



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	982 of 2023
Date of filing:	04.05.2023
First date of hearing:	12.07.2023
Date of decision:	26.05.2025

Mr. Parvesh Siwach S/o Late Sh. Piru Ram Siwach,
R/O HNo. 54, Sector-4,
Rohtak-124001, Haryana

....COMPLAINANT No. 1

Mr. Parteek Siwach S/o Late Sh. Piru Ram Siwach,
R/O HNo. 54, Sector-4,
Rohtak-124001, Haryana

....COMPLAINANT No. 2

Mrs. Rajesh Devi W/o Late Sh. Piru Ram Siwach,
R/O HNo. 54, Sector-4,
Rohtak-124001, Haryana

....COMPLAINANT No. 3

VERSUS

M/s Omaxe Limited

Corporate Office:-

7, Local Shopping Centre,
Kalkaji, New Delhi-110019
Registered Office:-

Shop No. 19-B, First Floor,
Omaxe Celebration Mall, Sohna Road,
Gurugram-122001, Haryana

...RESPONDENT

CORAM: **NadimAkhtar** **Member**
 ChanderShekhar **Member**

Present: - Mr. Parveen Kumar, Id. counsel for the complainants.
 Mr. Arjun Sharma, Id. counsel for the respondent through
 VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 04.05.2023 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 there under, 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 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	Omaxe City Location: Sector 26 & 28, Rohtak, Haryana.



2.	Name of promoter	Omaxe Limited
3.	Date of booking	01.08.2009
4.	Unit area	500 sq. yards as per complainant.
5.	Date of allotment	Allotment made through BBA on 18.04.2011
6.	Date of builder buyer agreement	18.04.2011
7.	Basic Sale Price	₹25,80,550/- as per complainant in aggregate.
8.	Amount paid by the complainant	₹ 30,55,500/-.
9.	Due date of possession	As per clause 23 of BBA, within 18 months from date of signing the Buyer's Agreement or within extended period of 6 months.
10.	Offer of possession	24.09.2015

B. FACTS AS STATED IN THE COMPLAINT:-

3. That that father of complainants no. 1 & 2 and husband of complainant no. 3 i.e., Sh. Piru (Peeru) Ram Siwach (now deceased) had booked a residential plot in the project floated by the company of respondent. As the allottee Sh. Piru Ram Siwach died on dated 06.10.2015, the petitioners being the legal heirs are filing the present complaint before the authority. The death certificate of allottee is annexed as Annexure-1.
4. That the allottee was allotted a plot in the respondent's project bearing plot number 82 (customer code ROHP/512) admeasuring 418.0602 sq.

mtrs. or 500 Sq. yards in Omaxe City, Sector 26 & 28, Rohtak, Haryana. The said plot was allotted @ Rs. 5023/- (Five Thousand Twenty-Three only) per square meter or Rs. 4200/- (Four thousand Two Hundred only) per sq. yard totaling ₹21,00,000/- (Twenty-One lakh only) plus additional charges and preferential location charges as applicable to the said plot, as mentioned in the payment plan. The aforementioned details are mentioned in the Buyer's Agreement which is annexed as Annexure-2.

5. That as per the opted payment plan, the allottee agreed to pay ₹21,00,000/- (Twenty-One Lakh only) against the cost of the plot. In addition to the said cost, the allottee was under an obligation to pay an amount of ₹5,00,000/- (Five Lakh only) towards the EDC amount and ₹85,550/- (Eighty-Five thousand Five Hundred and Fifty only) towards PLC charges. In the aggregate amounting to ₹25,80,500/- was mutually fixed as the final cost of the said plot as per the Buyer's Agreement.
6. That the Buyer's Agreement was duly executed between the allottee and respondent on 18.04.2011. As per the payment plan the allottee paid ₹4,00,000/- (Four Lakhs only) vide Receipt Id 368746 dated 01.08.2009, ₹20,70,000/- (twenty lakhs seventy thousand only) vide Receipt Id 389044 dated 11.09.2009, ₹1,10,500/- (One lakh Ten Thousand five hundred only) vide Receipt Id 421367 dated 22.03.2010. In total the allottee paid ₹25,80,500/- as promised and nothing was left due on



allottee's part regarding the payment of said plot. Copies of receipts are annexed as Annexure-3.

