HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**406 of 2024**
Date of filing.:	**12.03.2024**
First date of hearing.:	**30.07.2024**
Date of decision.:	**29.07.2025**

Dinesh Kumar Rathore S/o Jitender Kumar Rathore ....COMPLAINANT
R/o #276, Near Prayas Welfare Society
Sector-64, Ballabhgarh, Faridabad,
Haryana-121004

VERSUS

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

2. Vipul limited
Vipul Techsquare, Golf Course Road,
Sector-43, Gurgaon, Haryana -122009 ....RESPONDENTS

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

Chander Shekhar **Member**

Present: - Mr. Sanjeev Kashyap, Learned Counsel for the complainant

Mr. Vineet Sehgal, Learned Counsel for the respondents through VC

ORDER (DR. GEETA RATHEE SINGH - 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, details of sale consideration, amount paid by the complainant, 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.	Pratham Apartments, Sector-10 A, at Village Bawal, Rewari, Haryana.
2.	Nature of the project.	Group Housing Complex.
3.	RERA Registered/not registered	Registered vide no. 38 of 2018
4.	Details of the unit.	604, 6th Floor, Tower 01,

5.	Date of Allotment	10.08.2013
6.	Date of floor buyer agreement	20.11.2013
7.	Possession clause in floor buyer agreement	Clause 8.1 :Subject to terms of this clause and subject to the Vendee having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and complied with all provisions, formalities, documentation etc., as prescribed by the Vendor, and all just exceptions, the Vendor based on its present plans and estimates shall endeavour to hand over the possession of the Flat within a period of 60(Sixty) months from the date of signing of this Agreement. The Vendee agrees and understands that the Vendor shall be entitled to a grace period of 90 days. after the expiry of 60 (Sixty) months, for applying and obtaining the occupation certificate in phases in respect of the different towers of the Group Housing Complex.
8.	Due date of possession	20.11.2018
8.	Total sale consideration	₹21,51,495/-
9.	Amount paid by complainant	₹ 19,41,584/-
10.	Offer of possession.	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Complainant had booked a unit in project of the respondents namely, "Pratham Apartments" situated in Bawal, Sector 10 A, District Rewari, Haryana on 10.08.2013. Vide allotment letter dated 10.08.2013 a unit bearing No. 604 on 6th Floor in Tower 01, admeasuring 765 sq ft. was allotted to the complainant for a against which she has paid an amount of ₹ 19,41,584/-.

4. A builder buyer agreement qua the unit was executed between the complainant and the respondents on 20.11.2013. A copy of the builder buyer agreement is annexed as Annexure C-2. As per clause 8.1 of the agreement, possession of the floor was to be delivered within a period of 60 months from the date of execution. Said period expired on 20.11.2018. The respondents were granted a further grace period of 90 days for applying and obtaining the occupation certificate in phases in respect of the different towers of the Group Housing Complex.

5. The complainant has deposited the complete amount which was demanded by the respondents in terms of payment schedule. However, despite having received the huge amount, respondents have failed to deliver possession of the booked unit to the complainant. It is submitted by the complainant that the construction of Tower 01, in which the unit of the complainant is situated, has not been completed and that the unit itself is uninhabitable.

No development works are being carried out at the site and there is no progress regarding the development of the project since the past many years. As per agreement possession of the unit should have been delivered by 20.11.2018 however, till date, the respondents have failed to complete the construction of the project and issue an offer of possession. None of the facilities as promised in the builder buyer agreement have been constructed at the site.

6. Further the terms of the builder buyer agreement are heavily one sided and arbitrary. It is submitted that respondents are charging the delay payment charges @18% per annum compound interest on account of delay in making payments whereas the complainant is bound to pay delay payments charges @₹ 7/- sq. ft. as per the agreement which is arbitrary action on the part of the respondent. Respondents have never provided the delayed possession to the complainant.
7. Therefore, the complainant has filed the present complaint seeking refund of paid amount along with interest in terms of RERD, Act 2016 and Rules therein.

