



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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## COMPLAINT No. 389 OF 2021

Meenakshi Kamboj

...COMPLAINANT.

Versus

Choice Real Estate Developers Pvt. Ltd.

...RESPONDENT.

## COMPLAINT No. 578 OF 2020

Jayant Tuli

...COMPLAINANT.

Versus

Choice Real Estate Developers Pvt. Ltd.

...RESPONDENT.

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

**Date of hearing:** 07.12.2022

**Hearing:** 17th in complaint no. 389/2021  
8th in complaint no. 578/2020

**Present: -** Mr. Sunil Kumar, Ld. Counsel for the complainant in  
complaint no. 389/2021  
Mr. Jayant Tuli, Complainant in person in complaint  
no. 578/2021  
Mr. Vineet Sehgal, Learned counsel for respondent

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**ORDER: (NADIM AKHTAR-MEMBER)**

1. Authority has taken both these matters together as relief claimed is same and against the same project 'VIPUL PRATHAM APARTMENTS' of the respondent. Complaint No. 389/2021 titled 'Meenakshi Kamboj vs. Choice Real Estate Developers Pvt. Ltd.' is taken as the lead case.
2. Facts of the matter are as follows:-
  - i) That complainant in the year 2013 booked an apartment in the project named 'Vipul Pratham Apartments' of the respondent, situated in Sector 10A, Bawal, Rewari. Complainant deposited an amount of Rs. 4,00,000/- as booking amount. Respondent allotted a unit bearing no. 402, measuring 1280 sq. ft., 4th floor in tower 2 to the complainant. Allotment letter was issued by the respondent on 16.08.2013 but same has not been annexed with complaint file. A allotment is confirmed by details mentioned in the apartment buyers agreement annexed at page 31 of complaint file. Basic sale price agreed between parties for the apartment was Rs. 31,08,864/-.
  - ii) Flat buyer agreement was executed on 01.01.2014 whereby in clause 8.1(a), it was stipulated that possession will be offered within 60 months from the date of signing of the apartment buyers agreement plus grace period of 90 days. Apartment buyers agreement was signed on 01.01.2014, therefore due date of

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possession was 01.01.2019 exclusive of grace period. In case, there was any grace period, then project was to be handed over till 01.04.2019. Complainant has paid an amount of Rs. 33,80,522/- against sale consideration of Rs. 31,08,864/- as is evident from the receipts and bank statement as annexed by the complainant at page 60-75 of the complaint file.

iii) After expiry of due date i.e., 01.04.2019, complainant wrote multiple communications to the respondent enquiring about current status of the project whereas respondent always assured that construction was in full swing. As there has already been considerable delay from due date, complainant sought refund from the respondent. As respondent failed to honour his commitments, complainant filed this present complaint seeking refund.

3. Respondent filed his reply on 28.06.2021 whereby they submitted that complainant has paid only Rs. 33,70,265/-. Delay in construction was owing to FORCE MAJEURE and Covid-19 pandemic which was beyond their control. As the project is near completion, complainant cannot be allowed to withdraw from project as it will cause further hindrance to the respondent.



4. When the matter was taken up on 11.10.2022, both the parties were directed to file affidavit with regard to current status of the project.

Relevant order is produced below:

3. *Ld counsel for respondent during hearing verbally submitted that more than 75% of the work at project site is complete. Promoter are in process of submitting the roadmap indicating the tentative date by which project will be completed. On this ground, he sought adjournment and submitted that by next date of hearing, he will submit all relevant documents showing current status of the project.*

4. *Respondent is hereby directed to submit the following information by way of an affidavit before the next date of hearing:*

- I. *The exact status of each tower by way of visible coloured photographs.*
- II. *The exact status of the complete project including the status of laying of infrastructure facilities.*
- III. *Details of financial expenditure till now in this project along with available finances for completing the project.*
- IV. *Tentative completion date of project.*

5. *Matter is adjourned to 07.12.2022 with above directions to the respondent. Complainant is at liberty to submit any documents or latest photographs of project site showing current status.*

5. In pursuance of the above order, the complainant in complaint no. 578 of 2020 vide application dated 25.11.2022 have submitted proof showing the current status of the project. Photograph of the project site dated 01.12.2016 and 10.10.2022 have been annexed with the file.

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. The principal amount and interest thereon payable to each of the complainants is tabulated below:-

S.No	Complaint No.	Date of Agreement	Amount Paid	Interest	Total
1.	389/2021	01.01.2014	Rs. 33,80,522/-	Rs. 27,80,926/-	Rs. 61,61,448/-
2.	578/2020	23.11.2013	Rs. 31,14,556/-	Rs. 26,04,072/-	Rs. 57,18,628/-



10. Respondents are directed to refund above stated amounts along with interest shown in the table above within the time period of 90 days as prescribed in Rule 16 of HRERA Rules, 2017.
11. Complaints are **disposed off**. Files to be consigned to record room after uploading of order.

*Geeta Rathee*

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DR. GEETA RATHEE SINGH  
[MEMBER]

*Nadim Akhtar*

.....  
NADIM AKHTAR  
[MEMBER]

