HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**2659 of 2022**
Date of filing.:	**28.10.2022**
First date of hearing.:	**14.12.2022**
Date of decision.:	**11.02.2025**

1. Puran Prakash Sharma S/o Sh. S.P.Sharma
2. Pushpa Sharma alias Pushpa Lata Sharma W/o Sh. Puran Prakash Sharma

Both R/o Flat No. B-101, Jal Vihar Welfare Society,
Near KLJ Greens, Sector-77, Nimka, Faridabad, Haryana- 121004

....COMPLAINANT(S)

VERSUS

1. M/s BPTP Limited
R/o 28 ECE House, 1st floor, KG Marg, New Delhi- 110001
2. M/s BPTP Parkland Pride Limited
R/o M-11, Middle Circle Connaught Circus,
New Delhi- 110001

....RESPONDENT(S)

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

Hearing: 5th

Present: - Sh. Arjun Kundra, Learned Counsel for the complainants through VC

None for the respondents.

ORDER:

1. Present complaint has been filed on 28.10.2022 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, 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.	Park Elite Floors, Sector 75-89, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	First allotment	24.12.2009; H2-23-SF, admeasuring 1418 sq.ft.

5.	Re-allotment	12.06.2012; PE-178-SF, admeasuring 1510 sq.ft.
6.	Details of unit.	PE-178-SF, admeasuring 1510 sq.ft.
7.	Date of floor buyer agreement	23.10.2012
8.	Due date of possession	02.03.2014
9.	Possession clause in BBA (Clause 5.1)	Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being if default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions,formalities,documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of

		building plan whichever is later. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated.
10.	Total sale consideration	₹ 26,51,301.72/-
11.	Amount paid by complainants	₹ 28,97,437.51/-
12.	Offer of possession.	None

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANTS IN THE COMPLAINT:

3. Facts of complaint are that the complainants had booked a unit in the project of the respondents namely "Park Elite Floors" situated at Sector 75-89, Faridabad, Haryana in May 2009. Complainants were allotted unit no. H2-23-SF, admeasuring 1418 sq.ft., vide allotment letter dated 24.12.2009. Surprisingly, respondents after 3 years of booking changed the allotment on the pretext that due to reasons beyond their control, respondents are re-allotting a new unit to complainant i.e. unit no. PE-178-SF, measuring 1510 sq. ft. first floor, Park Elite Floors, Parklands,

Faridabad vide re-allotment letter dated 12.06.2012. Thereafter, floor buyer agreement was executed between the parties on 23.10.2012. Basic sale price of the unit was fixed at ₹ 26,51,301.72/- against which complainants had paid an amount of ₹ 28,97,437.51/-, i.e, more than total sale consideration of the booked unit between the years 2009-2017. As per clause 5.1 of the agreement possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plans whichever is later. From the date of execution of the agreement, the deemed date of possession works out to 23.10.2014. However, till date no offer of possession has been made by respondents. It is submitted that the complainants have never defaulted in making payment towards any installment as per the demand raised by the respondents from time to time. Further, from booking of the unit till date, the respondents have never informed the complainants about any force majeure or any other circumstances which were beyond the reasonable control of the respondents and has led to delay in completion and development of the project within the time stipulated.

4. The respondents were bound by terms and conditions of the agreement and to deliver possession of the unit within time prescribed in the floor buyers agreement. However, the respondents have miserably failed to complete the project and offer legal possession of the booked unit

complete in all aspects. It is submitted that even after a lapse of more than ten years from the date of delivery of possession, respondents are not in a position to offer possession of the booked unit to the complainants.

5. It is further stated that till date, the respondents have neither provided possession of the flat nor refunded the deposited amount along with interest. On account of inordinate delay in delivery of possession, complainant intends to withdraw from the project on account of deficiency in services. The complainants seek complete refund of the paid amount along with interest as per Rule 16 of HRERA Rules 2017 due to failure on the part of respondent in delivery of possession. Hence, the present complaint has been filed.

