



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	171 of 2022
Date of filing:	25.11.2021
Date of first hearing:	26.07.2022
Date of decision:	02.03.2023

Satpal Sharma,
S/o Sh. Ram Kishan,
R/o H. No. 489, sector 27, Panchkula,
Haryana,

....COMPLAINANT(S)

VERSUS

Omaxe Ltd.
Regd Office: Shop no. 19-B, 1st floor,
Omaxe celebration Mall,
Sohna Road,
Gurgaon - 122001

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Geeta Rathee

Present: - Mr. Kamaljit Dahiya, ld. counsel for the complainants.

Mr. M. K. Bhargav, ld. counsel for the respondent through video conference.

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 31.01.2020 has been filed by complainants 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Shubhangan, Sector 4 A Kassar Road, Bahadurgarh, Haryana

Geeta Rathee

2.	RERA registered/not registered	Registered vide Registration no. HRERA-PKL-PNP-129-2019 valid till 30.06.2021
3.	Unit no.	Not mentioned
4.	Unit area	630 sq. ft. approx. (Annexure R-3)
5.	Date of provisional allotment	10.08.2015 (Annexure R-3 of reply)
6.	Date of executing builder buyer agreement	Not executed
7.	Due date of possession	Not mentioned
8.	Total sales consideration	₹15,37,200/-
9.	Amount paid by complainant	₹3,51,780/-
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that one Mrs. Santosh Devi had booked a residential unit in the project of the respondent namely "Shubhangan" located at Sector 4, A Kassar Road, Bahadurgarh, Haryana by making a payment of ₹ 2,00,000/- to the respondent. Complainant has annexed payment receipt dated 09.05.2012 in favour of Mrs. Santosh Devi as Annexure C-1 with complaint. Complainant purchased the unit from Mrs. Santosh Devi by making a payment of ₹ 6,33,000/- as purchase price of the said unit. Thereafter Mrs. Santosh Devi

made an endorsement of transfer of the booked unit in favour of the complainant by executing an undated request form. Mrs. Santosh Devi endorsed 100% rights and interest, pertaining to the unit, including payments made in this regard, in favour of complainant i.e., Satpal Sharma, which was acknowledged by the respondent company. The copy of request form is annexed herewith as Annexure C-2.

4. Complainant made further payment of ₹ 1,42,874.20/- and interest of ₹ 8,905.80/- as demanded by the respondent, against which the respondent issued Receipt ID 1063260 and 1063262 dated 10.06.2014. The copies of said receipts are annexed herewith as Annexure C-3 and C-4.
5. Respondent intimated the complainant that the draw for allotment of flats would be conducted in the year 2015 and the complainant had to visit personally to the office of the respondent to get the flat allotted in his name in the said draw. However the complainant could not attend the draw due to some personal reasons.
6. Respondent sent letter dated nil to the complainant wherein it was mentioned that a unit was allotted to the complainant with reference no. "NHBH/101/T2" in "SHUBHANGAN" (IBHK) situated at Sector-4A, Kassar Road, Bahadurgarh against which the complainant had paid an amount of Rs. 3,42,874.2/- . It was also stated in the said letter that the allotment to the

complainant had been revoked. It is submitted that as the respondent has given description of the due amount in the said cancellation letter i.e. the payment was due on 03.10.2017, it can be construed that the unit was cancelled by the respondent in 2017. However, even after lapse of more than 4 years, the respondent has not returned the amount paid by the complainant. Hence the respondent is liable to pay interest on the amount paid by the complainant since the date of payment till date along with the refund of amount paid by the complainant. The copy of cancellation letter is annexed herewith as Annexure C-5.

7. Complainant paid an amount of Rs. 3,51,780/- till June 2014 as per the demands raised by the respondent i.e. more than 20% of basic sale price of the unit that was Rs. 15,37,200/-, has been demanded and accepted by the respondent, before execution of any written agreement between the parties that is violation of section 13(1) of RERA Act, 2016.
8. Complainant has mentioned in his complaint that he approached respondent several times and made numerous requests for refund of amount paid by him. Complainant also sent a letter on 08.09.2020 to the respondent to request the refund of the amount already paid by him. However the respondent again disrespected the requests of the complainant for refund and neither gave any reply to the said letter nor had refunded the amount paid by the complainant till

date. The copy of letter dated 08.09.2020 is annexed herewith as Annexure C-

6. Hence, the present case.

C. RELIEF SOUGHT

9. The complainants in their complaint have sought following reliefs:

- (i) To give necessary directions to the respondent for refund of the payment made in lieu of unit/flat till date along with the prescribed rate of interest as per the provisions of Sec. 18 and Sec. 19(4) of the RERA Act of 2016.
- (ii) To impose penalty upon the respondent as per the provisions of Section 60 of RERA Act of 2016 for willful default committed by them.
- (iii) To impose penalty upon the respondent as per the provisions of Section 61 of RERA Act of 2016 for contravention of Sec. 12, 13, Sec. 14 and Sec. 16 of RERA Act.
- (iv) To direct the respondent to provide detailed account statement against the amount collected from the complainant in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of HRERA Rules, 2017.
- (v) To issue directions to make liable every officer concerned i.e Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance acquiescence, neglect any of the offences has been

committed as mentioned in Sec.69 of RERA Act,2016 to be read with HRERA Rules, 2017.

