



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no. :	1418 of 2021
Date of filing :	18.01.2022
First date of hearing :	15.03.2022
Date of decision :	29.07.2025

Mr. Puneet Kumar Sharma,  
R/o 2703, Park Royal Residency,  
CHGS Vasudra Plot-1B,  
Sector 22, Dwarka, New Delhi-110077

.....COMPLAINANT

VERSUS

Pardesi Developers Private Limited  
(Formerly known as CMD Pardesi Developers Pvt. Ltd. & Ors.),  
Office at 801, Jackson Crown Heights 3B1,  
Twin District Centre, Sector-10,  
Rohini, Delhi-110088

.....RESPONDENT NO. 1

CMD Built Tech Private Limited,  
Office at 809, IITL Twin Tower,  
Netaji Subhash Place, Pitampura, New Delhi

.....RESPONDENT NO. 2

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

**Member**  
**Member**

**Present: -** None for the Complainant.

Adv. Shubnit Hans, Ld. Counsel for the Respondent No.1.

None for the Respondent No.2.

**ORDER (DR. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint has been filed on 18.01.2022 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, 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:

Sr. No.	Particulars	Details
1.	Name of the project.	Ushay Towers, Kundli
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Registered vide Registration No. RERA-PKL-SNP-140-2019





4.	Details of Unit.	Flat no. 803, 8th Floor, Crescent Tower, Ushay Towers, measuring super area of 1643.75 sq. ft.
5.	Date of Flat/Builder Buyer Agreement	06.04.2010
6.	Possession clause in BBA (Clause 12)	<p><i>"That the company shall endeavour the possession of apartment to Apartment Allottee within 30 months years from the date of sanction of building plans by the authorities subject to the force majeure circumstances and on receipt of all payments punctually as per agreed terms and on receipt of complete payment of the basic sale price and others charges due and payable upto the date of possession according to the payment plan applicable to the allottee. the Company shall issue a final call notice to the Apartment Allottee, requiring them to remit all outstanding dues and take possession of the apartment within 30 days from the date of such notice. In the event the Allottee fails to take possession within the stipulated period, for any reason whatsoever, it shall be deemed that possession has been offered and the Allottee shall be liable to pay maintenance charges and all other applicable levies from the date of such offer. However, physical possession of the apartment shall be</i></p>



		<i>handed over only upon full payment of all dues as demanded by the Company, up to the date of taking possession."</i>
7.	Due date of possession	06.10.2012
8.	Total/Basic sale consideration	Rs. 35,94,001/-
9.	Amount paid by complainant	Rs. 16,57,722/-
10.	Whether occupation certificate received or not.	No occupation certificate placed on record by respondent no.1
11.	Offer of possession	Not Offered

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

3. Case of the complainant is that he had booked an apartment bearing no. 803, 8th Floor, Crescent Tower, measuring super area of 1643.75 sq. ft. in respondent no.2's project, "Ushay Towers", Kundli, Sonipat in the year 2007 for the total sale consideration of Rs. 35,94,001/-, against which an amount of Rs. 16,57,722/- already stands paid.
4. A builder buyer agreement was executed between complainant and respondent no.2 i.e, CMD Built Tech Pvt. Ltd. on 06.04.2010. As per clause 12 of said agreement, respondent no.2 had committed to deliver possession of the unit





within 30 months from the date of sanction of building plans, which comes to 06.10.2012.

5. That in the year 2010, during a personal meeting, complainant was informed that the construction of the project had not commenced due to disputes between respondent no.1 and respondent no.2. It was further assured by respondent no.2 that possession of the allotted unit would be handed over by March of the following year and that no interest would be levied during this period. However, despite project remained in a stagnant condition, the complainant received a demand letter dated 01.09.2012 from the respondent no.2 claiming interest. Furthermore, respondent no.2 did not issue any final call notice for payment of the balance amount and also failed to deliver possession, owing to the fact that construction of the project remains incomplete.
6. After making several follow ups in the year 2014, complainant came to know about the proposed transfer of license of the project 'Ushay Towers' from respondent no. 2 i.e., 'CMD Built Tech Pvt. Ltd.' to respondent no.1 i.e., 'Pardesi Developers Pvt. Ltd.' and accordingly, complainant sent an email dated 08.11.2014 to respondent no.1 after personally visiting the site. Respondent no.1 gave assurance that the possession would be delivered in April 2015.



