

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

Complaint no.:	2727 of 2023
Date of complaint:	14.06.2023
Date of order:	07.04.2026

Sassafras Infotech Pvt. Ltd. Registered Office 205, CA Chamber 18/12, WEA Karol Bagh, New Delhi-110005	Complainant
Versus	
1. M/s Splendor Buildwell Pvt. Ltd. Registered Office: F-38/2, Okhla Industrial Rea, Phase-II, Okhla, New Delhi-110020.	Respondent no.1
2. Ishaya Builders and Developers Pvt. Ltd. Registered Office: unit no. 131, first floor, Splendor forum plot no. 03, Jasola District Centre, New Delhi-110025	Respondent no.2
3. DH Limited Registered office: L-41, Conaught Circus, New Delhi-110001	Respondent no.3

CORAM:	
Shri Arun Kumar	Chairman
APPEARANCE:	
Sh. Parmanand Yadav (Advocate)	Complainant
Ms. Shriya Takkar (Advocate)	Respondent no.1 & 2
Sh. Parikshit Singh (Advocate)	Respondent no.3

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 allottee 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Spectrum One", Sector 58, Gurugram
2.	Nature of the project	Commercial Project
3.	RERA Registered/ not registered	Registered Vide 376 of 2017 dated 07.12.2017 Valid till 31.12.2018
4.	Builder Buyer Agreement	02.01.2014 (Page 31 of complaint)
5.	Addendum to Builder Buyer Agreement	03.01.2014 (Page 79 of reply)
6.	Old Unit no.	806 to 818 , 8 th Floor, Tower B (13 units) (As per BBA at Page 34 of complaint)
7.	Re-allocated to Unit no.	314 to 326 , 3 rd Floor, Tower B (13 units) (Letter dated 08.03.2018, at page 110 of reply- Complainant is stating that he had not received any such letter and is demanding a clear copy of postal receipt from the respondent by way of application dated 03.07.2024)
8.	Unit area admeasuring	1393.53 sq. ft. (Super Area)
9.	Possession Clause	Clause 15.1 <i>"15.1 That the Company shall, under normal circumstances, and subject to force majeure clause mentioned herein and any other circumstances not beyond the control of the company and/or restraints/restrictions from the government, any authority/court,</i>

		<p><i>endeavor to complete the construction of Said Complex in which the Said Unit is located as per the said plans and specifications seen and accepted by the Allottee (with additional floors for units/spaces if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme of the company may consider necessary or may be required by any competent authority to be made in them or any of them, within a period of 36 (thirty six) months from the start of construction of the said tower in which the said unit is located or date of execution of this agreement, whichever is later subject to timely payment by the Allottee of the sale price and other dues and charges payable according to the Payment Plan/Schedule of Payment applicable to him or as demanded by the Company. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 months ("Grace Period") after the expiry of the said 36 (thirty-six) months period to allow for government or other circumventive delays in obtaining certificate for occupation/completion and use of the Complex etc., from the Regulatory Authority in respect of the Complex."</i></p> <p>(As per addendum to BBA at Page 82 of complaint)</p>
10.	Due date of delivery of Possession	03.01.2017 + 6 months = 03.07.2017 (Calculated to be 36 months from the date of execution of buyer's agreement)
11.	Basic sale consideration	Rs.8,70,00,000/- (As per Schedule of Payment at page no. 57 of complaint)
12.	Total sale consideration	Rs. 9,67,50,000/- (As per Schedule of Payment at page no. 57 of complaint)

13.	Amount paid by the complainant	Rs. 9,95,48,909/- (As statement of account at page 184 of reply)
14.	Letter by complainant demanding possession and DPC (Request for units situated at 8 th floor)	29.09.2017 and 10.03.2023 (Page 71 and 76 of complaint)
15.	Request for payment/Demand letters sent by respondent	15.01.2018, 27.02.2018 and 20.03.2018 (Page 72, 73 and 74 of complaint)
16.	Legal notice sent by complainant	29.03.2023 (Page 77 of complaint)
17.	Occupation Certificate	06.09.2019 (Page 128 of reply)
18.	Offer of Possession	Not Made
19.	Conveyance deed for the entire plate in favour of DH Limited (units situated at 8 th floor)	23.02.2024 (page 21 of reply to the application on behalf of the respondent no. 1)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the respondent made representation to the complainant that it has vast experience in the construction and real estate industry and has got reputation of timely delivery of the project. The respondent also made representation that pursuant to the understanding and arrangement between the respondent no. 1 and respondent no.2 has interalia full authority, power, valid and subsisting rights to develop IT/cyber park building/tower under the name and style of "Spectrum One" in the project, market the same and sell saleable areas/space/units and receive booking amount, advances, instalments and consideration for the same. Lured by the rosy pictures shown and promised by the respondent and ensuring committed delivery of the project on time, complainant applied for booking office space in the IT/ Cyber Park project of the respondent having an area ad measuring 15000 sq. ft. approximately developed by respondent no. 1 in their project "Spectrum One" located at

Sector 58 Gurugram Haryana and paid a sum of amount Rs. 04,01,95,665/- as registration/booking amount.

