



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Order pronounced on : 14.02.2023

Name of builder	Choice Real Estate Developers Pvt. Ltd.
Name of project	Vipul Pratham Apartments

Sr. No.	Complaint No.	Complainant
1.	393 of 2022	Ajay Singh Rawat, S/o Mateber Singh Rawat, R/o S-387, School Block, Shakarpur, Delhi-110092
2.	460 of 2022	Dinesh Kumar, S/o Sh. Sita Ram, age 39 years, R/o House no. 218, Jhajjar Road, Near Haryana Gas Agency, Ward No. 2, Rewari, Tehsil and District Rewari.

**Versus**

1.	Respondent 1	M/s Choice Real Estate Developers Pvt. Ltd., Registered office at C-9/9856, Vasant Kunj, New Delhi
2.	Respondent 2	M/s Vipul Limited, Registered office at Regus Rectangle, Level-4, Rectangle 1, D4, Commercial Complex, Saket, New Delhi-110017

**CORAM:** Dr. Geeta Rathee Singh  
Nadim Akhtar

Member  
Member

**PRESENT:** Mr. Kunal Thapa, learned counsel for complainant in complaint no. 363 of 2022.  
Mr. Sunil Sharma, learned counsel for complainant in complaint no. 460 of 2022.  
Mr. Vineet Sehgal, learned counsel for respondent in both the complaints

**ORDER (NADIM AKHTAR - MEMBER)**

1. This order shall dispose of both complaints titled as above filed before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

2. Captioned complaints are taken up together as facts and grievances of all these complaints are more or less identical and relate to the same project of the respondent, i.e., "Vipul Pratham Apartments", situated in Sector 10A, Bawal, Rewari. The terms and conditions of the builder buyer's agreements that had been executed between the parties are also similar. The fulcrum of the issue involved in all these cases pertains to failure on part of the respondent promoter to deliver timely possession of units in question. Therefore, **complaint no. 393 of 2022** titled "Ajay Singh Rawat v. Choice



Real Estate Developers Pvt. Ltd.”, has been taken as lead case for disposal of both the complaints.

**A. UNIT AND PROJECT RELATED DETAILS:**

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over possession, delay period, if any, in lead complaint case no. 1656 of 2022, have been detailed in following table:

SR. NO.	PARTICULARS	DETAILS
1.	Name of project	Vipul Pratham Apartments
2.	Nature of the Project	Group Housing Project
3.	RERA registered/not registered	Registered, HRERA-PKL-RWR-38-2018
4.	Allotment letter dated	16.08.2013
5.	FBA dated	23.11.2013
6.	Unit No.	Flat No. 406, 64 <sup>th</sup> Floor, Tower - 01
7.	Super Area	1160 sq. fts.
8.	Total Sale Consideration	₹30,49,237/-
9.	Paid by the complainant	₹28,82,237/-
10.	Deemed date of possession	23.11.2018 Clause 8.1 of Flat Buyer's Agreement- 60 Months from the date of signing of agreement.
11.	Offer of possession	Not Made

**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT (COMPLAINT NO. 393 OF 2022)**

4. That the complainant booked a unit in the respondents' project i.e., "Vipul Pratham Apartments" in Bawal, Rewari, Haryana on 03.07.2013. On 16.08.2013, the respondents furnished an allotment letter to the complainant and was allotted unit No. 406, 4 Floor, Tower No.1 admeasuring 1125 sq ft (Super area) in the its project.

5. That on 23.11.2013, the complainant and the respondents entered into a Builder Buyer Agreement (herein referred to as BBA). As per Clause 8.1(a) of the said agreement, the possession of the unit was deemed to be handed over by 60 months of the agreement i.e., by 23.11.2018 but the respondents had failed to hand over the possession within the stipulated period of time. In the present case the respondents had allotted themselves more than reasonable period of time i.e., 5 years form the date of the agreement and yet the respondents were unable to complete the project and even till date, the project is under constructed i.e., after 9 years from the date of agreement.

6. That the complainant had opted for Construction Linked Plan and the complainant paid the entire amount as and when demanded by the respondents and has complied with his legal obligation against the unit on

time without fail. The total amount paid along with receipts/account statement is annexed as ANNEXURE C-3 at page 32 of the complaint file.

7. That after visiting and inspection of the site it was revealed that the construction of the TOWER No. 1 in which complainant is allotted the flat is under constructed and inhabitable. No development works were carried out and only a concrete structure was erected with all the raw materials scattered all over. Till date, the said area is still under developed and no progress regarding the development of the project has been initiated by the respondent in order to complete the project even after 9 years from the date of the agreement.

