HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**3245 of 2022**
Date of filing:	**22.12.2022**
Date of first hearing:	**13.04.2023**
Date of decision:	**03.09.2024**

Mr. Anil Kumar,
R/o Village Raghunathpura Tehsil, NARNAUL Distt. Mahendra Garh, Haryana
Faridabad, Haryana- 121002 ...COMPLAINANT

Versus

1. Choice Real Estate Developers Pvt. Ltd,
   Regd. Office at 14/185-14/186, Ground Floor,
   Malviya Nagar, Main Shivalik Road,
   New Delhi -110017
2. Vipul Limited
   Regd. Office at Regus Rectangle, level-4,
   Rectangle 1, D-4, Commercial Complex,
   Saket, New Delhi- 110017 ...RESPONDENTS

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

Chander Shekhar **Member**

Present: - Sh. Harsh Ahuja, Advocate, counsel for the complainant, through VC.
Sh. Vineet Sehgal Advocate, counsel for the respondent through VC

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 22.12.2022 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 fulfill 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 have been detailed in following table:

S. No.	Particulars	Details
1.	Name of project	Pratham Apartments, Sector-10 A, at Village Bawal, Rewari, Haryana.
2.	Nature of the Project	Group Housing Project
3.	RERA registered/not registered	Registered vide no. 38 of 2018
4.	Date of Allotment	05.12.2013

5.	Flat no.	506, 5th floor, Tower- 04
6.	Flat area	1160 sq.ft. (107.768 sq. mts.)
7.	Date of builder buyer agreement	16.08.2014
8.	Deemed Date of Possession	16.08.2019 As per clause 8(8.1)(a), on fulfilment of all conditions as stated therein, possession is to be delivered within 60 months from date of signing agreement plus 90 days as grace period for applying and obtaining the Occupation Certificate in phases in respect of different towers of Group Housing Complex.
9.	Total sale price	₹34,28,609/-
10.	Amount paid by complainant	₹29,30,378/-
11.	Offer of possession	Not made

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

3. That the complainant booked a unit in the respondents' project i.e. "Pratham Apartments" in Bawal, Sector 10 A, District Rewari, Haryana in the year 2013 by payment of booking amount of Rs.5,00,000/-. On 05.12.2013,

respondents furnished an allotment letter to the complainant and allotted unit No. 506, 5thFloor, Tower No.04, admeasuring 1160 sq. ft. in the project. Total sales consideration was agreed to be Rs.34,28,609/- against which complainant had paid over Rs. 29,30,378/- by year 2018 in the following manner:

Sr. no.	Receipt no.	Receipt date	Amount (Rs.)	Cheque no.	Cheque date
1.	0431	05.12.2013	1,50,000/-	741354	30.08.2013
2.	0432	05.12.2013	3,50,000/-	008603	05.12.2013
3.	0728	04.12.2014	10,90,543/-	614159	21.12.2014
4.	1354	28.10.2015	6,82,194/-	078313	24.10.2015
5.	1475	04.12.2015	1,61,586/-	079267	25.11.2015
6.	1879	13.12.2016	5,093/-	024258	08.12.2016
7.	1552	07.04.2016	1,61,781/-	456462	05.04.2016
8.	1966	17.03.2017	1,63,147/-	900667	16.03.2017
9.	1986	17.04.2017	1,66,034/-	938063	12.04.2017
	Total		**29,30,378/-**		

4. That on 16.08.2014, the complainant and respondents entered into a builder buyer agreement (hereinafter 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 respondent within 60 months of the agreement along with grace period of

90 days, i.e., by 16.11.2019, however respondents 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 from the date of the agreement. Yet the respondent is unable to complete the project and even till date, the project is incomplete i.e., after more than 10 years from the date of agreement.

5. That the complainant had opted for construction linked plan and the complainant paid the entire amount as and when demanded by the respondent and has complied with his legal obligation against the unit on time and has also taken home loan from HDFC Bank on 27.09.2014 so that same can be done without fail. The total amount paid along with receipts/account statement is proved by receipts annexed with the complaint as annexure C-7.

6. That the complainant time and again contacted respondent and expressed concerns over delay in completion of project and sought explanation for the same. However, respondent did not inform anything in relation to construction of the project and kept on issuing demand letters for payment along-with interest to complainants.