- II. That a builder buyer agreement was executed between the parties on 02.01.2024 and the complainant were allotted unit no. 806 to 818 on 8th floor in tower B in "Spectrum One" located Sector 58, Gurugram admeasuring 15000 sq.ft. super area for a total sale consideration of Rs.9,67,50,000/- and the complainant has opted for construction linked payment plan. As per clause 15.1 of the BBA the time of handing over possession was 42 months from the start of construction of the said tower in which unit is located or the execution of the builder buyer agreement whichever is later plus further six months grace period.
- III. That on 03.01.2014 an addendum buyer's agreement was signed between the complainants and the respondent and certain covenants, and clause were renegotiated and agreed to between the parties. Some of the important clauses amended or rectified are as follow:
- a. Clause 3.2 of the buyer's agreement dated 02.01.2014 about cost escalation as per CPWD index was deleted.
 - b. Clause 15.1 regarding the due date of possession of the allotted unit as per BBA dated 02.01.2014 was amended and due new covenant that the builder/developer shall handover the possession of the allotted unit within 36 month plus further grace period of 6 months after expiry of 36 months period to allow obtaining OC/CC from the government authorities from 02.01.2014. In nutshell due date of handing over possession of the allotted unit was 01.01.2017 without grace period if the builder/developer has not applied for OC/ CC within 6 months after the completion of 36 months i.e., 01.01.2017. Due date of handing over possession of the allotted unit was 01.07.2017 with grace period if the builder/developer has applied for OC/ CC within 6 months after the completion of 36 months i.e., 01.01.2017.

- IV. That the complainants had made amounting to Rs 09,95,48,910/- constituting almost 100% of the total sale consideration but the respondent did not apprise about the timely progress of the project and the project is still incomplete.
- V. That the respondent failed to hand over the physical possession of the unit as per the clause no 15.1 of the Builder Buyer agreement despite the receipt of almost 100% of the total sale price from the complainant and did not even inform the complainant whether the grace period of required to be availed or not.
- VI. That the respondent further failed to hand over the physical possession of the unit as per the clause no 15.1 of the builder buyer agreement despite the receipt of almost 100% of the total sale price from the complainant even after further lapse of 6 months i.e., consuming the entire grace period also.
- VII. That the complainant wrote letter dated 29.09.2017 to the respondent demanded delay possession charges and delivery of the possession of the allotted units from the respondent and made telephonic communication and visit at the office of the respondent to hand over possession of the allotted units but all the concerns of the complainant fell on deaf ears.
- VIII. That the complainant was in receipt of the letter of demand dated 15.01.2018 from the respondent in which the respondent has made the illegal demands. The complainant issued a letter dated 27.02.2018 and 20.03.2018 inter-alia seeking details of the charges claimed from the complainant and its accounts, as stipulated under the terms and conditions of the agreement. However ever since thereafter no response was received or forthcoming from the respondents.
- IX. That the complainant suffering at the hands of the respondent got issued legal notice from its counsel demanding hand over of possession of the unit by issuing letter of offer of possession within 15 days from the receipt of legal notice and delay possession charges for the period of delay in handing over

possession but the respondent for reasons best known to it has chosen not to respond to the legal notice.

C. Relief sought by the complainants:

4. The complainants have sought following relief:

- I. Direct the respondent to deliver the possession of the allotted units complete in all respects along with OC and CC.
 - II. Direct the respondent to pay delay possession charges.
 - III. Directing the respondent to issue letter of possession in favour of the complainant.
 - IV. Directing the respondent to provide the latest statement of account of the complainant for the allotted units.
 - V. Direct the respondent not to levy maintenance charge as the construction activity is still going on and the IT/cyber park and building are not in a habitable/workable condition.
 - VI. Direct the respondent not to charge holding charge from the complainant.
 - VII. Directing the respondent to bear the cost of GST as the allotted units is Pre GST booking and was due for possession before the notification of the GST regime of taxes.
 - VIII. Directing the respondent to execute conveyance deed in favour of the complainant for the allotted unit.
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 no.1.

6. The respondent contested the complaint on the following grounds: -

- i. That at the outset, the respondent denies each and every statement, submissions and contentions set forth in the complaint to the extent the same are contrary to and inconsistent with the true and complete facts of the case and the submissions made on behalf of the respondent in the present reply. The respondent further humbly submits that the averments and contentions, as stated in the complaint under reply, may not be taken to be deemed to have been admitted by the respondent, save and except what are expressly and specifically admitted and the rest may be read as travesty of facts.

