



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	743 of 2021
Date of filing.:	28.07.2021
First date of hearing.:	02.09.2021
Date of decision.:	20.04.2023

COMPLAINT NO. 743 OF 2021

Tripta Sharma & Kusum Gaur
E-49, Sector- 24,
Industrial area, Sonapat

...COMPLAINANT

VERSUS

TDI Infrastructure Limited,
Upper Ground Floor, Vandana Building,
11, Tolstoy Marg, Connaught Palace
New Delhi- 110001

....RESPONDENT

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

Nadim Akhtar **Member**

Date of Hearing: 20.04.2023

Hearing: 12th

Present: - Mr. Deepak Dahiya, Counsel for the complainant
 through VC.
 Mr. Shubhnit Hans, Counsel for the respondent

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by complainant 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 tabular form:tabular form:

S.No.	Particulars	Details
1.	Name of the project.	Tuscan Floors(KTF), Tuscan City NH-1, Kundli, District Sonapat, Haryana
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Unregistered
5.	Details of unit.	T-114, Duplex, 1434 sq. ft



6.	Date of builder buyer agreement	24.09.2011
7.	Due date of possession	24.03.2014
8.	Possession Clause	“However, if the possession of the Floor is delayed beyond the stipulated period of 30 months from the date of execution hereof and the reasons of delay are solely attributable to the wilful neglect or default of the Company then for every month of delay, the buyer shall be entitled to a fixed monthly compensation damages/penalty quantified @ Rs.5 per square foot of the total super area of the Floor. The Buyer agrees that he shall neither claim nor be entitled for any further sums on account of such delay in handing over the possession of the Floor.”
9.	Basic sale consideration	₹32,50,000/-
10.	Amount paid by complainant	₹ 47,60,799.33/- (₹ 47,85,799.33/- as per the statement of account dated 08.02.2011 issued by respondent)
11.	Offer of possession.	16.10.2014

B. FACTS OF THE COMPLAINT

3. Complainants in this case had booked a residential unit in a project of the respondent named 'Tuscan Floors' Tuscan City, Kundli, Sonapat on 10.01.2011. A residential unit bearing no. T-114/Duplex, measuring 1434

sq. ft. was allotted to them on 20.06.2011. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between the parties on 24.09.2011. As per FBA, possession of the unit was to be delivered within 30 months from the date of agreement i.e by March 2014. Complainants have paid an amount of Rs. 47,60,799/- till date against basic sale price of Rs. 32,50,000/-.

4. Main grouse of the complainants is that respondent has offered them fit out possession on 16.10.2014 without obtaining Occupation Certificate. They are also aggrieved on account of the fact that respondent has unilaterally increased the super area of the unit from 1434 sq. ft. to 1797 sq. ft. i.e. by 363 sq. fts. vide said Offer for Fit Out Possession cum demand letter dated 16.10.2014 without providing any prior intimation or justification for the same. As a result an additional financial burden has been imposed on them. It is alleged that the respondent made unjust demands without completing construction of the project and forced the complainants to make entire payment. Respondent issued an NOC to the complainants on 17.06.2015. However, offer of possession dated 16.10.2014 cannot be called a valid offer of possession since at that time the project was incomplete and occupation certificate had not been received qua the project.



C. RELIEF SOUGHT

5. The complainants in present complaint seek following relief:

(i) to direct the respondent to deliver legally valid possession of the unit along with interest for delay till receipt of Occupation Certificate.

(ii) to direct the respondent to withdraw unreasonably charged amounts raised as per offer for Fit Out Possession cum demand letter dated 16.10.2014 against following categories which they had paid due under pressure of respondent at the time of issuance of NOC on 17.06.2015 :

(a) Interest Free Maintenance Security (SEC) ₹. 20,000/-

(b) Value Added Tax (VAT) ₹. 34,424/- (c) charges

demand on the pretext of increase in apartment area from 1434 sq. ft. to 1797 sq. ft. and (d) Club Membership

Charges(CMC) ₹. 75,000/-.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

6. Respondent in its reply submitted that the construction of the project in question has already been completed. Respondent had applied for grant

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of Occupation Certificate on 09.05.2014 but the same has not been granted to them by the Department of Town & Country Planning till date. Offer of possession has been issued to the complainants after completion of the project in the year 2014. An NOC after clearing of all dues was issued on 17.06.2015. Complainants after duly inspecting their units signed the NOC and accepted the physical possession of the unit in 2015 itself. Complainants have been residing in the unit since the year 2015 after issuance of NOC to them on 17.05.2015, therefore, respondent is not liable to pay interest for delay in delivery of possession till receipt of Occupation Certificate to the complainants.