6. During the arguments, learned counsel for the complainants submitted that reiterated his averments as mentioned above and further submitted that complainants wish to withdraw from the project in question and seek refund of the paid amount as per terms of RERA Act 2016 only.

C. RELIEF SOUGHT

7. That the complainants seeks following relief and directions to the respondent:-

   i. Direct the respondent to refund the amount paid of ₹ 28,97,437.51/- along with prescribed rate of interest as per

the RERA Act, from the date of respective payments until its actual realization.

ii. Any other relief which the applicant is entitled for under the Real Estate (Regulation & Development) Act,2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

8. Learned counsel for the respondents filed detailed reply on 05.06.2023 pleading therein:

9. That the unit no. H2-23-SF admeasuring 1418 sq.ft. was allotted to complainants in the year 2009, however due to reasons beyond control of the respondent, complainants were re-allotted the present unit no. PE-178-S, admeasuring 1510 sq.ft vide allotment letter dated 12.06.2012. That the complainants had opted for a construction linked payment plan. As per the payment plan, respondents had raised various demands, vide demand letters issued from 2009 till 2017, to the complainants. Copy of the demand letters and receipts of the amount paid by the complainants are annexed in the reply. Respondent has admitted allotment and execution of floor buyer agreement in favour of complainants. It is stated that in terms of floor buyer agreement dated 23.10.2012 respondent

proposed to handover the possession of the unit within a period of 24 months from the execution of floor buyer agreement or sanction of building plan, whichever is later along with a grace period of 180 days for filing and grant of occupation certificate.

10. It is further submitted that the construction of the project was going on in full swing but it got affected due to the circumstances beyond control of the respondent such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in **M.C Mehta v. Union of India,** ban by Environment Pollution (Prevention and Control) Authority etc. Further, the construction of the project had been marred by the COVID-19 pandemic whereby the government of India had imposed a nationwide lockdown on 24.04.2020 which was only partially lifted on 31.05.2020. Thereafter, a series of lockdown has been faced by the citizens of India including the complainant and the respondents which continued upto the year 2021. Secondly, respondent stated that booking of unit in question was based on self-certification policy issued by DTCP, Haryana. In said policy, any person could construct building in licensed colony by applying for building plans to the Director of concerned department for approval of said plans and in case non- receipt of any objection within stipulated time, construction could be started. In compliance, respondent had submitted drawings and design plans for

building along with requisite fee. However, same are with held by DTCP, Haryana. Since, there was no clarity on the policy of self-certification as together its applicable to individual floors and excludes developers or same is applicable on both. Department on 08.01.2014 issued public notice inviting developers to submit plans for regularization of construction. In view of same, respondent again submitted the plans to the department. Meanwhile respondent carried out the construction of project. Finally, on 08.07.2015, department clarified that policy shall also apply to cases of approval of building plans submitted by colonizer/promoters. Since there was an ambiguity period on part of department since policy was announced i.e. on 16.03.2010 which was given clarity on 08.07.2015 by department becomes the another valid reason on part of delay in offering possession to the complainants. That due to aforesaid unforeseeable circumstances and reasons beyond the control of the respondents, the construction got delayed.

11. That florr buyer agreement with complainants was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondents.

12. **Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.**

One of the averments of respondents is that provisions of the RERA Act, 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act, 2016. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as

Madhu Sareen v/s BPTP Ltd decided on 16.07.2018. Relevant part of the order is being reproduced below:

> *"The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller."*

Further, in present case, respondents had neither placed on record copy of occupation certificate nor completion certificate. Therefore, as per Section 3(1) of the RERA Act, 2016 this project of the respondent is an ongoing project and as per recent judgment of Hon'ble Supreme court in **"Newtech Promoters and Developers Pvt. Ltd"** Civil Appeal no. 6745-6749 of 2021 projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects.

Furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees

and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

13. **Objection raised by the respondents regarding with regard to deemed date of possession .**

Respondents in their reply has averred that as per clause 5.1 of the floor buyer agreement dated 23.10.2012 possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan whichever is later along with grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. In this regard, Authority observes that 24 months from the date of execution of the agreement, the deemed date of possession works out to 23.10.2014. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanction of building plan that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the builder buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession. Further, respondent has failed to place on record any document to show/prove as to what was the exact date for sanction of the

building plans, thus the date of execution of the builder buyer agreement is taken as the date for calculating the deemed date of possession. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate with respect to the plot on which the floor is situated. It is a matter of fact, that the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement i.e immediately after completion of construction works within 24 months. Thus, the period of 24 months expired on 23.10.2014. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

14. After hearing both the parties and considering the documents on records, Authority observes that upon booking, a unit bearing no. H2-23-SF, admeasuring 1418 sq. ft in the project of the respondent's namely "Park Elite Floors" located at Faridabad, Haryana was originally allotted to complainants vide allotment letter dated 24.12.2009.However, respondents rather than offering possession to complainant had issued another letter dated 12.06.2012, vide which respondents had changed the unit of complainants from JH2-23-SF, admeasuring 1418 sq.ft. to unit bearing no. PE-178-SF, admeasuring 1510 sq.ft. in the same project of

the respondent. Basic sale price of the unit was ₹ 26,51,301.72/- against which complainants had paid an amount of ₹ 28,97,437.51/- from year 2009-2017. The respondents in thier reply has averred that the re-allotment was done with the consent of the complainants. However, the language of letter dated 12.06.2012 does not reflect the fair/ voluntary consent of complainants. On the contrary, the letter provides that "due to reasons beyond our reasonable control, we could not develop the unit booked i.e H2-23-SF by you". In such a scenario, where allottees have paid approx ₹ 8,70,529.55/- and had waited for 3 years for their unit, could have only consented to the re-allotment in order to save their investments and especially when he was given a hope that re-allotted unit will be completed in time. However, it is also a matter of fact that the unit re-allotted to complainants is of increased area and the complainants had accepted the same by making payments subsequent to the re-allotment of unit no. PE-178-SF.

15. Further, respondents have stated that as per clause 5.1 of the agreement, respondents were under obligation to handover the possession within 24 months from the date of execution of the floor buyer agreement or sanctioning of building plans whichever is later along with 180 days of grace period for getting necessary approvals.

None of the parties in their pleadings have mentioned the date of sanction of building plan. So, taking 24 months from date of agreement,

the deemed date of possession work out to 23.10.2014. Respondent is their reply has taken a plea that grace period of 180 days be allowed as respondents. Authority is of view that respondent was duty bound to complete the construction within 24 months of execution of agreement, i.e., by 23.10.2014 then time period of 180 days was provided for applying for occupation certificate. Here, in the present case, respondent neither completed the construction within stipulated time nor has placed on record copy of occupation certificate till date. Accordingly, benefit of grace period of 180 days which would have been given to respondent, may have started running from 23.10.2014 which cannot be extended to unlimited time period. Since, respondent has not place on record any document showing receiving of occupation certificate, this benefit cannot be allowed.

Further, respondents in their reply has taken a plea that possession of unit was subject to occurrence of **force majure** conditions therefore, respondent has claimed relaxation for delay interest charges to be allowed to complainants for period which stands covered by force majeure conditions.

In present case, due date of possession has worked out to be 23.10.2014 (as explained in preceding paragraphs of this order). There is a delay on the part of the respondent and respondent had attributed the same to the various reasons such as the NGT order dated 19.07.2016

followed by orders dated 31.10.2018 passed by environment authority etc. It is pertinent to mention that both the orders were passed subsequent to the passing of deemed date of possession. Therefore, respondent cannot be given benefit of such statutory orders that were issued after lapse of due date of possession.