- ii. That without prejudice to the aforementioned contentions it is stated that the complainant has approached the Authority with unclean hands and has tried to mislead the Authority by making incorrect and false averments and stating untrue and incomplete facts and, as such, is guilty of *suppressio veri and supressio falsi*.
- iii. That the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the very threshold. The complaint is liable to be dismissed in view of the preliminary objections set out hereinafter. Since the preliminary objections are of a jurisdictional nature which goes to the root of the matter, and as per the settled law, the same should be decided in the first instance. It is only after deciding the question relating to maintainability of the complaint that the matter is to be proceeded with further. The following preliminary and jurisdictional objections are being raised for dismissal of the complaint.
- iv. That the complainant made an application for provisional allotment of office space admeasuring 15000 sq.ft. in the cyber/IT park developed by the respondent known as Spectrum One vide an application form. Thereafter space buyer's agreement was executed between the parties for provisional allotment of unit nos. 806 to 818 admeasuring 15,000 sq. ft. super area on 8th floor in tower B of proposed IT park project of the respondent. The said space buyer's agreement dated 02.01.2014 was executed determining all the rights and liabilities of the parties. The cost of the units was Rs.9,67,50,000/- plus other dues and charges as per the said space buyer agreement. Thereafter the parties entered into addendum agreement dated 03.01.2014 whereby some clauses of the agreement were amended.
- v. That thereafter, the respondent as per the payment plan opted by the complainant raised a demand due at the time of booking vide demand letter dated 14.01.2014 for an amount of Rs. 51,53,100/-. The respondent vide

demand letter dated 30.06.2014 raised the second demand due on casting of first basement roof slab for an amount of Rs. 90,22,596/-. Since, the complainant failed to make good the payment therefore the respondent issued reminder letters dated 14.07.2014 and 23.07.2014 requesting the complainant to clear its dues to the tune of Rs. 90,22,596/-. Thus, from the above it is absolutely clear that the complainant defaulted in making timely payments.

- vi. That the respondent vide demand letter dated 21.11.2014 raised the third demand due on casting of ground floor roof slab for an amount of Rs. 1,33,91,163/-. Since the complainant failed to make the payment of the demand due, the respondent issued reminder letter dated 12.12.2014 requesting the complainant to come forward and make the payment of Rs. 1,33,91,163/-. Thereafter the respondent as per the payment plan opted by the complainant, raised a demand vide demand letter dated 03.01.2015 to the tune of Rs. 1,17,26,163/-.
- vii. That in furtherance to the payment received against the last demand by the respondent, the respondent issued demand letter dated 17.02.2015 due on casting of 2nd floor roof slab for an amount of Rs. 47,06,341/-. Since the complainant failed to make the payment as a consequence of which the respondent was constrained to issue reminder letters dated 09.03.2015 and 17.04.2015 requesting the complainant to make the payment to the tune of Rs. 47,06,341/-.
- viii. That the respondent as per the payment plan raised demand vide letter dated 03.07.2015 due on casting of 5th floor roof slab to the tune of Rs. 46,11,267/-. The respondent vide letter dated 15.12.2016 raised the demand due towards VAT. Thereafter the respondent as per the agreed terms raised demand vide letter dated 30.12.2016 due on commencement of exterior cladding and glass work for an amount of Rs. 46,82,582/-.

- ix. Since, the complainant had expressed urgency to take over possession for its self-use the respondent issued letter dated 15.01.2018 requesting the complainant to clear their dues and start the process of fit outs. The respondent vide letter dated 13.02.2018 also informed the respondent that the project is at completion stage and the respondent is in discussion with the potential/intending corporates/MNCs/Banks for leasing of space in the project. Thereafter, the complainant post receipt of letter dated 15.01.2018, visited the office of the respondent and again expressed urgency in taking over the office space booked by the complainant. The respondent in order to accommodate and give priority to the complainant in terms of clause H read with clause 4.1 and 4.4 of the space buyer agreement dated 02.01.2014 executed between the parties, agreed to give office space admeasuring 15,000 sq. ft. of super area on the third floor of the same tower i.e., tower B of the said project, at the same price and on the same terms and conditions, as services of the third floor were complete at that time while upper floors services were in progress.
- x. That the respondent pursuant to discussions between the parties issued letter dated 08.03.2018 whereby it was confirmed that the complainant's allotment stood re-allocated to unit nos. 314-326 on third floor of tower B. It was also agreed that the demand dated 15.01.2018 be treated as sent for unit nos. 314-326 on third floor. It is relevant to point out that the office space vide letter dated 15.01.2018 was only offered for fit outs so that the complainant could commence its operations immediately on completion of the building/said tower. The respondent also addressed all queries of the complainant raised vide letter dated 27.02.2018. Vide the said letter it was duly informed to the complainant that since the office space/units earlier allotted to them on the eight floor have been reallocated to third floor of the same tower in the said project in terms of clause 4.4 read with recital clause H and clause 4.1 of the space buyer agreement dated 02.01.2014, the complainant have been left with

no rights and/or title and/or interest and/or claim in respect of old unit nos.806-816 on the eight floor of tower B of the said project. The said letter dated 08.03.2018 has been suppressed by the complainant from this Hon'ble tribunal.