E. OBSERVATIONS OF AUTHORITY VIDE ORDER DATED

07.12.2021 AND 01.06.2022

7. This case was heard at length by the Authority on 07.12.2021, wherein facts arguments advanced by both the parties were recorded. On the basis of arguments advanced by learned counsels for both parties on 07.12.2021 and perusal of record, Authority had observed and ordered as follows:-

“i) **Interest Free Maintenance Security:**

*The Authority vide order dated 01.04.2021 in **Complaint No. 464 of 2019 titled Kanwar Singh vs Mudra Finance Ltd.** has laid down certain principles*

had

in regard to IFMS, according to which IFMS is a non-refundable interest free security contributed by the allottees for carrying out capital works in future. Thus, extra money collected on account of IFMS has to be handed over by promoter to Association of allottees. IFMS is over and above the basic sale consideration and it cannot be utilized by the promoter.

Thus, IFMS money is payable by the complainants. However, the respondents shall deposit it in a separate interest earning account. Further till taking over of the project by RWA, the builder-respondents shall render periodic account of income and expenditure made out of this account to the general body of residents of the colony. Therefore, the amount charged from complainants on account of "Interest Free Maintenance Security" is upheld subject to aforesaid condition.

ii) **Club Membership Charges (CMC):**

In regard to the club membership charges the complainants state that charges levied on account of club charges are not maintainable because the club does not exist at all. Respondent has placed photographs of club as Annexure A-4 vide application dated 03.12.2021. In response, complainants have stated that the photographs attached by respondent are not of club sanctioned for 'Tuscan City' but pertain to club of 'TDI City'. As per sanctioned plan a separate



club was to be constructed for 'Tuscan City' which has not been constructed till date.

Therefore, it is ordered that since the club sanctioned for 'Tuscan City' is not in existence at present, the demand on account of club membership charges is unjustified and stands quashed. Whenever a club for this project is built and becomes operational the complainant shall be liable to pay the due amount.

iii) Value Added Tax:

Value Added Tax is the tax paid to the State Government. On perusal of record, it is inferred that as per Clause 3 of the agreement provides "the parties agree that the basic sale price of the independent floor shall not include the External Development Charges, Infrastructural Charges, Value Added Tax, Works Contract Tax or such other taxes, levies and /or charges present as well as future along with any enhancements thereof so imposed or levied by the state or any competent authority.....". Further it reads "The charges towards VAT, WCT or such other taxes that may be demanded by the government have not been quantified as of now, however the purchaser shall pay the same without any demur or protest as and when the same are demanded by the company."

Thus, a plain reading of this clause indicates, that the charges on account of VAT were not quantified at the time of agreement but the same were admitted to



be payable by the complainant on demand from the company. Since the VAT charges have been quantified and demanded by the company through the final account statement, the same are justified and hence allowed.

iv) **Increase In Super Area:**

The complainants are also aggrieved on account of unilateral increase in area of the apartment by respondent from initial booked area of 1434 sq. fts to 1797 sq. fts i.e. increase of about 363 sq. fts. Authority vide order dated 14.10.2021 had directed respondent to file component wise super area chart as per original sanctioned building plans. Respondent has failed to file the same. Respondent is directed to file the same in compliance of order dated 10.11.2021.

v) **Interest on amount paid on account of delay in Offer of possession/ Delivery:**

Admittedly, the FBA between the parties was executed on 24.09.2011. As per Agreement delivery was to be made within 30 months from the date of execution of FBA. Thus, as per FBA, the deemed date of possession of the unit was in 24.03.2014. Offer for Fit Out Possession was made on 16.10.2014.