(vi) To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.

(vii) To issue direction to pay the cost of litigation.

(viii) Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 11.10.2022 pleading therein:

10. That the Complainants have suppressed material facts in the complaint and hence the complaint is liable to be dismissed on the ground of concealment of material facts. The following facts would show that the captioned complaint is meritless.
11. It is submitted that demand letter dated 19.02.2014 was issued to the complainant to make payment of ₹ 1,42,875/- but the same was not paid by the complainant and accordingly, cancellation letter qua the unit was issued on 29.03.2014. However thereafter, on the request of complainant respondent company revoked the cancellation of said booking, upon payment of

₹1,42,874/- alongwith interest of ₹ 8906/- having been made by the complainant on 10.06.2014. Copy of demand letter dated 19.02.2014 and cancellation letter dated 29.03.2014 is attached herewith as Annexure R-1 and R-2 for the kind perusal of this Hon'ble Authority. It is submitted that the complainant has also mis-stated the fact, without any proof, that he has been approaching since the year 2017 for refund, although from the complaint itself, it is clear that for the first time, the complainant approached for refund only on 08.09.2020 (Annexure C-6).

12. It is submitted that intimation letter qua provisional allotment was issued to the complainant on 10.08.2015 and thereafter, demand letter dated 16.02.2017 amounting to Rs. 1,64,720/- was also issued. Copy of letter dated 10.08.2015 and demand letter dated 16.02.2017 is attached herewith as Annexure R-3 and R-4. However, the complainant again defaulted in making the said payment, although numbers of reminders were sent to the complainant. Under these circumstances, since the complainant did not clear the outstanding dues, therefore, the respondent-company left with no option but to cancel the unit in question vide letter dated 03.10.2017 (Annexure C-5). In furtherance to the same, an intimation letter dated 28.05.2018 was also issued to the complainant. Thus, the unit got canceled due to default on the part of the complainant.

13. It is also submitted that in fact, in the present case, the complainant after making initial payment, made up his mind, not to continue with the unit in question and for the said reason, he even did not come forward for execution of agreement and ultimately, approached respondent vide letter dated 08.09.2020 seeking refund. It is submitted that upon receipt of letter dated 08.09.2020, the complainant was approached telephonically by the officials of respondent and it was apprised to the complainant that since it is due to the default of complainant that the cancelation has taken place and since it is the complainant who does not want to continue with the unit, therefore, in view of company undergoing bad passage of time due to pandemic of COVID-19, therefore, his unit will be sold to new buyer and accordingly, the amount will be refunded after deducting the requisite amount. Thus, filing of complaint is misuse and abuse of the process of law, as the respondent has never denied to refund the amount as per the procedure of the company. Although it is the complainant who did not approach the respondent company either for seeking revocation of cancelation letter nor for refund of the amount.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. During oral arguments, ld. counsel for the complainant submitted that in the present matter, booking was done in the year 2012. No Flat Buyer Agreement

was executed in the case. Complainant opted for a construction linked plan but respondent failed to provide a reasonable timeline to complete the unit. Therefore, complainant stopped making the payment towards the unit. Further, nothing has been mentioned in the reply about the status of the project. He submitted that complainant by virtue of Section 18 of the RERA Act, 2016 is pressing for refund of the amount paid by him along with permissible interest as per HRERA Rules, 2017. Complainant has till now paid a total amount of ₹ 3,51,780/- to the respondent on different dates. Receipts of payment has been attached as Annexure C1, C3 and C4. Learned counsel for the respondent reiterated the pleading made in the reply submitted on behalf of the respondent.

F. JURISDICTION OF THE AUTHORITY

15. 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/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be the entire Haryana except Gurugram District for all purposes with offices 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:

Section 11(4)(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.

So, in view of the provisions of the Act of 2016 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 learned Adjudicating Officer if pursued by the complainants at a later stage.