- xi. That the respondent after completing the construction of the said project in September, 2018 had applied for the issuance of Occupation Certificate in November 2018 in the office of the Director General, Town & Country Planning Department, Haryana in November 2018. The Occupation Certificate was only granted by the competent authorities on 06.09.2019 after rigorous follow up and due verification and inspection that the building has been constructed and completed as per approved plans.
- xii. That the complainant was duly informed about the completion of the building and receipt of Occupation Certificate dated 06.09.2019 vide various communication and in several meetings held between the representatives of the complainant and the respondent. The respondent's representative had also sent copy of the said Occupation Certificate to the respondent's representative on Whatsapp on 02.11.2019 and on multiple occasions requested the complainant to come forward to clear their dues and take possession, but to no avail.
- xiii. That by way of addendum agreement, the due date is calculated as per clause 15.1 of the addendum agreement i.e., 36 months from the date of execution of buyer agreement. Further the allottee agreed for 6 months grace period after the expiry of the said 36 thirty-six months period to allow for government or other circumventive delays in obtaining certificate for Occupation/Completion and use of the complex etc., from the Regulatory Authority in respect of the complex. Thus, the due date of possession has to be reckoned from the date of execution of the buyers' agreement i.e., 01.01.2014. Thus, the due date of possession comes out to be 01.07.2017. However, the said timeline was subject

to existence of normal conditions and subject to force majeure clause conditions enumerated in clause 19.1 of the buyers' agreement. In the intervening period when the construction and development was under progress there were various instances and scenarios when the development and construction work had to be put on hold due to reasons beyond the control of the respondent. The parties have agreed that if the construction and development of the project is affected on account of force majeure conditions, the developer shall be entitled to extension of time.

- xiv. That the construction of the project was affected due to force majeure conditions such as demonetization, shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project. Despite the said circumstances, the respondent completed the construction of the project diligently and timely. Upon completion of the construction of the units in terms of the buyers, agreement an application for the receipt of the Occupation Certificate was applied for in November, 2018 with respect to the tower in which the said units are situated with the statutory authorities and the same was granted by the authorities only on 06.09.2019 i.e., after a period of almost 10 months. This delay of the competent authorities in giving Occupation Certificate cannot be attributed in considering the delay in delivering the possession of the units. The Occupation Certificate with respect to the tower where the units are situated was only granted after inspection by the relevant authorities and after ascertaining that the construction was completed in all respect in accordance with the approved plans and that the units were habitable.
- xv. That the complainant has failed to get the conveyance deed registered and take possession of the said units i.e., unit nos.314-326 on 3rd floor of tower B of the Project. The failure of the complainant to make payment of outstanding amounts in terms of the said agreement and get the conveyance deed registered

transpired that the complainant is in breach of its reciprocal promises to be performed as laid down in the said agreement. Thus, the complainants are clearly in breach of Section 51 of the Indian Contract Act, which provides that when a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

- xvi. That in the present case, the complainant has failed to bring to the notice of the Authority that it was in fact the complainant is a defaulter and was is in arrears for payment of outstanding dues and charges as per said space buyer agreement for which repeated requests were made to the complainant.
- xvii. That in terms of the clause 3.1 to 3.8 of the said agreement, a sum of Rs.2,09,62,284/- inclusive of GST plus interest at the prescribed rate on the principal amount is due and payable by the complainants to the respondent as on 31.01.2024. Further, the complainant is also liable to pay maintenance charges and holding charges in terms of clause 11 & 12 and clause 15.2 respectively of the said agreement. The outstanding amount of maintenance charges and holding charges as on 31.01.2024 is Rs.1,37,70,000/- & Rs.1,87,50,000/- respectively.
- xviii. That the respondent is entitled to compensation from the complainant for the losses and damages in consequence of the non-performance of the said buyer's agreement by the complainant and various acts of commissions and omissions committed by the complainants and the respondent has reserved its rights to initiate necessary proceedings against the complainants for same.
- xix. That the complainant had expressed urgency to take over possession for its own use therefore the respondent issued letter dated 15.01.2018 requesting the complainant to clear their dues and start the process of fit outs so that it could commence operations once Occupation Certificate was granted by the competent authorities. The respondent vide letter dated 13.02.2018 also