C. RELIEF SOUGHT

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

i. To direct the respondents to refund the deposited amount of Rs. 19,41,584 /- to the Complainants along with interest as per Rule 15 of HRERA Rules 2017 on the amounts from the respective dates of deposit till its actual realization within 90 days according to section 18 (1) Real Estate (Regulation And Development) Act, 2016 read with rule 15 and rule 16 of Haryana Real Estate (Regulation And Development) Rules, 2017.

ii. To direct the respondents 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 the present case.

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

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 07.11.2024 pleading therein:

9. That the respondents had purchased a 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".

10. Complainant, desirous of purchasing a unit in the aforesaid project approached the respondents. After making enquiry in all respects the complainant vide application in 2013 had applied for provisional registration of a residential unit in the aforesaid group housing complex. At the time of application, complainant had opted for construction linked payment plan.

11. 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. 604 in Tower-1 at 6th 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.

12. That thereafter, a builder buyer's agreement was executed between the complainant and the respondents on 20.11.2013. Further, as per clause 8.1 of the floor buyer's agreement, possession of the unit was proposed to be handed over within a period of 60 months from the date of execution of the said agreement along with a grace period of 90 days.

13. Respondents have made every endeavor to complete the construction of the project well within time. It is because of these efforts that the project

has reached near completion but due to force majeure conditions the development works of the project have been delayed. Respondents had duly intimated the complainant 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 unit 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.

14. The development work of the project is in its final stage and shortly the respondent will approach the DTCP, Haryana, for grant of occupation certificate. Once the project is near completion 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.

15. During the course of arguments, learned counsel for the respondents confirmed that the project is yet to receive an occupation certificate.

E. ISSUES FOR ADJUDICATION

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

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

17. On perusal of file and considering oral averments of both parties, Authority observes that there is no dispute regarding the fact that the complainant had booked a residential unit in the project of the respondents namely "Pratham Apartments" situated in Bawal, Sector 10 A, District Rewari, Haryana . Vide allotment letter dated 10.08.2013 complainant was allotted a unit bearing No. 604 on 6th Floor in Tower 01, admeasuring 765 sq ft. was allotted to the complainant for a total sale consideration of ₹ 21,51,495/- against which he has paid an amount of ₹19,41,584/-; A builder buyer agreement was executed between both the parties on 20.11.2013. As per clause 8.1 of the agreement, possession of the floor was to be delivered within a period of 60 months from the date of execution. Said period expired on 20.11.2018. The respondents were granted a further grace period of 90 days for applying and obtaining the occupation certificate in phases in respect of the different towers of the Group Housing Complex.

In the present complaint, complainant is aggrieved by the fact that despite a lapse of more than 6 years from the proposed deemed date of possession, respondents are not in a position to deliver possession of the booked unit as the construction work is not complete at the project site.

18. Admittedly delivery of possession has been delayed beyond the stipulated period of time. Complainant had booked the floor in question in the year 2013. As per builder buyer agreement dated 20.11.2013, possession of the unit should have been delivered within a period of 60 months from the date of execution of builder buyer agreement. The agreement further provides that the promoter shall be entitled to a grace period of 90 days after expiry of 60 months for filing and pursuing the grant of occupation certificate in respect of different towers of group housing complex. Authority observes that a 90 days grace period was provided in the agreement solely for the purpose of obtaining occupation certificate for the tower. It is a matter of fact that till date the construction works are not complete at the site of the project, thus the respondent is not entitled to a grace period of 90 days. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 90 days cannot be allowed to the promoter. 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 20.11.2018 .