7. That both respondents willfully concealed the material fact that liquidation proceedings and related litigation had been pending before the Hon'ble Delhi High Court since 2013, culminating in orders passed in 2019. Further, respondent no.1, vide letter dated 09.04.2015, intimated that the project, 'Ushay Towers' was being taken over by it. Subsequently, a fresh demand letter dated 25.05.2015 was issued by respondent no.1 directing the complainant to clear outstanding dues. However, the project remained incomplete and no tangible progress was made towards its completion.
8. Complainant issued a legal notice dated 23.12.2019 to respondent no.2 i.e. 'CMD Built Tech Pvt. Ltd.'; however the same remains unresponded and unacknowledged. The complainant once again visited the project site in 2021 and was shocked to discover that the construction remained incomplete and the site was in an abandoned condition. No final demand letter or possession notice was ever served upon the complainant.
9. From booking of the unit till date, neither of the respondents have ever informed the complainant about any force majeure or any other circumstances which were beyond the reasonable control of the respondents and had led to delay in completion and development of the project within the time stipulated. Both the respondents have miserably failed to complete the project and offer





legal possession of the booked unit complete in all aspects. Therefore, the complainant was left with no other option but to approach this Authority.

10. During the course of hearing, learned counsel for the complainant orally reiterated the averments made in the complaint and further submitted that respondent no.1 had issued a demand letter dated 25.05.2015 for the payment of outstanding dues and later in 2023, a 'possession cum demand letter' dated 04.12.2023 issued directing to pay the outstanding balance. However, the complainant had not honoured any demand letter or offer of possession as the same was not a valid offer of possession. Therefore, the complainant prayed that direction be issued to the respondent no.1 to refund of amount deposited alongwith interest or in alternative offer of possession of the booked unit at the same price as was agreed in the agreement for sale.

**C. RELIEF SOUGHT**

11. That complainant seeks following relief and directions to the respondent:-
- i. That the amount of Rs. 16,57,722/- paid by the complainant towards the project should be refunded along with 18% interest from the date of commencement of payment of regular instalment by the Complainant i.e 02.03.2007.
  - ii. Alternatively, the possession of the unit/flat no. 803 in Crescent Tower under Ushay Towers project in Kundli, Haryana the project promised



flats to the complainant should be handed over to the Complainant. The Complainant is ready to pay the remaining amount Rs. 15,17,451/- as pre-fixed during the time of agreement and the interest levied of amount Rs. 12,68,000/- should be removed. This amount to be born shall be free from any interest and encumbrances.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO.1**

Learned Counsel for respondent no.1 filed reply on 11.03.2022, pleading therein:

12. The project 'Ushay Towers' was being developed by the respondent no. 2 according to builder buyer agreement and the same was executed between complainant and respondent no.2. Further, the complainant paid the booking amount to respondent no.2 and all the records were kept by respondent no.2, hence it is the responsibility of respondent no.2. Furthermore, respondent no. 2 i.e., M/s CMD Built Tech Pt. Ltd. is a separate legal entity.
13. As per the joint venture agreement dated 29.06.2006 and Memorandum of Understanding(MoU) dated 04.07.2009 executed between respondent no.1 and respondent no.2, respondent no.1 was carrying out the development work in the project in question on its share of 12 towers and the booking of the unit of complainant is in Tower Crescent which was under the share of respondent no.2. Further, the project "Ushay Tower" is ready and occupation





certificate for 10 towers has already been obtained and possession has also been handed over to the respective customers. Further, Tower Crescent in which the unit of the complainant is situated, is ready in all respects and an occupation certificate has been applied by respondent no.1 before the concerned department on 26.05.2021 and copy of application is annexed at page no. 49 of the reply.

14. Complainant has defaulted payment plans as he did not adhere to it as per terms of the builder buyer agreement, wherein the 96% of payment was to be paid within 27 months from the initial booking of the unit and remaining 4% of payment to be paid at the time of possession. However, the complainant paid only approximately 50% of the cost upto 2008 and thereafter stopped making further payments despite repeated reminders.
15. Complainant has not approached this Hon'ble Authority with clean hands, having willfully concealed material facts. It has come to light through respondent no.2 that the complainant had already received a sum of Rs. 10,00,000/- from respondent no.2 towards cancellation of the booked unit. Hence, the complainant is not entitled for the possession of the booked unit and is only liable to refund of the balance amount.
16. The project 'Ushay Towers' was under respondent no.2 i.e., M/S CMD Built Tech Pvt. Ltd. and vide order dated 18.09.2013 in CP-468/2011 the Hon'ble



Delhi High Court took over the project, appointed an official liquidator as custodian of all the assets related to 'Ushay Towers'. The said order referred to above was got modified on an application moved by respondent no.1 and 12 Towers could be got released in terms of order of Hon'ble High Court dated 09.11.2017 and finally winding up petition was withdrawn on 12.02.2019.