8. That the respondent has furnished information with the Hon'ble Real Estate Regulatory Authority, Haryana for registration of the said project, "Vipul Pratham Apartments". As per the said information furnished on 27.07.2019 by the respondent himself to the Hon'ble RERA Authority, certain basic facilities were to be present in the said project. And till date, none of the facilities have been developed. The respondent has himself stated in the said application that the project will be completed by 31.03.2020. However, it has been two years from the date, the extended date committed on the RERA application for completion of project but till date no progress has taken place.

9. That till date respondent has not completed the construction of the tower in which the complainant was allotted the unit. The said area is mostly

lying vacant and idle with nothing on it. The whole project is at stand still and no work is going on for years. Aggrieved by the same, complainant has filed the present complaint. Complainant has prayed for relief of refund of the amount paid by complainant till date along with the prescribed rate of interest from respective dates of payment till the actual realization.

**C. RELIEF SOUGHT:**

8. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund the complete amount which has been deposited with the respondent by the complainant with interest from the actual date of deposit of each payment as per the Real Estate (Regulation & Development) Act, 2016 R/w Haryana Real Estate (Regulation & Development) Rules, 2017 at the rate prescribed under the Act.
  - ii. Any other relief or claim which the Hon'ble Authority deems appropriate.

**D. REPLY:**

9. Details of service of notice to respondent:

Particulars	Details
Notice sent on 03.03.2022	Ld. counsel for the respondent accepted the notice in court during hearing dated 07.12.2022



10. That the Complainant has concealed the fact that the respondents have duly intimated him with regard to various restrain orders having been passed against the construction activities by the Hon'ble NGT on various occasions, which ultimately acted like FORCE MAJEURE and caused unwanted delay in finishing the project. Further, in the present scenario of Covid pandemic the construction activities on all the project sites have virtually stalled since March 2020 and the same has caused delay in finalizing the development works and handing over the possession of the Apartment to the complainant. The intimation of same was duly sent to the complainant but the said fact has been concealed by the complainant while filing the present complaint.

11. That as a part of its business, the respondent No. 2 had acquired and purchased the land admeasuring 9.60 acres situated within the revenue estate of village Bawal, Sector-10 A, Tehsil & District, Rewari, Haryana with a view to promote and develop a group housing colony known as "Vipul Pratham Apartments".

12. That the Complainant after being completely satisfied in all respects with respect to project has booked a flat/residential unit in the Group Housing Project known as "Vipul Pratham Apartments" and vide application dated 03.07.2013 had applied for provisional registration of a residential unit in the aforesaid group housing complex i.e. "Vipul Pratham Apartments".



13. That the respondent company in furtherance of the application form so submitted by the complainant and the earnest money so received from the complainant, accordingly made the provisional allotment of one residential flat bearing No. 406 in Tower-1, at 4th Floor, in the aforesaid group housing project known as "Vipul Pratham Apartments" in favor of the complainant. It is further submitted that the respondent company along with said allotment letter had sent the terms and conditions for allotment of flat as well as schedule of payment which was construction linked plan, as opted by the complainant. The Allotment letter, terms and conditions for allotment of flat were voluntarily agreed by the complainants.

14. That the respondent company, on 23.11.2013 sent the 'Flat Buyer Agreement' to the complainant, Buyers Agreement dated 23.11.2013 was voluntarily and consciously executed by the complainant and in terms thereof he had assumed and undertaken to perform the terms and conditions of the agreement.

**E. JURISDICTION OF THE AUTHORITY:**

15. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.





**E.1: Territorial jurisdiction**

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, Haryana, Panchkula shall be the rest of Haryana except Gurugram for all purposes with office situated in Panchkula. In the present case the project in question is situated within the planning area Rewari District, therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.2: Subject matter jurisdiction**

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:

*(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:*

*34. Functions of Authority.—The functions of the Authority shall include—(f) 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;*

In view of the Provisions of the Act of 2016 quoted above, this authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

**F. ISSUES FOR ADJUDICATION:**

- i. Whether the respondent has failed to deliver its commitments and obligations as per the BBA dated 23.11.2013.
- ii. Whether the complainant is entitled to refund of the entire amount for failing to hand over the unit within the stipulated period of time as per the agreement.

**G. OBSERVATIONS OF THE AUTHORITY:**

16. After considering facts and circumstances of the case and going through oral as well as written arguments, Authority observes as follows:

- i) Builder-buyer agreement between complainant and respondent was executed on 23.11.2013. Total sales consideration was agreed to be Rs.30,49,237. Complainant had paid over Rs. 28,82,237/- ,i.e., more than 94% of the total sales consideration by 09.08.2017.



ii) After payment of 94% of sales consideration amount, legitimate expectations of complainant would be that possession of the apartment will be delivered within a reasonable period of time. With agreement having been executed in 2013 and full substantial payment having been made by 2015, legitimate expectation is generated that possession will be delivered within next 1-2 years.