7. That on 20.05.2011, the respondents raised an unreasonable demand of ₹4,75,000/- (Four Lakh Seventy-Five Thousand only) on pretext of External Development Charges & Infrastructure Development Charges. The allottee was not left with any other option but to abide by the unruly and unreasonable demands of the respondent. Thus, in order to prevent cancellation of the said plot the allottee agreed to pay the abovementioned amount and on 13.06.2011. The allottee paid the said amount vide cheque and the corresponding receipt is annexed as Annexure-4.
8. That the allottee was compelled to pay a total amount of ₹30,55,500/- (Thirty lakh fifty-five thousand five hundred only) even before signing of the Buyer's Agreement which amounts to gross violations of provisions mentioned under Section 13 of RERA Act, 2016 which allows the promoter to accept an amount of not more than 10% of the cost of the apartment, plot, building before the signing of Buyer's Agreement.
9. That as per Clause 23 of Buyer's Agreement executed between the parties, the developer promised to offer the actual possession of the said plot within a period of 18 months from the date of signing the Buyer's Agreement, i.e., 17.10.2012 or within extended period of 6 months (Total 24 months), i.e., 17.04.2013.



10. That the respondent sent a letter dated 27.03.2018 regarding the execution of sale deed/conveyance deed of unit no. "ROHP/82". The copy of same is annexed as Annexure-5. That on 02.05.2018, the respondent sent a reminder notice offering the possession of the said plot. The notice was titled as "Ref. Residential Plot No. ROHP/82 admeasuring approx. 677.04 sq. mtrs (809.74 sq yards approx) in Omaxe City- Rohtak. Haryana". The notice was accompanied with an Annexure bearing the statement of account regarding the above said plot under which the basic sale price was mentioned as ₹55,01,883.70 and the total amount payable against the said plot as ₹75,71,641.44 only. Copy of same is annexed as Annexure-6.
11. The respondent again sent a notice bearing the same contents on dated 06.06.2018. However, the annexure appended with the notice mentioned the total amount payable against the said plot as ₹76,90,239/- only. The copy of same is annexed as Annexure-7.
12. That on 28.06.2018, the respondent sent a notice regarding the cancellation of the said plot on account of failure of the allottees to abide by the terms of the previous notices sent by them. The copy of same is annexed as Annexure-8.
13. That despite the delay of approx. 5 years in offering the possession of the said plot, the respondent deliberately and unilaterally increased the size of the plot from 418.0602 sq. mtrs or 500 Sq. yards to 809.74 sq. yards.



This amounts to gross violations in the terms agreed upon by the parties in the buyer's agreement as the size of plot was unreasonably increased to approx. 50% of the actual area promised during the execution of buyer's agreement.

14. The complainants came to know about the increase in the area of the said residential plot and the subsequent cancellation notice when applicant no.1 went to his native village for some marriage function where he was handed over these documents which were sent by the respondent.
15. That the complainants also sent a legal notice to the respondent through his counsel on dated 20.01.2023 stating in detail the facts of the case and more particularly the relief sought but the respondent rather than addressing the grievance of the complainant and protecting his rights sent reply to the said legal notice on 28.02.2023 where the respondent gave a vague reply and denied the locus standi of the abovementioned complainants. The legal notice dated 20.01.2023 is annexed as Annexure-9 and the reply dated 28.02.2023 as Annexure-10.

C. RELIEFS SOUGHT:-

16. Complainants in their complaint have sought following reliefs:
 - (i) The cancellation notice dated 28.06.2018 for residential plot no. 82 be set aside being illegal and based on mala fide acts of the respondent.



- (ii) To deliver/ handover the possession of the plot admeasuring 418.06 sq. mtrs or 500 sq. yards as per the buyer's agreement executed between the parties with interest on the payment made owing to the delayed possession of the plot as per RERA rules. (The cause of action accruing from 17.04.2013)
- (iii) That in event the abovementioned plot is sold to someone else, respondent be directed to allot afresh a new unit/plot bearing same characteristics of location, size and dimension etc., from their inventory.
- (iv) That the respondent be directed to pay ₹75,000/- as litigation expenses to the complainants.
- (v) To pay an amount of ₹1,00,000/- to the complainant on account of financial loss, harassment, and mental agony.
- (vi) Or any other order which the authority may deem fit and proper in the interest of justice be passed in favour of the complainants and against the respondents.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS:-

