

Mere existence of unutilised or unregistered FAR in a real estate project does not, by itself, constitute a violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016, in the absence of any evidence of actual marketing, sale, or booking

The **Haryana Real Estate Appellate Tribunal (HREAT)** in the case of **Tulip Infratech Private Limited v. Haryana Real Estate Regulatory Authority, Gurugram [Appeal No. 124 of 2024] dated March 27, 2026**, has held that the mere existence of unutilised or unregistered FAR in a real estate project does not, by itself, constitute a violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016, in the absence of any evidence of actual marketing, sale, or booking. It further held that Clause 1(iv) of the Registration Certificate, which provided for levy of late fee in case of default, cannot override the statutory requirement of establishing an actual violation under Section 3 of the Act.

The Tribunal held that while the appellant could not be completely absolved of regulatory consequences, the law targets unregistered sale or marketing, and not mere existence of unregistered FAR. It further held that fastening full retrospective liability on the incoming promoter would be inequitable where the alleged breach itself has not been conclusively established.

The Tribunal observed that while the project reflected some regulatory non-compliance due to incomplete registration of the entire licensed area, the absence of any unlawful sale or marketing activity, coupled with overlapping registration fees already paid for certain phases, rendered the late fee imposed excessive and disproportionate, warranting only a limited and moderated liability.

Considering that there existed an element of delayed comprehensive registration of the project as a whole, and some regulatory levy is justified to uphold statutory discipline, the Tribunal stated that the circumstances warranted moderate penalty in view of the fact that the appellant voluntarily took over an abandoned project. In case, the project had not moved forward, it would have resulted in heavy loss to the allottees.