17. During hearing, ld. counsel for respondent no.1 apprised the Authority that respondent no. 1 had no control/involvement in Tower Crescent prior to the date 12.02.2019 i.e., on which the petition was withdrawn before the Hon'ble Delhi High Court. In short, a joint reading of joint venture agreement of 2006 and MoU of 2009, acts as a legal shield for respondent no. 1. The agreement clearly confirms that respondent no. 2 bears sole responsibility for any legal encumbrances or litigation pertaining to the project land. It precludes the complainant from transferring the burden of dues or compensation onto respondent no.1, particularly in matters concerning Tower Crescent. It establishes that said tower remained outside the control and authority of respondent no.1 until 2019, and as such, no liability can be fastened upon respondent no.1 for any events occurring prior to that period.





**E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY**

18. Facts set out in the preceding paragraphs demonstrate that admittedly the complainant booked an apartment bearing No. 803, 8<sup>th</sup> Floor, Crescent Tower measuring super area of 1643,75 Sq. Ft. in the real estate project namely "Ushay Tower" located at Kundli at Sonapat that was been developed by respondent no. 2 in the year 2007.
19. The main grouse of the complaint is that despite making payment of Rs. 16,57,722/- in regular installment from 2007 to 2008 against the total sale consideration of Rs. 37,52,950/- complainant has till date neither being offered possession of the unit nor has the amount paid by him been refunded back. Hence, aggrieved by this fact complainant has filed the present complaint seeking relief of refund the amount paid alongwith interest or in alternative possession of the unit along with interest for the delay caused.
20. In the caption complaint, complainant has impleaded Pardesi Developers Private Limited (Formally known as CMD Pardesi Developers) as respondent no. 1 and CMD Built Tech. Private Limited as respondent no. 2. Reply has been filed on 11.03.2022 on behalf of respondent no.1 . Whereas, no reply till date has been filed on behalf of respondent no. 2 i.e. CMD Built Tech. Private Ltd, neither has respondent no. 2 been represented through any counsel, therefore, respondent no. 2 is proceeded against ex-parte.



21. In the present case, Authority observes that the complainant Mr. Puneet Kumar Sharma S/o Sh. V.K.Sharma executed a flat buyer agreement with respondent no. 2, CMD Buildtech Private Limited on 06.04.2010, whereby the respondent no. 2 accepted the application of the complainant/allottee and allotted him apartment no. 803, having an approximate super area of 1643.75 Sq. Fts. in Tower Crescent, which is a part of "Ushay Towers Project" located at Kundli, Sonapat. As per Clause 5(a) of this agreement for sale, respondent no. 2 admitted the fact that the complainant has already paid a sum of Rs.16,57,722/-. Respondent no. 2 at clause 12 of the said agreement also agreed to offer the possession of the apartment within 30 months from the date of sanctions of building plans. In the absence of information regarding sanctioning of building plans, Authority deems it appropriate to rely on the date of execution of agreement for sale to compute the deem date of possession. The agreement for sale was executed on 06.04.2010, 30 months from the date of agreement for sale comes to 06.10.2012, respondent no. 2 should have accordingly delivered the unit by 06.10.2012. It is a matter of fact that till date complainant has not received the possession of the said apartment.
22. Complainant in his complaint has alleged that respondent no. 1 i.e. Pardesi Developers Private Limited has taken over the project from respondent no. 2





i.e.CMD Buildtech Pvt.Ltd., meaning thereby that respondent no. 1 has stepped into the shoes of respondent no. 2 and is liable to discharge all the obligations pending towards complainant.