17. Learned counsel for the respondent filed a detailed reply on 19.10.2023 pleading therein as under :-

- (i) That the Petitioners claiming themselves to be the Legal Heirs of Late Sh. Peeru Ram Siwach have filed the present complaint, inter-alia,



seeking setting aside of cancellation notice dated 28th June 2018, issued by the Respondent, qua plot no.82 situated at Omaxe City, Sector 26 & 28, Rohtak, Haryana (hereinafter referred to as the 'plot in question') and further, direction is being sought to deliver/handover the possession of said plot in question as per the Buyer's Agreement dated 18 April, 2011 executed between the Respondent Company & Late Sh. Pccru Ram Siwach. Since, admittedly the Petitioners are seeking setting aside of cancellation notice dated 28th June 2018, therefore, in the humble submission of the Respondent, the present complaint is barred by limitation. Though there is no limitation period prescribed under the Real Estate (Regulation & Development) Act, 2016, (hereinafter referred to as the '2016 Act') for filing the complaint, however, section 88 of the 2016 Act clearly states that the provision of 2016 Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. Admittedly, in the present case, the plot in question stands cancelled vide cancellation letter dated 28th June 2018 and the present complaint has been filed on 22nd April, 2023 i.e. after almost 5 years from the date of cancellation. That even under the civil law, limitation period to file suit for recovery is 3 years from the date of cause of action and any suit filed thereafter is barred by limitation and, as such, is liable to be dismissed. Since, in the present case, the cause of action arose on 28th June, 2018, i.e., when the Respondent cancelled the



allotment but the present complaint having been filed on 22nd April, 2023, i.e., after almost 5 years from the said cancellation, therefore, the present complaint is time barred and, as such, deserves to be dismissed on this short ground itself.

(ii) That without prejudice to the above submissions, even otherwise, the Respondent Company before cancelling the allotment vide letter dated 28th June, 2018, Annexure 8, sent various reminders, telephonically as well as in writing, to the allottee for paying the due amount and for executing & registering the sale deed (Annexure 5 to Annexure 7 annexed by the Petitioners with their complaint). Since, there was no correspondence on behalf of the Late Sh. Peeru Ram Siwach, the Respondent Company had no option but to cancel the allotment of said plot in question, made in favour of Late Sh. Peeru Ram Siwach. Further, on 07th July 2018, the Respondent Company also issued advertisement in all leading newspapers informing about cancellation of allotment of the plot in question in favour of Late Sh. Peeru Ram Siwach. Thereafter, in August, 2018 the plot in question was sold to new owner Smt. Vijay Laxmi and in February 2019, conveyance deed qua the said plot in question was also executed in her favour.

(iii) That the plot in question was booked by Late Sh. Peeru Ram Siwach in August 2009 by paying an amount of ₹4,00,000/-. The total cost of plot in question was ₹27,30,500/- including additional charges. Since, the



payment schedule adopted by Late Sh. Peeru Ram Siwach was down payment, as per which the next payment was supposed to be paid within 60 days from the date of booking, therefore, on 11th September, 2009, an amount of ₹20,70,000/- was paid by the allottee towards next installment. Thereafter, on 22nd March, 2010 another payment of Rs.1,10,500/- was made by the allottee. On 18th April, 2011 Builder Buyer Agreement was executed between the parties. Further, on 11th June, 2011, the allottee paid an amount of ₹4,75,000/- towards EDC. Later in the year 2013, in terms of clause 8 of the builder buyer agreement, the area of plot was revised to 809.74 square yards from 500 square yards. Accordingly, on 24th September, 2015, the Respondent issued offer of possession with revised area of 809.74 square yard & revised total cost of ₹74,22,747/- to Late Sh. Peeru Ram Siwach. As per the said letter dated 24th September, 2015, the total amount that was to be paid by the allottee was ₹43,92,132/- (inclusive of interest of ₹24,885/-), however, the allottee did not make the said payment. Thereafter, many reminders were sent to Late Sh. Peeru Ram Siwach before cancelling the allotment vide letter dated 28th June, 2018.

- (iv) That thereafter legal notice dated 20th January, 2023 was received by the Respondent Company, served on behalf of Petitioner No.1, whereby Petitioner No.1 while seeking possession of plot in question, inter-alia, informed the Respondent Company that Late Sh. Peeru Ram Siwach



expired on 06th October, 2015 and that possession was delayed and the area was increased wrongly. The said legal notice was duly replied by the Respondent Company vide its reply dated 28th February, 2023 and it was inter-alia informed to Petitioner No.1 that plot in question was cancelled after issuing various reminders and that the said plot, after cancellation, has already been sold to a new buyer. Further, it was also stated that the Respondent Company was never informed or communicated about the demise of Sh. Peeru Ram Siwach, prior to issuance of the afore-mentioned legal notice. Still further, the Respondent Company also informed Petitioner No.1 that area of plot in question was increased from 500 square yards to 809.74 square yards in terms of clause 8 of the Buyer's Agreement and that vide letter dated 24th September, 2015, offer of possession with revised area and the outstanding due amount was also made to Sh. Peeru Ram Siwach. However, no payment was made and accordingly, after sending various reminders the plot in question was cancelled vide letter dated 28th June, 2018. That on 07th July, 2018, the Respondent Company also issued advertisement in all leading newspapers informing about cancellation of allotment of the plot in question in favour of Late Sh. Peeru Ram Siwach. Also it was stated that the claims of Petitioner No.1 were even otherwise barred by limitation.