G. ISSUES FOR ADJUDICATION

16. Whether the complainants are entitled to refund of the amount deposited by him along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

17. The Authority has gone through the contentions of both the parties. In light of the background of the matter as raptured in this order and also the arguments submitted by the parties, Authority observes that booking of the unit was made in the project of respondent on 09.05.2012 by Mr. Amit Sharma by making a payment of Rs. 2,00,000/-. A gold coin of 10 gm of value of Rs. 27,500/- was issued to the said original allottee as per the scheme. Thereafter, upon request the booking was transferred in favour of Mrs. Santosh Devi on 22.09.2012. Subsequently, complainant purchased the unit from Santosh Devi on 04.01.2013. Mrs. Santosh Devi transferred the said unit and endorsed 100% rights and interest pertaining to the unit in favour of complainant. Subsequent thereupon, the respondent issued a demand letter dated 19.02.2014 to the complainant to make a payment of Rs. 1,42,875/- however, upon default in payment of the said amount by the complainant, the respondent issued a cancellation letter dated 29.03.2014, cancelling the booking of the apartment. Thereafter, the respondent company upon payment of Rs. 1,42,874/- along

with interest of Rs. 8,906/- having being paid by the complainant on 10.06.2014 revoked the cancellation of the booked apartment.

18. As admitted by the parties provisional allotment letter dated 10.08.2015 was issued in favour of the complainant. Perusal of said allotment letter reveals that the process of provisional allotment required allottee to submit his preference of the unit to the company by 13th August 2015 to 14th August 2015. Allotment was to be done on "First come first serve basis". The letter further provided that the applicant should personally visit the office of the respondent before 14th August 2015 "for having provisional allotment of residential flat in his favour and in case the applicant sends a representative/dealer for the said provisional allotment, then it shall be presumed that he has been duly authorized by the applicant and is vested with necessary powers to act on his behalf." It also mentions that "no allotment request after 14th August 2015 shall be entertained and paid amount will be adjusted/refunded to the applicant without interest."
19. Complainant in his complaint vide para 8 has admitted that due to some personal reason he could not personally visit the office of respondent or authorized a representative/dealer to give his preference of the unit in the project. It is observed that there is nothing on record to show that any communication to the complainant was made by the respondent with respect

to confirming the provisional allotment of an apartment in his favour from 16.08.2015 onward till 16.02.2017.

20. On 16.02.2017 the respondent issued a demand letter wherein it was mentioned "With refence to your application for provisional allotment of unit no. **NHBH/TOWER/1/TENTH/1005** in Shubhangan (1BHK) situated at Sector 4 A, Kassar road, Bahadurgarh, we would like to inform you that as per the payment plan opted by you that is construction linked plan, following payment is pending from your side to continue/confirm the booking under the said payment plan." Vide this demand letter the respondent demanded an amount of Rs. 1,64,720.34/- towards casting of still floor roof. The Authority here observes that till 10.06.2014 the complainant had paid an amount of Rs. 3,51,780/- to the respondent i.e., more than 20% of the basic sale price of the unit. The complainant is distressed with the fact that even after a lapse of almost 3 years' time and on payment of 20% of the basic sale price, the respondent did not issue any final allotment letter nor did it execute a builder buyer agreement and instead unilaterally allotted him a unit and raised demand against it. During the course of hearing, ld. counsel for the complainant stated that as demand letter dated 16.02.2017 was issued without executing a builder buyer agreement and without informing the status of construction oh his tower, complainant did not adhere to payment of illegal

demands raised by the respondent promoter who, with the custody of 20% of basic sale price in his account, was in the dominant position to dictate his terms. Per contra, the respondent in his reply has stated that it is the complainant who has not come forward to execute the builder buyer agreement. However, the respondent has failed to submit any document/postal receipts to show that it made any bonafide attempt to get the builder buyer agreement executed. It is observed that even without executing a builder buyer agreement with respect to a specific unit, the respondent randomly raised the demand of Rs. 1,67,720.34/- in February 2017. Since, between August 2015 to February 2017 there was no communication from the respondent to the complainant, communicating the details with respect to the specific unit allotted to him, the complainant cannot be expected to make payments towards a unilateral allotment, that too provisional.

Further, the complainant in his complaint has stated that the respondent had sent a letter dated nil, wherein it was mentioned that a unit no. NHHB/101/T2 in Shubhangarh situated at Sector 4 A, Bahadurgarh has been allotted to him. It was also stated in the said letter that the allotment to the complainant has been revoked. In rebuttal to this stance of the complainant, the respondent in its reply contended that the complainant defaulted in making the payment of Rs. 1,67,720.34/-, and consequent thereupon number of