23. Rebutting these allegations made by complainant, respondent no. 1 in its reply has averred that the real estate project "Ushay Tower" was launched by respondent no. 2, flat buyer agreement dated 06.04.2010 was executed between the complainant and respondent no. 2, and also all the sale consideration amounts were received by respondent no. 2 in its account. Thus, the privity of contract was only between complainant and Respondent no. 2 CMD Buildtech Private Ltd., respondent no. 1 is a separate legal entity and is alien to this contract. Since, there is no privity of contract between the complainant and respondent no. 1, it has no obligation to discharge towards the complainant.
24. Respondent No. 1 has further averred that vide the joint venture agreement dated 29.09.2006, respondent no. 1 and respondent no. 2 envisaged the distribution of towers among respondent no. 1 who was in possession and control of 12 towers and respondent no. 2 was in possession/power control of 5 towers which included tower of Crescent where the unit of complainant is situated. The joint venture agreement further casts the liability of the respective tower with the company in possession of them. Therefore, all the



liabilities to complete the Crescent Tower and handing over the possession of the unit are of respondent no. 2.

25. In this regard, Authority observes that Joint Venture Agreement reflecting shares of towers in "Ushay Towers" between respondent no. 1 and respondent no. 2 pertains to 29.09.2006. However, lot of water had flown under the bridge since the year 2006. In fact, subsequently, respondent no. 1 vide letter dated 09.01.2015 had informed the complainant that it has taken over the "Ushay Tower" project situated at Sector 61, Kundli (Sonapat) by way of transfer of Licence to respondent no. 1 through Director General, Town and Country Planning Department. Now "Ushay Tower Project" totally will be developed by the Pradesi Developer Pvt. Ltd. (Respondent No. 1). Vide this letter, respondent no. 1 also requested the complainant to pay his outstanding dues with interest, if any, in favour of the respondent No. 1. Thereafter, respondent no. 1 issued a demand letter dated 25.05.2015 requesting the complainant to pay a balance due amount of Rs.28,53,873/- which was inclusive of an interest of Rs. 12,68,000/-. Vide this said demand letter also respondent no. 1 informed the complainant to pay the amounts via cheque/demand draft/P.O in favour of respondent no. 1, M/s CMD Pardesi Development Pvt. Ltd.. Meaning thereby that respondent no. 1 had clearly communicated to complainant in the year 2015 that it has taken over the





project "Ushay Tower, shall complete the entire project and it shall be collecting payment from the complainant allottee for the allotted unit. Subsequently, during pendency of this complaint also, respondent no. 1 issued a letter dated 04.12.2023, to complainant stating therein that "This is in reference to your booking of 3 BHK Flat No. 803 on 8<sup>th</sup> Floor in Crescent "Ushay Tower Project" situated at Sector-61, main G.T. Road, NH-I Village Rashoi, Kundli, Sonapat. There is an outstanding amount against your flat as per below given details. It is requested to deposit the due amount and take possession". A conjoint reading of letter dated 09.04.2015, demand letter dated 25.05.2015 and possession letter-cum-demand letter dated 04.12.2023 establishes the fact that from 09.04.2015 onwards respondent no. 1 had taken over the entire 'Ushay Tower' Project including Crescent Tower, where the unit of complainant is situated and stepped into the shoes of respondent no. 2 for all intents and purposes. In view of this observations, there remain no ambiguity that there exists a promoter/allottee relationship between the complainant and respondent no. 1 and after communicating the factum of taking over the project to complainant, respondent no. 1 become liable for discharge of all obligation towards the complainant as per agreement for sale dated 06.04.2010.



26. Authority, further observes that vide letter dated 26.05.2001 to Director General, Town and Country Planning Department, Haryana, respondent no.1 submitted an application for grant of Occupation Certificate for Tower Crescent. This letter of respondent no. 1 to DTCP further corroborates two facts, one that respondent no. 1 had stepped into the shoes of respondent no. 2 for the purpose of completion of the project for Crescent Tower and secondly, that the unit of the complainant was not fit for offering possession even on 26.05.2021 i.e. after more than 8 ½ years lapse of deemed date of possession on 06.10.2012.
27. There is no document placed on record placed by respondent no. 1 to prove that competent authority had granted occupation certificate for Crescent Tower. Therefore, even as on date the respondent no. 1 is not competent to offer a legally valid offer of possession to the complainant. The counsel for complainant during the proceedings had stated that the complainant is willing to accept the possession of the unit only if respondent no. 1 had already obtained occupation certificate for the crescent tower and also if respondent no. 1 forgoes the interest levied by on the complainant, else, the complainant is only interested in refund of amount paid by it alongwith interest.