E. DOCUMENT SUBMITTED BY RESPONDENT:-

18. Application for placing on record the relevant documents has been filed by the respondent's counsel on 12.12.2023. In compliance of order dated 18.11.2023, complainants filed an application dated 27.02.2025 for placing on record Legal Heir Certificate and other documents.

F. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENTS:-

19. During oral arguments, ld. counsel for the complainants reiterated the facts of the complaint. Learned counsel for complainants submitted that the complainants had paid a sum ₹30,55,500/- to the respondents till date. They further filed Legal Heir Certificate in the Authority on 27.02.2025. Ld. counsel for the respondent stated that complainants have not complied with the orders of Authority regarding placing on record the documents showing efforts made by the complainants to seek possession. He further argued that since the plot has been cancelled by following due process and has further been allotted to subsequent allottee, the plot in question is not available and hence, request of complainants be rejected.

G. ISSUES FOR ADJUDICATION:-

20. Whether the complainants are entitled to get the possession of booked plot along with delay interest in terms of Section 18 of Act of 2016?



H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY:-

21. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes as follows:

(i) Respondent has taken a preliminary objection that complaint is grossly barred by limitation. In this regard, Authority places reliance upon the judgment of Apex Court in Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** where it has been held that Indian Limitation Act deals with applicability to courts and not tribunals. Further, RERA Act is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the Limitation Act, 1963 would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority set up under that Act being quasi-judicial and not a Court. The promoter has till date failed to fulfill its obligations because of which the cause of action is re-occurring.

(ii) Factual matrix of the case is that admittedly, father of Complainants no. 1 & 2 and husband of Complainant no. 3, i.e., Sh. Piru (Peeru) Ram Siwach (now deceased) had booked a residential plot in the project floated by the company of respondent by paying ₹4,00,000/- through cheque as booking amount. The allottee made the remaining payment of ₹20,70,000/- on 11.09.2009. On 18.04.2011, BBA was



executed between the parties. On 13.06.2011, the allottee made a payment against the revised EDC and IDC. Till date, complainant had paid total sum of ₹30,55,500/-. The allottee died on 06.10.2015.

(iii) That in the present complaint, question relating to total cost of the plot of an area 500 sq yards has been raised by the respondent. As mentioned in pleadings, the total cost of plot was ₹25,80,500/- including additional charges. However, respondent in his reply and averments has mentioned that the total cost of the plot was ₹27,30,500/-. Annexure-3 of the complaint also contains payment plan in which the total cost of plot is mentioned as ₹27,30,500/-. Further in reminders issued by the respondent on 29.09.2009 & 02.11.2009 for due installments, the total cost of the plot is also mentioned as ₹27,30,500/-. In this reference, complainants have not placed on record any document in which they objected to the total cost of plot. In view of the same, the total price of the plot of an area of 500 sq. yards is considered as ₹27,30,500/-.

(iv) That Complainants have averred that the respondent has deliberately and unilaterally increased the size of the plot from 500 sq. yards to 809 sq. yards. In this regards, clause 8 of BBA is reproduced below:-

"That it is further understood and agreed by the Buyer(s) that the area of the said Plot given in this Agreement is tentative and subject to change as per direction of the Sanctioning Authority or Archi-tect or Structural Engineers of the Company which may result in change (decrease/increase) in the area of the said Plot,



change in its dimension, size, location, number, boundaries etc. The final size, location, number, boundaries etc. shall be confirmed by the Company on completion of development of the Project. In case of increase in the allotted area of the said Plot, the Buyer(s) shall pay for the initial 10% of increase in area at the rate of booking of the said Plot and shall pay for balance increased area at the then prevailing company's rate/ market rate. In case of decrease of the allotted area of the said Plot, the amount received in excess over and above the total cost of the said Plot based on the changed area, shall be refunded / adjusted (as the may be) by the Company to the Buyer(s) along with interest @ 10% p.a."

It is very clear from the above said clause that the area of the said plot is tentative in nature and it can be increased and decreased as per approval of the Competent Authority. It is pertinent to mention here that as per Annexure R-1 of the documents placed on record by the respondent, it is evident that on 24.09.2015, respondent had issued an offer of possession of the said plot with revised area and for the payments of outstanding due amount as per increase area but after that complainants have not placed on record any rebuttal which they made to the respondent w.r.t. increase area. Complainants in their complaint have also nowhere mentioned about the communication made to protest the increase in area.