7. Now that the complainant has lost all hope and has dropped the decision of taking possession and has decided to get the refund of the amounts paid by

him along-with interest equivalent to at the rate of interest 18% charged by respondent for late payment.

C. RELIEF SOUGHT:

8. The complainant in his complaint has prayed for following reliefs:

   i. Direct the respondents to award refund of amount of Rs.29,30,378/- paid by complainant along-with interest at the rate prescribed under the Act from the date of receipt of each payment till the actual date of refund.

   ii. Pass such order or further orders as this Hon'ble Authority may deem fit and proper in the facts and circumstances of present case.

D. REPLY:

9. Respondent has submitted reply on 25.07.2023 in the registry. Respondent has submitted as follows:-

   a. 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-19 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.

b. That as a part of its business, the respondents 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 "Pratham Apartments".

c. That the complainant only after being completely satisfied in all respects with respect to project has booked a flat/residential unit in the Group Housing Project known as "Pratham Apartments" and vide application in the month of August 2013 had applied for provisional registration of a residential unit in the aforesaid group housing complex i.e. "Pratham Apartments".

d. That the respondent company in furtherance of the application form so submitted by the complainants and the earnest money so received from the complainants, accordingly made the provisional allotment of one residential flat bearing No. 506 in Tower-4, at 5th Floor, in the aforesaid group housing in favor of the complainants. 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 complainants. The allotment letter, terms and conditions for allotment of flat were voluntarily agreed by the complainants.

e. That the respondent company, on 16.08.2014 sent the 'Flat Buyer Agreement' to the complainant, which was voluntarily and consciously executed by the complainants and in terms thereof he had assumed and undertaken to perform the terms and conditions of the agreement.

f. That they have acted fairly and made every endeavor to perform their part of responsibility in completing the project work and handling over the possession of the flat in issue to the complainants at the earliest but it is only due to force majeure and covid 19 pandemic that the completion of project has been delayed. However sincere efforts have been undertaken with promise to offer possession of the flats to the complainants at the earliest.

10. In conclusion it is submitted by respondents that their project is near completion and is on final stage. Therefore, the complainant cannot be allowed to withdraw from the same, as per the law settled in various cases

and also as per the principles of equity as further hindrance will be caused to the respondent in completing the project.

E. ORAL SUBMISSIONS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT:

11. During oral arguments, learned counsel for the complainants reiterated the facts mentioned in para 3-7 of this order and submitted that there is no progress at the site and project cannot be completed in near future. Therefore, he requested to dispose off the case and decide the matter on the basis of facts in complaint file as it is exhaustive and self-explanatory and requires no further arguments on his end.

12. Learned counsel for respondent reiterated the facts mentioned in para 9-10 of this order. He submitted that the facts that are stated in his written submissions vide reply dated 25.07.2023, may be taken as his oral submissions.

F. ISSUES FOR ADJUDICATION:

13. Whether the complainant is entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS OF THE AUTHORITY:

14. After considering facts and circumstances of the case and going through oral as well as written submissions, Authority observes that flat buyer agreement between complainant and respondents was executed on 16.08.2014. Total sales consideration was agreed to be Rs.34,28,609/- against which complainants had paid over Rs.29,30,378/- by year 2017. After paying almost 90% of sales consideration amount, legitimate expectations of complainant would be that possession of the apartment will be delivered within time as stipulated in flat buyer agreement, however possession has not been delivered till date.

15. As per clause 8(8.1) (a) of the flat buyer agreement dated 16.08.2014, possession was to be delivered within 60 months from date of signing agreement plus 90 days as grace period for applying and obtaining the occupation certificate in phases in respect of different towers of group housing complex. Ld. counsel for respondent has submitted that they had made every endeavor to complete the project work and handover the possession of the flat to complainant at earliest, however it was only due to force majeure and covid 19 pandemic that there was a delay. Further he submitted that in the present case repeated orders were passed by Hon'ble NGT, New Delhi whereby construction work in entire NCR was stayed on

many occasions which was duly intimated to complainant. Authority observes that due date of possession was on 16.08.2019, whereas covid 19 lockdown was imposed later in the month of March, 2020. And for delay in construction due to outbreak of Covid-19, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020*** dated 29.05.2020 has observed that:

> "69... *The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.*
> ... *The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.* "

Therefore, respondent cannot be given the benefit of halt in work due to covid-19 pandemic. Secondly, there is no document placed on record to prove as to when and for how much period ban by NGT due to pollution imposed on construction, halted their work. In absence of such proof, benefit

of such circumstances also cannot be awarded to respondent builder. Respondent cannot be allowed to take the plea of force majeure conditions towards delay caused in delivery of possession as the same is considered to be without any basis and the same is rejected. Hence, the deemed date of possession comes out to be 16.08.2019 i.e. 60 months from the date of execution of flat buyer agreement.

