HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**52 of 2024**
Date of filing:	**09.01.2024**
Date of first hearing:	**13.02.2024**
Date of decision:	**10.09.2024**

Meena Gupta W/o Raj Kumar,
Through Attorney Mr. Vishal Madaan,
R/o 131-A, Prem Nagar,Ward No. 16,
Bara Bazar, Basai Road, Near Bhuteshwar Mandir,
Gurgaon, Haryana- 122001 ...COMPLAINANT

Versus

Choice Real Estate Developers Pvt. Ltd,
Regd. Office at 14/185-14/186, Ground Floor,
Malviya Nagar, Main Shivalik Road,
New Delhi -110017

...RESPONDENTS

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

Present: - Adv. Vishal Madaan, Counsel for complainant in person.
Adv. Vineet Sehgal, Counsel for respondents through VC

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed on 09.01.2024 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 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	Not mentioned
5.	Flat no.	403, Tower- 04, 4th floor
6.	Flat area	765 sq. ft.

Rathee

7.	Date of builder buyer agreement	11.02.2014
8.	Deemed Date of Possession	11.02.2019 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	₹22,25,420/-
10.	Amount paid by complainant	₹19,11,679/-
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 Flat No.403 on Fourth Floor in Tower 04, admeasuring 765 sq ft. (super area), i.e. "Pratham Apartments" in Bawal, Sector 10 A, District Rewari, Haryana in the year 2013 for a total sale consideration of Rs. 22,25,420/- against which complainant paid Rs.19,11,679/- by 2017.

4. That on 11.02.2014, the complainant and respondent 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 11.02.2019, 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 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 tried to contact the officials of respondent and visited their offices many times to know when construction of the flat will start but to no avail and only false assurances to start the work were given by the respondent. The complainant submits that he had invested his hard earned money for having a residential house for his family but all his hopes were shattered. Even as per agreement, time period to complete the construction of flat expired in 2019, but the respondent is not even nearby to give possession of flat. Thus, in a way respondent has already committed a breach of agreement terms.

6. That the flat buyer agreement is arbitrary, one-sided and pro-builder. The respondent is charging delay payment charge of 18% p.a. interest compounded on account of delay payments whereas he bound himself to pay delay payment charges @Rs.7 per sq. ft. as per the agreement which is arbitrary action on part of respondent. The respondent has not only shattered the dream of complainant to have a residential house for his family but also caused huge financial loss to him.

7. That the cause of action is continuous as the respondent has failed to deliver possession of flat on time and further failed to deliver possession of the flat on time and further failed to provide delayed possession charges on same rate upon which he is charging delayed payment charges.

C. RELIEF SOUGHT:

8. In view of the facts mentioned above, complainant humbly prays for the following reliefs:-

i. Direct the respondent to refund the deposited amount of Rs.19,11,679/- to the complainant, along with interest as per rule 15 of HRERA rules, 2017 on the amounts from the respective dates of deposit till actual realization within 90 days according to section 18(1) of Real Estate (Regulation and Development) Act, 2016 read with rule

15 and 16 of Haryana Real Estate (Regulation and Development) Rules, 2017;

ii. To direct the respondent to pay Rs. 50,000/- on account of cost and litigation expenses.

iii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of present case.

iv. The RERA registration of the project "Pratham Apartments" may kindly be cancelled.

D. REPLY:

9. Respondent has submitted reply on 24.05.2024 in the registry. Respondent has submitted as follows:-

a. That the complainant has concealed the fact that the respondent has 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 complainant and the earnest money so received from the complainant, accordingly made the provisional allotment of residential flat bearing No. 403 in Tower-4 at 4th floor, in the aforesaid group housing in favor of complainant. It is further submitted that the respondent company along with said allotment letter had sent the terms and conditions for allotment of flat as well as schedule of payment which

was construction linked plan, as opted by the complainant. The allotment letter, terms and conditions for allotment of flat were voluntarily agreed by the complainant.

e. That the respondent company, on 11.02.2014 sent the 'Flat Buyer Agreement' to the complainant, which was voluntarily and consciously executed by the complainant and in terms thereof he had assumed and undertaken to perform the terms and conditions of the agreement.

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 complainant 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 complainant 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 complainant reiterated the facts mentioned in para 3-12 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 14-15 of this order. He submitted that the facts that are stated in his written submissions vide reply dated 24.05.2024, 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 11.02.2014. Total

sales consideration was agreed to be Rs. 22,25,420/- for unit against which complainant had paid Rs.19,11,679/- for the unit by year 2017. After paying almost 86% 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 11.02.2014, 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. Authority observes that period of 90 days grace period was provided in the agreement solely for the purpose of obtaining occupation certificate for the tower. However, admittedly till date construction works are not complete, therefore respondent is not entitled to the grace period of 90 days. Hence, deemed date of possession shall be considered to be 60 months from the date of signing of flat buyer agreement which comes out to be 11.02.2019.

16. Further, 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 due to force majeure and

covid-19 pandemic that there was a delay in the construction of project. 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 observed that due date of possession was in 2019 i.e. on 11.02.2019, 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 was not a condition precedent for arriving at deemed date of possession.

17. 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 BBA dated 11.02.2014. Possession of unit should have been delivered by 11.02.2019. 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 has yet to receive occupation certificate in respect of the unit. Therefore, complainant has 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 as prayed for.

18. Authority observes that the relief of refund was allowed in similar cases against 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."

19. Since captioned matter is also based on similar facts, relating to same project of the respondent, this complaint is also disposed of in terms of complaint no. 389 of 2011 titled "Meenakshi Kamboj Vs. Choice Real Estate Developers Pvt. Ltd." and Authority allows the prayer for refund 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".*

20. 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%.

21. 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 complainant the paid amount of ₹19,11,679/- 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 as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 10.09.2024 (in Rs.)	TOTAL (in Rs.)
1.	3,27,865/-	2013-10-07	3,98,030/-	7,25,895/-
2.	2,18,574/-	2013-11-20	2,62,425/-	4,80,999/-
3.	2,81972/-	2014-01-06	3,34,512/-	6,16,484/-
4.	2,10,030/-	2014-10-14	2,31,217/-	4,41,247/-
5.	1,23,697/-	2015-01-14	1,32,714/-	2,56,411/-
6.	1,23,697/-	2015-04-06	1,29,630/-	2,53,327/-
7.	1,02,208/-	2015-06-09	1,05,121/-	2,07,329/-
8.	1,02,614/-	2015-08-27	1,03,073/-	2,05,687/-
9.	1,02,614/-	2015-11-23	1,00,327/-	2,02,941/-
10.	1,02,738/-	2016-03-15	96,918/-	1,99,656/-
11.	8,458/-	2016-12-06	7,295/-	15,753/-
12.	1,03,606/-	2017-03-10	86,394/-	1,90,000/-
13.	1,03,606/-	2017-04-17	85,196/-	1,88,802/-
Total	**19,11,679/-**		**20,72,852/-**	**39,84,531/-**

22. Further, the complainant is seeking sum of Rs.70,000/- as compensation for cost of litigation expenses. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as *"M/s Newtech Promoters and Developers PvL Ltd. V/s State of U.P. & ors."* (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY:

23. 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. 39,84,531/-** to the complainant as specified in both the tables for both units as provided in para 21 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.

24. 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]

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