informed the respondent that the project is at completion stage and the respondent is in discussion with the potential/intending corporates/ MNCs/ Banks for leasing of space in the project. Thereafter, the complainant p Post receipt of letter dated 15.01.2018, the complainant visited the office of the respondent and expressed urgency in taking over the office space booked by the complainant. The respondent in order to accommodate and give priority to the complainant in terms of clause H read with clause 4.1 and 4.4 of the buyer agreement dated 02.01.2014 executed between the parties, agreed to give office space admeasuring 15,000 sq. ft. of super area on the third floor of the same tower i.e., tower B of the said project, at the same price and on the same terms and conditions, as services of the third floor were complete at that time while upper floors services were in progress. The respondent pursuant to discussions between the parties issued letter dated 08.03.2018 whereby it was confirmed that the complainant's allotment stood re-allocated to unit nos.314-326 on third floor of tower B. It was also agreed that the demand dated 15.01.2018 be treated as sent for Unit Nos. 314-326 on third floor. The respondent also addressed all queries of the complainant raised vide letter dated 27.02.2018. Vide the said letter dated 08.03.2018 it was duly informed to the complainant that since the office space units earlier allotted to them on the eight floor have been reallocated to third floor of the same tower in the said project in terms of clause 4.4 read with recital clause H and clause 4.1 of the space buyer agreement dated 02.01.2014, the complainant have been left with no rights and/or title and/or interest and/or claim in respect of old unit nos.806-816 on the eight floor of tower B of the said project. Further, it was also informed that the respondent as a goodwill gesture had agreed to pay delay possession charges in terms of the said space buyer agreement till receipt of Occupation Certificate, even though there was no delay on its part and the respondent as per the agreed terms of the space buyers' agreement and

addendum was entitled to extension of time. The above, the complainant has been left with no right, title or interest over old unit nos. 806-816 of tower B of the said project. Thus, the present complaint is infructuous and is liable to be dismissed.

- xx. That the said space buyer's agreement was entered into between the parties on 02.01.2014 and the addendum to space buyers' agreement dated 03.01.2014 and as such, the parties are bound by the terms and conditions mentioned in the said agreements. The agreements were duly signed by the complainant after properly understanding each and every clause contained in the space buyer's agreement. The complainants were neither force nor influenced by the respondent to sign the said agreements. It was the complainant who after understanding the clauses signed the said agreements in their complete senses.
- xxi. That the complainant concealed the facts that since, the complainant had expressed urgency to take over possession for its own use therefore the respondent issued letter dated 15.01.2018 requesting the complainant to clear their dues and start the process of fit outs so that it could commence operations once OC was granted by the competent authorities. Thereafter, the complainant has concealed the fact that post receipt of letter dated 15.01.2018, the complainant visited the office of the respondent and expressed urgency in taking over the office space booked by the complainant. The respondent in order to accommodate and give priority to the complainant in terms of clause H read with clause 4.1 and 4.4 of the space buyer agreement dated 02.01.2014 executed between the parties, agreed to give office space admeasuring 15,000 sq.ft. of super area on the third floor of the same tower i.e., tower B of the said project, at the price and on the same terms and conditions, as services of the third floor were complete at that time while upper floors services were in progress. The respondent pursuant to discussions between the parties issued letter dated 08.03.2018 whereby it was confirmed that the complainant's

allotment stood re-allocated to unit nos. 314-326 on third floor of tower B of the said project at the same price and on the same terms and conditions. It was also agreed that the demand dated 15.01.2018 be treated as sent for unit nos. 314-326 on third floor. The respondent company also addressed all queries of the complainant raised vide letter dated 27.02.2018.

xxii. That the complainant has not approached the Authority clean hands. The complainant is attempting to raise non issues and is now, at a belated stage, attempting to seek a modification of the space buyer's agreement entered into between the parties in order to acquire benefits for which the complainant is not entitled in the least.

7. On 05.03.2025, the counsel for the respondent states that the unit no. 806 to 818 have already been sold to a third party in the year 2018 the conveyance deed dated 23.02.2024 has been executed in this regard and also points out to a letter dated 08.03.2018 according to which the unit no. 806 to 818 on 8th floor have been transferred as per mutual discussion to unit Nos. 314 to 326 on 3rd floor. The counsel for the complainant contests the arguments of the counsel for the respondent and states that the complainant never agreed to transfer of the unit and the letter dated 08.03.2018 was entirely unilateral. The counsel for the complainant further points out that the conveyance deeds submitted with the reply to the application pertain to unit no. 801 to 806 and not the other units of the complainant. With respect to unit nos. 807 to 818, the counsel for the respondent states at bar that rest of the units have been subsumed in unit nos. 801 to 806 and the complete area admeasuring 25673 Sq.ft. has been sold to one single company.

8. On 10.03.2025, the counsel for the complainant has filed an application to implead third party and the same was allowed on 16.09.2025.

E. Reply by respondent no.3 i.e., DH Limited

The respondent no. 3 is contesting the complaint on the following grounds:

- i. That respondent no. 3 is a bona fide purchaser of unit nos. 801-806 in Spectrum One project, having acquired title through a duly registered instrument, executed after payment of full consideration. The respondents executed space buyer agreements and supplemental agreements in the year 2018 for the respective units and the complainant filed the present complaint only on 14.06.2023, i.e., several years after an interest had already passed to respondent no. 3. Hence, the impleadment of respondent no.3 can be considered to be an afterthought and the same appears to be a collusive exercise between the complainant and the respondents no. 1 and 2.
- ii. That the complainant admittedly does not possess any registered document showing title, interest or possession over units. In contrast, respondent no. 3's title stands supported by a registered conveyance deed, which enjoys a statutory presumption of genuineness.
- iii. That the attempt to implead respondent no. 3 appears to be an afterthought and is perhaps being pursued in collusion between the complainant and respondent nos. 1-2 to improperly cast a cloud over respondent no. 3's lawful and pre-existing rights.
- iv. That even assuming the allegations of the complainant to be true *arguendo*, the dispute, if any, arises solely between the complainant and respondent nos. 1-2, who were the parties to any alleged correspondence or contractual arrangement. Respondent no. 3 was never privy to such communications. It may further be noted, that the respondent no.3 reserves it's right to file such other additional affidavit/reply as may be necessary or it may be called upon to do so by the Authority.
- v. That the respondent no. 3's presence in these proceedings is not required for the adjudication of issues framed in the complaint. No relief has been sought against respondent no. 3, nor can any relief be granted against respondent no. 3 in a proceeding initiated under Section 31 of the Act.

- vi. That based on the representation and warranties from the respondent no.1 and 2 that they are legally competent to sell/transfer/lease the units and there are no conflicting claims against the unit. Accordingly, the respondent no. 3 got the allotment of IT office spaces bearing units on the 8th floor of tower B of the said complex.
- vii. That the space buyer agreement and supplemental agreements created a right/interest of respondent no.3 in the units. Thereafter the possession for the units was also handed over to the respondent No.3. It is relevant to note that the rights/title/interest of the Respondent no. 3 is further corroborated by the execution of a registered instruments, i.e., conveyance deeds. Hence, it is a fallacious contention of the complainant that it has a conflicting right over the units. The rights and title of respondent no.3 is not disputed and has been created way before the institution of the present complaint which has been filed only on 14.06.2023, after almost 5 years. Hence, all the prayers of the complainant which are in conflict with the rights of the respondent no.3 should be denied.

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

E. Jurisdiction of the Authority.

10. 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

11. 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

12. 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.

13. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent.

F.I Objection regarding force majeure conditions.

14. The respondent no.1/promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT) and various court orders. But all the pleas advanced in this regard are devoid of merit. The buyer's agreement was executed between the parties on 02.01.2014 and thereafter an addendum to the agreement was executed on 03.01.2014 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 03.07.2017.

15. The Authority observes that the events taking place such as restriction on construction were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottee may not be regular in paying the amount due but the interest of all the stakeholder concerned with the said project cannot be put on hold due to fault of some of allottees. Moreover, the respondent promoter has already been given 6 months grace period being unqualified to take care of unforeseen eventualities. Therefore, no further grace period is warranted on account of Covid-19. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advance in this regard is untenable.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to deliver possession of the allotted units complete in all respects along with OC and CC

G.II. Direct the respondent to pay delay penalty as prescribed under RERA w.e.f. 01.01.2017 (without grace period) up to the date of actual delivery of possession of the allotted units in accordance with the provisions of the RERA Act.

G.III Direct the respondent to strictly comply with the terms and conditions of the agreement and the addendum.

G.IV Direct the respondent to provide relevant information with respect to the demand dated 15.01.2018 as sought in request letter dated 27.02.2018, 20.03.2018 and then re-assessing its demand letter dated 15.01.2018.

16. The complainant states that he was reallocated unit no. 314-326 on 3rd floor of the tower. It further states that he had not received letter dated 08.03.2018 annexed by the respondent at page 110 of reply re-allocating the units allotted to the complainant and is demanding a clear copy of postal receipt from the respondent by way of application dated 03.07.2024.

17. A reply to the said application has been filed by the respondent dated 04.09.2024 along with application for condonation of delay wherein he had annexed a clear copy of the postal receipt confirming the delivery of letter dated 08.03.2018 to the complainant.

18. During the course of proceeding dated 05.03.2025, the respondent apprised the Authority that 3rd party rights have been created, and conveyance deed has been executed in respect of unit no. 806 and rest of the unit no.'s 807 to 818 have been subsumed in unit no.'s 801 to 806 and the complete area admeasuring 25673 sq. ft. has been sold to one single company.
19. Thereafter, an application under Order 1 Rule 10 of CPC has been filed by the complainant to implead "DH Limited" as respondent no.3 against whom third party rights have been created by the respondent as agreement to sell with DH Limited was executed on 10.05.2018 and payment of sale consideration was already made as per clause 1 of the conveyance deed and conveyance deed was executed on 23.02.2024 during the pendency of present proceedings and yet no disclosure was made to the Court in this behalf. Since the claim of the complainant is on the units illegally sold to the DH limited, it is a necessary and proper party to the present proceedings and its impleadment is essential as fraud has been committed on the complainant.
20. On the contrary to this, a reply to the said application has been filed by the respondent on 09.04.2025 wherein it is stated that a letter dated 08.03.2018 was issued to the complainant wherein he was reallocated unit no. 314-326 on 3rd floor of the tower in terms of clause 4.4 read with recital clause H and clause 4.1 of the buyer's agreement. Thus, the complainant has no rights/title/interest/or any claim in respect of old unit no.'s 806-818 on 8th floor of tower B. The complainant is not an allottee of the space admeasuring 15000 sq. ft. and has no locus standi to approach the Authority.
21. It is important to note that application filed by the complainant for impleadment of third party was allowed on 16.09.2025. After impleading respondent no.3, the respondent no.3 filed reply stating that the space buyer agreement and supplemental agreements created a right/interest of respondent no.3 in the units. Thereafter the possession for the units was also