16. Further facts set out in the preceding paragraphs demonstrate that construction of the project had been delayed beyond the time period stipulated in the flat buyer agreement. Authority observes that respondent has failed to fulfil its obligation stipulated in flat buyer agreement dated 16.08.2014. Possession of unit should have been delivered by 16.08.2019. Now, even after a lapse of more than 5 years, respondent is not in a position to offer possession of the unit since respondent company is yet to receive occupation certificate in respect of the unit. Therefore, complainant in exercise of his right under section 18 of the Act, filed complaint before the Authority and seeks refund of the amount that he has paid to respondent builder. Section 18 of the Act is reproduced as under:

> *"Section 18. Return of amount and compensation.*
> *(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.
(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

As per section 18 of the Act of 2016, in case promoter fails to handover possession of the unit duly completed by dates specified in the agreement for

sale, then the allottee has right to either continue with the project and claim possession along-with interest or withdraw from the project and demand refund of the amount paid by them along-with interest. In the present complaint, promoter has failed to deliver the possession of the flat within the prescribed time period, and complainant also does not want to continue with the project and seeks refund of the amount paid, therefore, Authority deems it proper that it is a fit case to grant refund along-with interest as prayed for.

17. Authority observes that the relief of refund was allowed in similar cases pertaining to the same project of the respondent where the facts and issues were similar. Vide order dated 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 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 flat buyer agreement dates back to 2013. Relevant part of the order dated 07.12.2022 is reproduced 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 Real E 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

Others2021 (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 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 captioned complaint is also based on similar facts, relating to same project of the respondent, the same is also disposed of in terms of complaint no. 389 of 2011 titled "Meenakshi Kamboj Vs. Choice Real Estate

Developers Pvt. Ltd." and the Authority allows the prayer for refund along-with interest in favor of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HIRERA Rules, 2017 provides for prescribed rate of interest which is as under: 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;*

Rule 15 of HRERA Rules, 2017 which is reproduced below for ready reference:

> ***"Rule 15:** Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7)ofsection19]*
> *(1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at therate*

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".

19. Consequently, as per website of State Bank of India i.e. https://sbi.co.in, the marginal cost of lending rate (in short MCLR) as on date i.e. 01.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR+2% i.e. 11.10%.

20. Accordingly, respondents will be liable to pay the complainant interest from the date amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondents to refund to the complainants the paid amount of ₹29,30,378/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest at the rate of 11.10% till the date of this order and said amount works out to ₹59,77,554/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 03.09.2024 (in Rs.)	TOTAL (in Rs.)
1.	1,50,000/-	05.12.2013	1,92,912/-	3,42,912/-
2.	3,50,000/-	05.12.2013	4,17,877/-	7,67,877/-
3.	10,90,543/-	04.12.2014	11,81,318/-	22,71,861/-
4.	6,82,194/-	28.10.2015	6,70,931/-	13,53,125/-
5.	1,61,586/-	04.12.2015	1,57,100/-	3,18,686/-
6.	5,093/-	13.12.2016	1,51,140/-	3,12,921/-
7.	1,61,781/-	07.04.2016	4,371/-	9,464/-
8.	1,63,147/-	17.03.2017	1,35,349/-	2,98,496/-
9.	1,66,034/-	17.04.2017	1,36,178/-	3,02,212/-
Total	**29,30,378/-**		**30,47,176/-**	59,77,554/-

H. DIRECTIONS OF THE AUTHORITY:

21. 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 amounts along with interest of @ 11.10 % i.e. **Rs. 59,77,554/-** to the complainant as specified in the table provided in para 20 of this order.

(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.

22. Captioned complaint is, accordingly, **disposed of.** File be consigned to the record room after uploading orders on the website of the Authority.

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CHANDER SHEKHAR
[MEMBER]

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DR. GEETA RATHEE SINGH
[MEMBER]