Since offer for fit out possession dated 16.10.2014 was sans Occupation Certificate, therefore, it could not be termed a proper and legal



offer of possession. It could be inferred that application for issuance of Occupation Certificate filed vide letter dated 09.05.2014 by the respondent promoter would have been defective due to which, the Department of Town & Country Planning has not granted him Occupation Certificate till date.

In these circumstances, it can be concluded that a proper and legal offer of possession is yet to be made. Accordingly, respondent promoter is liable to pay interest on account of delay in handing over of possession from the deemed date of possession till the delivery of possession of booked apartment. ”

8. All the issues raised by the complainants were heard and decided vide order dated 07.12.2021, which forms part of this order, except issue pertaining to super area of the unit; actual handover of possession of the unit on 17.06.2015 and interest for delay in handing over of the unit. For adjudication on these issues both parties were directed to file component wise super area chart; affidavits along with supporting documents qua handing over of unit to complainants after executing 'NOC for Handover of Possession of Unit' on 17.06.2015; and details of amount paid by the complainants along with receipts / detailed statement of accounts.
9. Thereafter, detailed arguments were advanced by both parties on hearing dated 01.06.2022 regarding the issue of 'NOC for Handover of Possession of Unit' executed on 17.06.2015. It was pressed by learned



counsel for the respondent that the complainants had already accepted the possession of the unit after signing the NOC on 17.06.2015 therefore, respondent is not liable to pay delay interest to the complainants till receipt of occupation certificate. Arguments advance by both parties and observation of the Authority is reproduced below for reference:

“3. *Learned counsel for complainants argued that as per 'NOC for Handover of Possession of Unit' dated 17.06.2015, complainants had undertaken to take physical possession within ninety days from the receipt of 'NOC'. Therefore, as per standard process of respondent company, complainants were compelled to sign the 'NOC for Handover of Possession of Unit' on 17.06.2015 first and the keys of the unit were handed over to them later when they went to site for taking possession of the unit. Complainants along with representative of respondent company visited the site after issuance of 'NOC'. It was at that time that complainants for the first time saw that the unit was having large number of deficiencies. Further, since the unit was offered sans Occupation Certificate, therefore, complainants did not accept the physical handover of the unit.*

4. *In response, learned counsel for respondent argued that complainants had already visited the unit before signing 'NOC' and they also had full knowledge about non-receipt of Occupation*



Certificate at the time of signing 'NOC'. Despite these facts, complainants agreed to take possession of the unit and signed the 'NOC' after they were fully satisfied with the unit and took physical possession of the unit on 17.06.2015. Further, they never approached nor communicated with respondent company in any way expressing their dissatisfaction regarding condition of the unit. No such communication with respondent company regarding existence of deficiencies in the unit has been placed on record by the complainants. No legal action was initiated by complainants against respondent company regarding condition of the unit after taking possession of the unit. Thus, grievances raised by complainants after six years of issuance of 'NOC' appears to be an afterthought and only a means to get the matter reopened under RERA Act, 2016. Complainants had surrendered their rights by signing 'NOC' and by taking possession of the unit in the year 2015. Therefore, respondent is not liable to pay interest to the complainants for delay in delivery of possession after date of issuance of 'NOC' i.e. 17.06.2015.

5. *After hearing arguments of both the parties and perusal of record, Authority observes that since complainant had signed 'NOC for Handover of Possession of Unit' on 17.06.2015, and no document showing dissatisfaction of complainants qua condition of unit or action taken by them regarding the same has*



been placed on record by the complainants, therefore, the burden of proof that unit had deficiencies due to which complainants did not take possession of the unit lies on complainants. In such circumstances, a last opportunity is granted to complainants to prove their case by filing corroborating documentary evidence. A copy of such evidence shall be supplied to respondent in advance. ”

10. In compliance with the order dated 01.06.2022, complainants have filed their submissions in the registry of the office.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS

11. During the course of oral hearing, learned counsel for complainants submitted that complainants had booked a unit in the project of the respondent in the year 2011. As per buyers agreement possession of the unit should have been delivered by 24.03.2014. Respondent issued an offer of possession for fit outs on 16.10.2014 along with additional unjustified demands which the complainants were forced to pay and further to execute a NOC on 17.06.2015 for handing over of possession of the unit after clearing all dues. Though respondent had issued offer of possession for fit outs to the complainants but said offer cannot be called a valid offer since the respondent has not obtained occupation certificate qua the project in question and also the project had major deficiencies because of which the complainants did not take physical



possession. Authority vide order dated 01.06.2022 had observed that the burden of proof lies on complainants to prove the case with regard to deficiencies in the project and status of occupancy of unit in question. As proof complainants have filed a letter dated 30.03.2022 from Resident Welfare Association Tuscan City Floors (60 to 150) certifying that flat no. T-114/ Duplex, Tuscan Floors, TDI Tuscan Kundli Sonapat is lying vacant and that there is no electric meter installed in it. Learned counsel for the complainants further submitted that with regard to deficiencies in the project, Authority in Complaint no. 2676 of 2019 titled "Tuscan City Floors LX To CL Residents Welfare Association Vs TDI Infrastructure Ltd" and a bunch of other complaints has been made aware of the fact in regard to the deficiencies existing in the project of the respondent by respective RWA of the project. The unit of the complainants is part of the same project and is affected by these deficiencies as well. Learned counsel for the complainants also argued that in this case no possession certificate has been issued by the respondent. Mere signing of an NOC for handing over possession does not tantamount to the fact that complainants have taken actual physical possession. Complainants have invested their hard money to the tune of ₹ 47,60,799/- in the project of the respondent since the year 2015. However, they are not able to enjoy the rights attached to the unit on account of deficiency in



services on the part of the respondent. Therefore, he prayed that direction be issued to respondent to make payment of delay interest from deemed date of possession till receipt of occupation certificate.

G. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT

12. Mr. Shubhnit Hans, learned counsel for the respondent reiterated his arguments as previously recorded. He further submitted that the NOC for the unit has already been executed on 17.06.2105. Complainants cannot raise any claims after a lapse of six years. The possession of the unit is being enjoyed by them since six years and thus they are not liable to receive any delay interest.

13. At this point a specific query was raised from learned counsel for the respondent whether a possession certificate qua the unit in question has been executed between the parties. Learned counsel for the respondent submitted that complainant did not come forward to execute the possession certificate.

H. OBSERVATIONS OF THE AUTHORITY

14. Considering above submissions and perusing all documents, Authority observes that the fulcrum of the issue involved in this case pertains to failure on part of respondent to timely delivery of possession of the unit in question as per the agreed terms and withdrawal of various charges



raised vide demand letter dated 16.10.2014 which have been paid by the complainants under duress. During the course of hearing dated 07.12.2021, all the issues raised by the complainants were heard and decided except issue pertaining to super area of the unit; actual handing over possession of the unit on 17.06.2015 and interest for delay in handing over of the unit. Relevant part of order dated 07.12.2021 has been reproduced in para 7 of this order. Authority reconfirms observations made vide order dated 07.12.2021 pertaining to the issue regarding interest free maintenance security, club membership charges and other charges. For adjudication of issues pertaining to super area of the unit; actual handing over of possession of the unit on 17.06.2015 and interest for delay in handing over of the unit, Authority observes as follows:

- i. As per buyers agreement, possession of the unit was to be delivered by 24.03.2014. Respondent issued an offer of fit out possession of 16.10.2014 without obtaining occupation certificate. An NOC for handing over of possession was executed between both parties on 17.06.2015. It is alleged by the complainant that the offer of possession dated 16.01.2014 was an incomplete offer of possession since the respondent had not obtained occupation certificate qua the project and further there were several deficiencies at



site. Therefore, the complainants did not accept said offer of possession and have sought relief of delay interest on account of delayed possession till receipt of occupation certificate. On the other hand it has been principally argued by learned counsel for the respondent that complainants have taken possession of the unit in the year 2015 itself and are thus not liable to receive delay interest. Timely delivery of possession as per the agreed terms is an essential part of the contractual relationship existing between parties as per builder buyer agreement. Here though the complainants have executed an NOC on 17.06.2015 but the same does not tantamount to actually taking physical possession of the unit in the absence of occupation certificate. Allottees who invest their hard earned money in real estate project get bound by the terms and condition of the respondent/promoter to safeguard their interest against cancellation, which the complainants did in this case by signing the NOC. Mere signing of the NOC does not substantiate that the complainants have actually been enjoying or utilising the benefit of possession of a unit. Complainants have placed on record a letter dated 30.03.2022 signed by the Tuscan City RWA