reminders were sent to complainant and since the complainant did not clear the outstanding dues, the respondent company was left with no option but to cancel the unit in question vide letter dated 03.10.2017. In this regard the Authority observes that in the demand letter dated 16.02.2017 the **“provisional allotment number”** was mentioned as **“NHBH/TOWER/1/TENTH/1005”**, whereby meaning that until 16.02.2017 the provisional allotment was never confirmed in favour of the complainant. However, surprisingly the **cancellation letter dated nil** which refers to amount due till 03.10.2017 mentions the allotted unit number as **“NHBH/101/T2”** which on the face of it is different from what was being mentioned on the demand letter dated 16.02.2017. Also, nothing is available on record to show that the complainant ever consented to allotment of either of these units i.e., **“NHBH/TOWER/1/TENTH/1005”** or **“NHBH/101/T2”**. Further, the respondent in its reply has taken a plea that although number of reminders were sent to the complainant, despite, complainant repeatedly defaulted in making the payments raised on 16.02.2017 and therefore, it was constrained to cancel the unit. On perusal of record it is observed that though the respondent claims to have issued that numerous reminder letters to the complainant, however, none proof/record of these have been submitted in the matter. Considering the available record and argument of the parties it is

observed that the nil dated cancellation letter was illegal, arbitrary and a mere eye wash on part of the respondent to evade from his obligations as a promoter. The respondent is enjoying the money deposited by the complainant in the hope to own a 1BHK unit in a decent group housing society. Also, the fact that the complainant booked a 1BHK unit shows his financial capacity and for such an individual the amount of Rs. ₹3,51,780/- is a huge amount, specially when he has got nothing in return till date.

21. The complainant in the present case is an “aggrieved person” whose has filed this present complaint under section 31 against the respondent promoter for not discharging his obligations as per the provisions of the RERA act of 2016 or the rules and regulations made thereunder. The original applicant who booked the unit on 09.05.2012 and till date neither any builder buyer agreement has been executed nor the possession of the unit been handed over to the complainant. In a situation where no builder buyer agreement is executed or the same is silent w.r.t the date of handing over of possession, possession has to be given within a reasonable period. The authority in its various previous judgments have considered 3 years’ time from the date of booking to be the reasonable time. The Hon’ble Supreme Court in **Fortune Infrastructure Ltd. V. Trevor D Lima and Ors. (12.03.2018)** held that the reasonable period for delivery of possession may be taken as 3 years.

If this reasonable period of 3 years is considered and the due date is calculated from the date of original booking i.e., 09.02.2012, the possession should have been handed over by 09.05.2015. Even if, the date of booking by the complainant is considered i.e., 04.01.2013 the possession should have been delivered to complainant by 04.01.2017. Till this deemed date of possession i.e., 04.01.2017, the respondent neither handed over the possession nor did he raised any further demand and post this date if any illegal demand/payment was raised by the respondent, the complainant was justified in not making the same and is well within his rights to demand refund of his amount paid along with interest as per provisions of Section 18 (1) of the RERA act, 2016. It is also noted that till date no occupation certificate has been received for the project. Thus, the Authority considers it a fit case for grant of refund along with interest at the prescribed rate.

22. Further, in the judgment of the Hon'ble Supreme Court of India in the case of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" reiterated in case of "M/s Sana Realtors Pvt. Ltd. And Others. v. Union of India and Others." SLP(Civil) No. 13005 of 2020 decided on 12.05.2022, it was observed:

"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.”

Accordingly, the Authority is of the view that since promoter has failed in his obligation to hand over the possession within a reasonable time i.e., by 04.01.2017 it is liable to the complainant allottee, as the allottee wishes to withdraw from the project, without prejudice to any of the remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed. 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 (I) 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."

23. 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. 02.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.

24. The definition of term 'interest' is defined under Section 2(za) 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.

25. Authority has got calculated the interest payable to the complainants till date of order i.e., 02.03.2023. Complainant has paid a total sum of ₹ 3,51,780/- to respondent till June 2014. Respondent shall refund this amount of ₹ 3,51,780/- along with interest as per Rule 15 of HRERA Rules, 2017. Interest is calculated on the amount of ₹ 3,51,780/- from the date of receipts till the date of the order i.e., 02.03.2023 @ SBI MCLR + 2% i.e., 10.70%

which comes out to be ₹ 3,73,437/- Accordingly, total amount payable to the complainants including interest calculated at the rate 10.70% works out to ₹ 7,25,217/-.

26. With respect to other reliefs at serial no (ii) to (viii) sought by complainant in his complaint, it is observed that the relief sought are not part of the pleadings neither were argued by Id. counsel for complainant at the time of hearing.

I. DIRECTIONS OF THE AUTHORITY

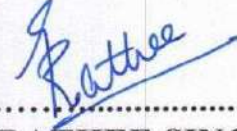
27. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount of ₹ 7,25,217/- to the complainant.
- (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.

28. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



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

