation certificate from the competent Authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 11.10% p.a. w.e.f. 30.03.2017 till valid offer of possession plus two months after obtaining occupation certificate from the competent Authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II Direct the respondent to not force the complainant to sign any indemnity bond.

28. The complainant is seeking relief w.r.t direct the respondent not to force the complainant to sign any indemnity bond. The allottee has waited for long for his cherished dream home and now when it is ready for taking possession, she has either to sign the indemnity-cum-undertaking and take possession or to keep struggling with the promoter if indemnity-cum-undertaking is not signed by him. The execution of indemnity-cum-undertaking would defeat the provisions of sections 23 and 28 of the Indian Contract Act, 1872 and therefore, would be against public policy, besides being an unfair trade practice. Therefore, the respondent is directed not to place any condition or ask the complainants to sign an indemnity bond.

G.III Direct the respondent to not charge anything that is not part of the agreement.

G.IV Direct the respondent to not charge anything due to increase in floors from 9th to 12th floor.

29. The above mentioned reliefs no. G.III & F.IV as sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.
30. As per the Section 14 of the Act of 2016, the respondent is required to complete and deliver the project in accordance with the terms and conditions of the sale agreement which includes the plan, design and specifications mentioned in the buyer agreement. Any changes in these terms can only be made with the buyer's consent. Therefore, the respondent builder is directed not to charge anything which is not part of the buyer agreement executed between the parties on 30.03.2014.

G.V Direct the respondent to provide the exact lay out plan of the unit

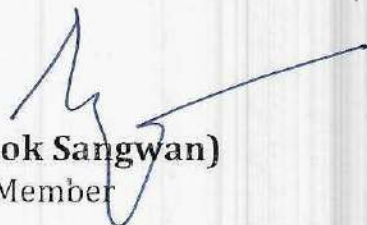
31. The complainant is seeking relief to provide the exact pay out plan of the unit. It is important to note that as per Section 11(3)(a) of the RERA Act of 2016, developers are mandated to provide allottees with sanctioned plans, layout plans, and specifications at the time of booking and the issuance of the allotment letter. This disclosure ensures that homebuyers have comprehensive information about the proposed project from the outset. So, the respondent-builder is directed to provide all the necessary approvals obtained from the competent authority to the complainant.


G. Directions of the authority

32. 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 respondents are directed to pay the interest at the prescribed rate i.e. 11.10 % per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 26.02.2014 till valid offer of possession after obtaining occupation certificate, plus two months or actual handing over of possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondents are directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days from the date of this order.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- iv. The respondents shall not charge anything from the complainant which is not the part of the buyer's agreement.
 - v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - vi. The respondent-builders are directed to handover the possession of the allotted unit to the complainant and execute the conveyance deed within period of 90 days from the date of this order.
 - vii. This order is without prejudice to the rights of the legal heirs.
 - viii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
33. Complaint stands disposed of.
34. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.12.2024