corroborating the fact that the unit in question is not being utilised. Further Authority vide Complaint no. 2676 of 2019 & others is aware of the lack of basic infrastructural facilities at the site of the project which gives support to the contention of the complainants that the unit was incomplete at the time of signing of NOC because of which the complainants did not accept possession. Respondent has admitted the fact that possession certificate qua the unit has not been executed between the parties since the complainants did not come forward to sign it which aligns with the claims of the complainants that they did not accept the physical possession of the unit on account of deficiencies in services and non receipt of occupation certificate. In light of the above facts, it can rightly be ascertained that infact the unit booked by the complainants was not complete at the time of signing of NOC and that a legally valid possession has not been issued to the complainants. Authority has laid a criteria as to what shall be called lawful offer/ handing over of possession in **Complaint Case No. 903 of 2019- Sandeep Goyal Vs. Omaxe Ltd.** Relevant part of the said order is reproduced below:



“7. At this stage, the Authority would express its views regarding the concept of ‘valid offer of possession’. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end and liability of allottee for paying holding charges as per agreement commences. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession of an apartment must have following components:

(i) Firstly, the apartment after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

(ii) Secondly, the apartment should be in habitable condition. The test of habitability is that the allottee should be able to live in the apartment within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc. from the relevant authorities. In a habitable apartment all the common facilities like lifts, stairs, lobbies, etc. should be functional or capable of being made functional within 30 days after completing prescribed formalities. The Authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some

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places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such minor defects under protest. This Authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest. However, if the apartment is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the apartment shall be deemed as uninhabitable and offer of possession of an uninhabitable apartment will not be considered a legally valid offer of possession.

(iii)

- ii. Since at the time of offer of possession, respondent had not received occupation certificate qua the project in which the flat of the complainant is situated, therefore offer of possession dated 16.10.2014 cannot be called a valid offer of possession in terms of principles laid down by this Authority in Complaint no. 903 of 2019. Therefore, a valid offer of possession is yet to be made to the complainant. Complainants are entitled to receive delay interest on account of delay in delivery of possession from



deemed date of possession till receipt of occupation certificate. Authority deems it fit to issue directions to respondent to make a fresh legal offer for possession of booked flat complete in all respects after obtaining Occupation Certificate in terms of the principles laid in this order.

- iii. With regard to the super area of the unit, it is observed that at the time of issuing fresh offer of possession, respondent will recalculate the charges raised on account of increase in super area as per the principles laid in in **Complaint No. 607 of 2018 titled Vivek Kadian Versus M/s TDI Infrastructure Pvt. Ltd and Complaint no. 83 of 2019 titled Adesh Vats Vs TDI Infrastructure Pvt. Ltd.**

15. Accordingly, respondent will liable to pay delay interest to the complainant on account of delay caused in delivery of possession from deemed date of possession till a legal offer of possession after obtaining occupation certificate. 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;*

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: “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%: Provided that in case the State Bank of India marginal cost of lending rate (NCLR) 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”.”



16. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 20.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%. Accordingly, respondent will be liable to pay the complainant interest from the date the amounts were paid by him till the actual realization of the amount.
17. Authority has got calculated the delay interest payable to the complainants from deemed date of possession till date of order i.e. 20.04.2023 which works out to ₹ 44,66,311/- and further monthly interest till a fresh offer of possession is made after obtaining occupation certificate at the rate 10.70% which works out to ₹ 42,089/-

I. DIRECTIONS OF THE AUTHORITY

18. 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 issue a fresh legal offer for possession to the complainant for the booked unit complete in all respects after obtaining Occupation Certificate. Said offer letter shall be accompanied with a detailed statement of accounts showing lawful payables

and receivables along with justification. Respondent while issuing such statement shall follow the principles laid down by the Authority.

(ii) Respondent is directed to make upfront payment of delay interest (till date of this order i.e 20.04.2023) of ₹ 44,66,311/- on account of delay caused in delivery of possession and further payment of monthly interest of ₹ 42,089/- till the date a valid offer of possession is issued to the complainant. 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.

19. The complaints are, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.


.....
DR. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]