handed over to respondent No.3. It is relevant to note that the rights/title/interest of the respondent no. 3 is further corroborated by the execution of a registered instruments, i.e., conveyance deeds. Hence, it is a fallacious contention of the complainant that it has a conflicting right over the units. The rights and title of respondent no.3 is not disputed and has been created way before the institution of the present complaint which has been filed only on 14.06.2023, after almost 5 years. Hence, all the prayers of the complainant which are in conflict with the rights of the respondent no.3 should be denied.

22. After consideration of all the facts and circumstances, Authority is of view that the respondent sold the 8th floor units to DH Limited via an agreement in 2018. The complainant filed the present case before the Authority in year 2023 after unit sold to respondent no. 3 and a subsequent Conveyance Deed executed in 2024 in favour of respondent no.3. As per Recital H of the Agreement, the allottee accepted that the unit number, floor, and location were tentative in nature and subject to change at the sole discretion of the developer, which reproduced below as:

H. The Allottee has been made aware that the Company is still in the process of developing the Complex on the plot of land out of the said Land, and in pursuance thereof, it is understood and agreed by the Allottee that the location, size, dimension of Said Unit including its Super Area are tentative and subject to change and may, at the sole discretion of the Company, be modified and revised or changed from time to time during the course of its completion and grant of Occupation Certificate;

23. The respondent vide communication dated 08.03.2018, re-allocated the unit from the 8th floor to the 3rd floor. Though the complainant denied receipt of the said communication, the respondent has duly produced postal receipts and dispatch proof.

24. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges at prescribed rate of interest on

amount already paid by her as provided under the proviso to Section 18(1) of the Act which 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."

25. Clause 15 of the buyer's agreement (in short, the agreement) provides the time period for handing over possession and the same is reproduced below:

*"15.1 That the Company shall, under normal circumstances, and subject to force majeure clause mentioned herein and any other circumstances not beyond the control of the company and/or restraints/restrictions from the government, any authority/court, endeavor to complete the construction of Said Complex in which the Said Unit is located as per the said plans and specifications seen and accepted by the Allottee (with additional floors for units/spaces if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme of the company may consider necessary or may be required by any competent authority to be made in them or any of them, **within a period of 36 (thirty six) months from the start of construction of the said tower in which the said unit is located or date of execution of this agreement, whichever is later** subject to timely payment by the Allottee of the sale price and other dues and charges payable according to the Payment Plan/Schedule of Payment applicable to him or as demanded by the Company. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of **6 months ("Grace Period") after the expiry of the said 36 (thirty-six) months period to allow for government or other circumventive delays in obtaining certificate for occupation/completion and use of the Complex etc., from the Regulatory Authority in respect of the Complex.**)"*

18. Due date of handing over possession: As per clause 15 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 36 from the start of construction of the said tower in which the said unit is located or date of execution of this agreement, whichever is later. Accordingly, the due date of possession comes out to be

03.01.2017. The period of 36 months expired on 03.01.2017 and a grace period of 6 months for applying and obtaining the occupation certificate in respect of the complex. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in *Appeal No. 433 of 2022 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari* wherein it has been held that if the allottee wishes to continue with the project, he accepts the terms of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

*"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. **So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate.** Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."*

26. Therefore, in view of the above judgement, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 03.01.2017 including grace period of 6 months.

27. Admissibility of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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: 9

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%.

(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.

28. 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.

29. 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., 07.04.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

30. 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;"*

31. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
32. Now the question for consideration arises as to for how much period, the allottees are entitled for delay possession charges. As per the buyer's agreement entered between the parties on 02.01.2014 w.r.t. the allotted unit, the due date for completion of the project and offer of possession of the allotted unit was agreed upon as 03.07.2017. But the builder failed to honour its commitment and occupation certificate of the project was received only on 06.09.2019. It is important to note that the respondent obtained the OC on 06.09.2019 and the same is notified to the complainant also respondent contacted to the complainant in year 2020 through whatsapp w.r.t the offer of possession of the unit, however, the complainant failed to take possession after occupation certificate was issued constitute a deliberate delay. the occupation certificate is a public document viewable at the website of the DTCP. So, in view of all these facts and particularly when the allottees have already paid substantial portion of the sale consideration of the allotted unit, they must be aware of the occupation certificate of the project, Thus in such a situation they are allowed delay possession charges against the allotted unit from the date of receipt of occupation certificate plus two months as per the provisions of section 19(10) of the Act of ,2016.
33. On consideration of the documents available on record and submissions made by both the parties, 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 dated 02.01.2014. By virtue of clause 15 of the agreement, the possession of the subject apartment was to be delivered by 3.07.2017 including grace period of 6 months for the reasons mentioned. In the present complaint, the respondent obtained the OC on 06.09.2019 and the same is notified to the complainant.