As far as delay in construction due to outbreak of **Covid-19** is concerned 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 septemeber,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.*
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> *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.* "

Since, in the present case also the deemed date of possession had lapsed in the year 2014, respondent cannot be allowed taking advantage of an subsequent event of Covid-19 that further delayed the construction. Therefore, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

Lastly, plea taken by respondents with regard to booking of unit in question on self-certification policy issued by DTCP, Haryana is concerned, it is observed by the Authority that said policy was launched on 16.03.2010 by concerned department which as per respondents was vague at that time, however respondent carried out the construction work at site irrespective of any clarity upon the said policy. Interestingly, policy got the clarity on 08.07.2015 i.e. after passing of due date of possession that was 23.10.2014 as per floor buyer agreement. Respondents had failed to file any document showing bonafide of respondents as to when they had applied for approval of building plans to the department since 2010. Mere quoting a policy without establishing or making any correlation of both will not suffice the purpose of respondents for justifying delay caused on their part in handing over of possession.

16. The facts set out in the preceding paragraph demonstrate that construction of the project had been delayed beyond a reasonable period of time thus

causing delay and suffering to the complainants. Respondents have neither developed the project in question nor returned the amount paid by the complainants till date. Fact remains that respondent in its written statement has not specified as to when possession of booked unit will be offered to the complainants. Complainants have already waited for a long period of time and are not willing to wait further. In these circumstances, the provisions of Section 18(1)(a) of the Act clearly come into play by virtue of which the complainants are seeking refund of paid amount along with interest on account of default in delivery of possession of booked unit within a reasonable period of time.

17. Further, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others** " in CIVIL APPEAL NO(S). 6745 - 6749 OF 2021 has observed that in case of delay in offering possession as per agreement for sale, allottee has an unqualified right to seek refund of amount paid to the promoter along with interest. Para 25 of this judgement is reproduced below:

> *"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time*

stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

18. So, the Authority finds it to be a fit case for allowing refund in favour of complainants. The complainants will be entitled to refund of the paid amount from the dates of various payments till realization. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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 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"."*

19. 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. 11.02.2025 is 9.1 %. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.1%.

20. Hence, Authority directs respondents to pay refund to the complainants on account of failure in timely delivery of possession 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 11.1% (9.1% + 2.00%) from the date of various payments till actual realization of the amount.

21. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e 11.02.2025 at the rate of 11.1% and said amount works out to **₹68,08,439.51**/-. Complainants shall be entitled to further interest on the paid amount till realization of full amount payable by respondent:

Complainants claims to have paid an amount of Rs 28,70,449.03/- at page no. 35 of complaint. In support receipts of Rs 28,70,449.03/- has been annexed in complaint file as Annexure C-4(Colly) from page no. 81-97 of complaint book. However statement of account dated 29.08.2022 annexed at page no. 99 of complaint, shows that amount of ₹ 28,97,437.51/- stands received by respondents. Accordingly, an amount of Rs 28,70,449.03/- is taken from receipts annexed in complaint file and remaining/differential amount of Rs 26,988.48/- is taken from statement of account dated 29.08.2022.

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 11.02.2025 (in ₹)
1.	3,00,000/-	15.06.2009	5,21,943/-
2.	3,07,051.55/-	28.04.2009	5,27,675/-
3.	2,63,478/-	23.10.2009	4,47,986/-
4.	5,33,547/-	04.04.2013	7,02,896/-
5.	8,885/-	29.05.2013	11,557/-
6.	3,74,769.16/-	17.08.2013	4,78,336/-
7.	3,78,427.16/-	04.10.2013	4,77,481/-
8.	3,78,427.16/-	05.11.2013	4,73,798/-
9.	26,065/-	21.11.2016	23,819/-
10.	2,99,799/-	19.12.2017	2,38,141/-
11.	26,988.48/-	29.08.2022	7,370/-
Total:	**28,97,437.51/-**		39,11,002/-

F. DIRECTIONS OF THE AUTHORITY

22. 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 ₹**68,08,439.51**/- (till date of order i.e 11.02.2025) to the complainants. Further, interest shall be paid as per Section 2(za) of RERA Act,2016.

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.

23. **Disposed of**. File be consigned to record room after uploading on the website of the Authority.

.....
CHANDER SHEKHAR
[MEMBER]

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