The respondents have submitted that sincere efforts were made to complete the construction of the project and handover possession to the complainant within stipulated time, however, there was a delay in the construction of project delay and subsequent delivery of possession due to force majeure conditions. Respondents have submitted that the National Green Tribunal, New Delhi had put a ban on construction activities in the National Capital Region whereby construction work in the entire NCR was stayed on many occasions which was duly intimated to the complainant. However, respondent has failed to attach a copy of the order of the National Green Tribunal banning the construction activities to substantiate its claim regarding the same. There is no document placed on record to prove as to when and for how much period of time the ban by NGT was imposed on construction due to which the development of the project had been halted. In absence of any proof, benefit of such circumstances cannot be awarded to the respondent. Furthermore, respondent has cited COVID-19 as force majeure condition banning construction activities thus causing a delay in construction of the project. In this regard it is observed that the COVID-19 outbreak hit construction activities post 22nd March 2020, whereas the delivery of possession of the unit in question was to be handed over by 20.11.2018. Therefore, as far as delay in construction due to outbreak of Covid-19 is concerned, respondents cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition. Further, reliance is

placed on judgement passed by 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*"

Respondents cannot be allowed to take the plea of force majeure conditions towards delay caused in construction of the project/delivery of possession as the same did not affect the construction activities at the site of the project during the proposed possession timeline.

19. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 20.11.2018.

However, respondents failed to complete construction of the project and deliver possession within stipulated time. Now even after a lapse of 6 years from the proposed date of delivery of possession the construction of the project is not complete and the respondent is not in a position to handover possession in foreseeable future. Respondents have submitted that the construction of the project is in final stages and that an application for grant of occupation certificate will be filed shortly with the concerned department. However, respondents have failed to give a fixed timeline as to when the possession will be delivered. In such circumstances, complainant cannot be forced to wait further for delivery of possession of the booked unit for an indefinite period of time for a unit for which the allotment and buyer's agreement were executed back in 2013. Complainant in this case does not wish to continue with the project on account of inordinate delay caused in delivery of possession and is hence seeking refund of paid amount along with interest as per RERA Act 2016. 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 and allottees cannot be made to wait for possession for an indefinite period.

20. 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 granting possession as per agreement for sale, the allottee has an unqualified right to seek refund of amounts 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."*

21. The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. The complainant wishes to withdraw from the project of the respondent , therefore, the Authority finds it to be a case fit for allowing refund in favour of the complainant. So, the Authority hereby concludes that complainant is entitled to receive a refund of the paid amount along with interest as per Rule 15 of HRERA Rules 2017 on account of failure on part of the responden. As per Section 18 of the RERA 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"

22. Hence, Authority directs respondent to refund to the complainant the paid amount 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 10.90% (8.90% + 2.00%) from the date amounts were paid till the actual realization of the amount.

23. Authority has got calculated the interest on total paid amount from date of payments till date of order(i.e 29.07.2025) and same is depicted in the table below:

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 29.07.2025 (in ₹)
1.	300000	10.08.2013	391683
2.	216508	23.09.2013	279830
3.	269999	07.11.2013	345338
4.	201545	12.09.2014	239185

5.	118098	27.11.2014	137473
6.	118098	10.02.2015	134828
7.	96609	28.03.2015	108968
8.	96609	02.06.2015	107064
9.	96993	12.08.2015	105433
10.	96993	02.11.2015	103058
11.	97790	12.05.2016	98297
12.	97931	26.09.2016	94433
13.	8031	09.12.2016	7567
14.	126380	18.08.2017	109562
Total= 19,41,584/-			22,62,719/-
Total payable to complainant=19,41,584 + 22,62,719 = 42,04,303/-			

24. Vide relief clause no. (ii) the complainant is seeking payment of ₹ 50,000/- on account of cost and 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 PvT 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

25. Further, vide relief clause no (iv) complainant is seeking cancellation of RERA registration of the project in question, 'Pratham Apartments'. In this regard it is observed that said relief no. (iv) is neither part of pleading nor did the complainant during the entire course of hearing pressed for/agitated for the same. Therefore, no decision is being passed regarding relief no. iv.

F. DIRECTIONS OF THE AUTHORITY

26. 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 @ 10.90% ₹42,04,303/- to the complainant as specified in para 23 of this order. Interest shall be paid up till the time period under section 2(za) i.e till actual realization of amount.

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.

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

CHANDER SHEKHAR
[MEMBER]

DR. GEETA RATHEE SINGH
[MEMBER]