(v) Complainants also made averments with regard to the cancellation notice of the said plot. In this reference, Authority observes that after the offer of possession, respondent had issued various reminders dated 05.12.2015, 27.03.2018 and 02.05.2018 for due payments of the said plot as per revised area but no response of these reminder letters was sent by the complainants to the respondent. Ultimately, on 28.06.2018,

respondent had cancelled the above said plot and issued an advertisement in all leading newspaper which clearly shows the bonafide of respondent that in cancellation of allotment of plot on account of the default of the complainants. Even after issuance of public notice, complainants did not approach to the respondent for setting aside the cancellation. After sufficient publications of cancellation of allotted plot, the respondent re-allotted the same plot to a third party and got executed Conveyance Deed. Hence, the cancellation is valid as no communication was made by the complainants with the respondent which shows the intention of the complainants to not to perform their duties.

(vi) Complainants had issued a legal notice to the respondent on 20.01.2023 seeking possession of the plot. The said notice was duly replied by the respondent on 28.02.2023. It is pertinent to mention here that complainants had issued the legal notice after the delay of 5 years. Between 2018 to 2023, complainants had not made any communication with the respondent. Respondent has contended that he did not know the death of the allottee in the year 2015. Complainants have not attached any documents which shows that they communicated with respondent about the death of the allottee and requested for endorsement of plot in their names. The delay of eight years, i.e., from the death of allottee till the date of sending legal notice is unexplained.



(vii) Authority vide its orders dated 22.07.2023, 18.11.2024 and 17.03.2025 directed the complainants :-

- a. To place on record the documents proving that complainant has responded to the documents annexed by the respondent, showing held with the complainant with regard to the project in question.
- b. To place on record the documents showing efforts taken by the complainant to seek possession from the respondent specifically from the period of cancellation of the unit of complainant in the year 2018 till the year 2023, when this captioned complaint was filed, in next four weeks from today, with an advance copy supplied to the opposite party.

Despite of 3 opportunities, complainants have failed to comply with the orders of the Authority which clearly shows the default on the part of the complainants. It is established that the complainants were issued a offer of possession on 24.09.2015 of the said plot with revised area and thereafter, there was complete silence between the years 2015 to 2023, from the complainants. Now, the complainants have chosen to file this complaint seeking possession after the unit has been cancelled by the respondent in the year 2018 and already re-allotted to third party. Cause of action, if any, arose to complainants at the time when offer of possession dated 24.09.2015 was issued by the respondent. However, complainants remained silent over their rights to agitate upon same till



year 2023 and hence are not entitled for the reliefs sought. In support, reliance is placed upon judgement dated 18.04.2024 passed by **Hon'ble Apex Court in Civil Appeal nos. 5027 of 2024 (@ Special leave Petition (civil) no. 30152 of 2018) Mrinmoy Maity versus Chhanda Koley and others**. Relevant part of the judgement is reproduced below for reference:-

"9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

Also, Prima facie complainants have failed to show how the demands raised by respondent were not in consonance to the terms and condition of BBA. Furthermore, complainants have also not placed even a single document which shows that after passing due date of possession or even after receiving offer of possession in the year 2015, complainants had contacted the respondent and conveyed their intention to continue with the project. However, in the present case, complainants even did not demanded refund when the unit was cancelled after following due



process. Complainants in the present case did not refused the offer of possession nor did demanded for refund of amount paid within the period as provided under Section 19(10). Though the complainants have chosen to continue with the project but the said plot has already been allotted to third party on the default of complainants itself. Therefore, at this stage complainants-allottees cannot be allowed possession and prayer of complainants for passing order for possession is declined. However, this is without prejudice to other rights of allottees including refund along with interest and compensation as per provisions of RERA Act, 2016.

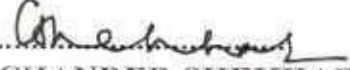
(viii) Consequent upon the considerable consideration, the Authority is constrained to conclude that the present complaint is nothing but an ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act, 2016 is a beneficial/social legislation enacted by the Parliament to put a check on the malpractices prevailing in the real estate sector and to address the grievance of the allottees who have suffered due to the dominant position of the promoter. However, it is a moral obligation on part of a complainants to invoke the provisions of this Act with a clear and bona-fide intent and not as a tool/instrument for enrichment.

22. Thus, Authority decides to dispose of the captioned **complaint** as **dismissed**. The complaint is accordingly disposed of in view of above



terms. File be consigned to the record room after uploading of the order on the website of the Authority.

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


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]