34. The respondent has obtained the occupation certificate on 06.09.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 03.01.2014 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 03.01.2014 to hand over the possession within the stipulated period.
35. 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 06.09.2019. In the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants 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.
36. 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 rate of the prescribed interest @ 10.80% p.a. w.e.f. 03.07.2017 till the date of obtaining of

occupation certificate (06.09.2019) plus two months i.e., 06.11.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.V Direct the respondent to provide latest statement of accounts of the complainant for allotted unit.

37. The respondent is directed to supply a copy of the updated statement of account after adjusting the delay possession charges within a period of 30 days to the complainant.

G.VI Direct the respondent not to levy maintenance charges as construction is still going on and IT/Cyber Park and building are not in a habitable condition

38. The respondent shall not levy or recover any maintenance charges from the complainant for the period from the due date of possession till the date of grant of Occupation Certificate plus two months. Maintenance charges, shall become payable by the complainant only after expiry of the aforesaid period. Any maintenance charges already recovered for the said period shall be adjusted or refunded to the complainant. Thereafter, the complainant shall be liable to pay maintenance charges in terms of the builder buyer agreement and applicable provisions of the Act, 2016.

G.VII Direct the respondent not charge holding charges from the respondent.

39. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

G.VIII Direct the respondent to bear the cost of GST as the allotted unit is Pre GST booking and due for possession before the notification of GST regime of taxes.

40. It is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards GST. It is pleaded that the liability to pay GST is on the builder and not on the allottee. But the version of respondents is

otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively. It is important to note that the possession of the subject unit was required to be delivered by 30.03.2018 and the incidence of GST came into operation thereafter on 01.07.2017. The authority is of view that the due date of possession is after 01.07.2017 i.e. date of coming into force of GST, the builder is entitled for charging GST w.e.f. 01.07.2017. The promoter shall charge GST from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme subject to furnishing of such proof of payments and relevant details.

G.IX Direct the respondent not to charge delay in payment of installment by the complainant beyond the RERA prescribed limit.

41. The rate of interest chargeable from the allottee by the respondent, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent no.1 /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(za) of the Act.

G.X Direct the respondent to execute conveyance deed in favor of the complainant for the allotted unit.

42. Under Section-17(1) proviso of the Act, 2016, the respondent/promoter is under an obligation to execute the registered conveyance deed in favour of the allottee/complainant within three months from the date of issue of occupancy certificate. The relevant provision is reproduced below:

“Section 17. Transfer of title

- (1) *the promoter shall execute a registered conveyance deedlocal laws:
Provided that, in 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 the date of issue of occupancy certificate.*

[Emphasis supplied]

43. The Authority hereby directs the respondent to execute the conveyance deed in favour of the complainants within 3 months after obtaining the occupation certificate from the competent authorities.
44. If there is any title disputes or cancellation of conveyance deeds where third-party rights have intervened or any allegation of fraud, cheating, or misrepresentation, if so claimed, falls squarely within the jurisdiction of the Civil Court or appropriate Criminal Court. Further, allottee is entitled to claim compensation 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 expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

H. Directions of the authority

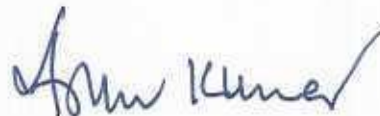
45. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- I. The respondent no.1 is directed to pay interest at the prescribed rate i.e., 10.80% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 03.07.2017 till the date of occupation certificate (06.09.2019) plus two months i.e. up to 06.11.2019 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - II. The rate of interest chargeable from the allottee by the respondent no.1/promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent no.1 /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(za) of the Act.
 - III. The respondent is directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days and

thereafter the complainants are directed to pay outstanding dues, within next 30 days if any.

- IV. The respondent is directed to handover the possession of the unit bearing no. 314 to 326, 3rd floor, Tower B on payment of outstanding dues if any, within 30 days to the complainant/allottees and to get the conveyance deed of the allotted unit executed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- V. The respondent no.1 shall not charge anything from the complainants which is not the part of the buyer's agreement.
- VI. The respondent-promoter is not entitled to charge holding charges from the complainant-allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.
- VII. The complainant was initially allotted a unit on the 8th floor; however, Recital H of the agreement explicitly states that such allotment was tentative in nature. This inherent ambiguity in the terms of allotment has led to uncertainty and harassment for the complainant. In light of the same, the complainant may seek appropriate compensation in this regard.

46. Complaint stands disposed of.

47. File be consigned to registry.



Arun Kumar
Chairman
07.04.2026

Haryana Real Estate Regulatory Authority, Gurugram