17. Authority further observes that the relief of refund was allowed in similar cases against the respondent in same projects where the facts and issues were similar. Refund order dates back to 07.12.2022 passed in lead complaint no. 389 of 2021 titled "Meenakshi Kamboj vs. Choice Real Estate Developers Pvt. Ltd.". Authority has specifically stated in that order that respondent has failed to deliver the possession to the complainants even after inordinate delay from the due date of possession. Allottees cannot be made to wait for an indefinite period of time for a unit for which the allotment and BBA dates back to 2013. Relevant part of the order dated 07.12.2022 is produced below:

*"6. Counsel for the complainant argued that project is at complete halt and there is no likelihood of its completion in near future. Project has been already delayed by more than 3 years and they further cannot wait for an uncertain amount of time. Therefore, he pressed for refund only. Further in complaint no. 578/2020, complainant also stated that he has paid more than 85% of the agreed sale consideration by 2016 and there is no progress at project site since 2016. Photographs dated 10.10.2022 shows that there is no work ongoing at the site. No progress has been made at the site in the last 6 years as is clear from comparison of*

the photographs dated 01.12.2016 and latest photographs dated 10.10.2022.

7. Ld. Counsel for respondent submitted that more than 80% of the work at the project site has already been completed and the project is currently ongoing. Project has been registered with RERA as HRERA-PKL-RWR-38-2018 and as per it, completion date was 2020 which has been further extended by concerned Authority till December 2022. As the project is still at an ongoing stage, the Occupation Certificate has not been applied till date. He requested for an adjournment to comply with the directions given by Authority vide order dated 11.10.2022.

8. Authority has gone through respective written submissions apart from noting verbal arguments put forth by both the sides. Respondents admitted that construction of the project has not been completed. In fact, it is still going on. Further, no specific time period has been committed for its completion. Arguments in respect of force majeure conditions cannot be accepted and no such conditions have been shown to be applicable. Nothing extraordinary have taken place between the date of executing the BBA and due date of offer of possession, and for that matter even till now. As per the photographs submitted vide application dated 25.11.2022, it is clear that project is at halt and incomplete. Further, Occupation Certificate has not been applied till date and there is no scope the same will be applied by end of this year by which respondent claimed to complete the project as per the registration certificate. Declared policy of this Authority in all such cases where projects are neither complete nor likely to be completed within the foreseeable future and delay has already been caused from the due date of offer of possession, the complainant would not be made to pay the remaining amount.

This right of the complainant to claim refund in case of delay has been made into a more substantial right by way of 'Newtech Promoters and Developers Pvt. Ltd. v. State of UP and Others 2021 (11) ADJ 280.' where the Hon'ble Supreme Court has expressly observed that allottee has an unqualified right to claim refund even if



*there is delay of one day. Relevant paragraph is produced below:*

*“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”*

*In this case, the agreement was entered into on 01.01.2014 by which the due date to handover of possession was set to January 2019. Nearly four years has passed and still there is no certainty that this project will see light of day in the foreseeable future. Thus in such cases complainant would be entitled to relief of refund because they cannot be forced to wait for completion of project for endless period of time.*

*9. Authority accordingly hereby orders refund of the amount paid by the complainants along with interest in accordance with Rule 15 of the RERA Rules, 2017.”*

18. Since both these matters are based on similar facts, relating to same project of the respondent, these complaints are also disposed of in terms of complaint no.

389 of 2021 titled "Meenakshi Kamboj vs. Choice Real Estate Developers Pvt. Ltd.". Therefore, the Authority finds it to be a fit case for allowing refund in favor of the complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

*"Rule 15: Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (1) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:*

*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."*

19. The legislature in its wisdom in the subordinate legislation under the provisions 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.

20. 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. 14.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be SBI MCLR + 2% , i.e., 10.60%.

21. The term 'interest' is defined under Section 2(z) of the Act which is as under:

*(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;*

Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid by him till the actual realization of the amount.

22. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.60% till the date of this order in all the captioned complaints; details are given in the table below:

Sr. No.	Complaint No.	Principal Amount (in Rs.)	Interest @10.60% till 14.02.2023 (in Rs.)	Total amount to be refunded (in Rs.)
1.	393 of 2022	Rs. 28,82,237/-	Rs. 24,90,486/-	Rs. 53,72,723/-
2.	460 of 2022	Rs. 29,95,120	Rs. 25,29,466/-	Rs. 55,24,576/-

#### **H. DIRECTIONS OF THE AUTHORITY:**

23. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount along with interest of @ 10.60 % to the complainant as is specified in the table above from the date amounts were paid till the actual realization of the amount.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.



24. These complaints are, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.

*Geeta*

.....  
Dr. GEETA RATHEE SINGH  
[MEMBER]

*Nadim*

.....  
NADIM AKHTAR  
[MEMBER]