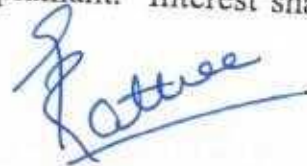
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28. Authority observes that the respondent no. 1 who has stepped into shoes of respondent no. 2 has failed to handover the legal and valid possession to complainant as per agreement for sale, complainant is well within its right to either seek refund of the amount alongwith interest or possession of the unit alongwith interest. For delay in the present case, Authority observes that since occupation certificate has not yet been granted by the competent authority and the complainant does not wish to accept the possession without occupation certificate. Authority deems it appropriate to allow refund of the paid amount alongwith interest to complainant as per Section 18(1) of the RERA Act, 2016.
29. Authority observes that there is a dispute between the complainant and the respondent no. 1 with respect to the total amount deposited by complainant against the unit. The complainant has alleged that it has paid the total amount of Rs. 16,57,722/- towards the unit and therefore, this entire amount be refunded alongwith interest. Whereas, it is contention of respondent no. 1 that respondent no. 2 had refunded an amount of Rs. 10,00,000/- (Ten lacs) to the complainant. To adjudicate this issue, Authority has pursued the letter dated 31.12.2011 relied upon by respondent no. 1. This letter was issued by respondent no. 2, certifying that he has received an amount of Rs. 16,57,722/- from Mr. Puneet Kumar Sharma for a booking of 3 BHK Flat in



their group housing project name (Ushay Tower). This letter further states "On the request of client" they have adjusted the amount of Rs. 10,00,000/- from the booking against outstanding payment payable to their sister concern i.e. M/s Narula Industries Pvt.Ltd. and that the client has Rs. 6,57,722/- in this booking amount. On perusal of this letter, it is observed that this letter is neither addressed to the complainant nor is there any proof to establish the fact this letter was ever communicated to the complainant. Also, there is no request letter by complainant placed on record by respondent no. 1 or respondent no. 2 to prove that the complainant ever requested to respondent no. 2 to adjust Rs. 10,00,000/- from the booking to M/s Narula Pvt. Ltd. In such circumstances, the veracity of the documents is highly questionable and therefore the same cannot be relied upon. Further, it is observed that the respondent no. 1 in its demand letter dated 25.05.1015, which is subsequent to the above letter dated 31.12.2011, has mentioned that it has received an amount of Rs.16,57,722/- from complainant meaning thereby that vide demand letter, respondent no. 1 has acknowledged the fact that as per their accounts books Rs. 16,57,722/- stands deposited in the unit account of the complainant. In view of the above, the Authority has no hesitation in recording that the respondent no. 1 is liable to refund an amount of Rs. 16,57,722/- alongwith interest to the complainant. Interest shall be





paid as prescribed under Rule-15 of Haryana Real Estate Regulatory Authority, Rules, 2017. 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 (MCLR) 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".."*

30. 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 of order i.e., 29.07.2025 is 8.90%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. **10.90%**.
31. Hence, Authority directs respondent to refund the paid amount to the complainant along with interest at the rate of 10.90% (8.90% + 2.00%) till the actual realization of the amount.
32. Authority has got calculated the interest on total paid amount which works out to Rs. 30,84,123/- as per detail given in the table below:

It is pertinent to mention here that complainant claims to have paid an amount of Rs 16,57,722/- . In support of it, bank statement has been placed on record as Annexure-B of complaint. In said statement, proof of only two amounts (Rs 5,42,437+Rs 8,65,285=Rs 14,07,722) are given, i.e., an amount of Rs 5,42,437/- paid on 23.04.2007 and amount of Rs 8,65,285/- paid on 11.10.2008. However, total paid amount of Rs 16,57,722/- has been duly admitted in clause 5 (a) the builder buyer agreement dated 06.04.2010.





Therefore, difference in remaining/balance amount, i.e. Rs 2,50,000/- (1657722-1407722), is taken/presumed to be paid on 06.04.2010 and interest on it is awarded accordingly.

Sr. No.	Principal Amount (in Rs. )	Date of payment	Interest Accrued till 29.07.2025 (in Rs. )
1.	5,42,437/-	23.04.2007	10,80,946/-
2.	8,65,285/-	11.10.2008	15,85,543/-
3.	2,50,000/-	06.04.2010	4,17,634/-
Total	Rs 16,57,722/-		30,84,123/-

#### F. DIRECTIONS OF THE AUTHORITY


33. 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 paid amount of Rs 16,57,722/- alongwith interest of Rs 30,84,123/- to the complainant. Interest shall be paid up till the time period as provided under section 2(z) of RERA Act, 2016 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.

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

  
CHANDER SHEKHAR  
[MEMBER]

  
DR. GEETA RATHEE SINGH  
[MEMBER]