



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	150 of 2024
Date of filing.:	23.02.2024
First date of hearing.:	28.05.2024
Date of decision.:	11.11.2025

Madhu Thakur w/o Sh. Umesh Kumar
R/o 201-A, New Colony,
Gurgaon, Haryana

....COMPLAINANT

VERSUS

Parsvnath Developers Ltd,
Regd. Office at Parsvnath Metro Tower,
Near Shahdara Metro Station, Shahdara
Delhi-110032

....RESPONDENT

Present: - Mr.Rahul Yadav, Learned Counsel for the complainant
Ms. Nectu Singh, Learned Counsel for the respondent
through VC

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 23.02.2024 has been filed by 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.	Parsvnath Elite Floors, Parsvnath City, Dharuhera, District Rewari. .
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Unregistered
4.	Date of allotment	14.03.2007
5.	Details of the unit.	B-030-G, 1775 sq. ft.
6.	Date of flat buyer agreement	07.12.2012
7.	Possession clause in flat buyer agreement	Clause 9(a): Developer shall endeavor to complete the construction of Flat within twenty (24) months from the date of commencement of construction on the individual Plot on which the Flat is located with a grace period of six (6) month after receipt of all approvals for commencing and carrying on construction subject to force majeure, restraints or

		restrictions from any courts/Authorities, nonavailability of building materials, disputes with contractors/work force etc. and circumstances beyond the control of the developer and subject to timely payments by the flat buyers. No claim by way of damages/compensation shall lie against the developer in case of delay in handing over possession on account of any of such reasons and the period of construction shall be deemed to be correspondingly extended.
8.	Due date of possession	Not available
8.	Total sale consideration	₹36,15,675/-
9.	Amount paid by complainant	₹7,41,755/-
10.	Offer of possession.	None

**B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT
AS STATED IN THE COMPLAINT**

3. Complainant had booked a unit bearing no. B-030-g, measuring 1775 sq. ft. in a project of the respondent namely, "Parsvnath Elite Floors, Parsvnath City" situated in Dharuhera, Rewari in the year 2012.
4. A flat buyer agreement qua the unit was executed between the parties on 07.02.2012. As per clause 9(a) of the agreement, construction of the unit was to be completed within a period of twenty four (24) months from the



date of commencement of construction on the individual plot on which the unit is located along with a grace period of six (6) months after receipt of all approvals for commencing and carrying on construction subject to force majeure. The total sale consideration of the unit was fixed as ₹ 36,15,675/- against which she has paid an amount of ₹7,41,755/- till date.

5. As per agreement, possession of the unit should have been delivered by 07.05.2015, however, till date, the respondent has 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. It is submitted by the complainant that the construction of the plot on which the unit was to be developed, 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. The construction of the project is stand still and the development works are in doldrum. The project as yet is far from completion.
6. The complainant time and again approached the respondent regarding development and date of completion of the project but the representatives of the respondent always stated that the project will be delivered soon. Complainant sent letters dated 11.03.2014, 30.07.2014, 13.11.2018=9, 18.08.2019 and 06.10.2022 to the respondent, asking the respondent to handover possession but received no response.



7. The respondent is guilty of deficiency in service and has failed to handover the possession of the unit to the complainant within stipulated time. According to Section 18(1) of the Real Estate(Regulation and Development), Act, 2016, the respondent is bound to return the entire amount deposited against the unit by the complainant along with prescribed rate of interest on account of deficiency in service.
8. 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

9. In view of the facts mentioned above, the complainants pray for the following reliefs):-
- i. To direct the respondent to refund the complete amount which has been deposited with the respondent by the complainant with interest from the actual date of deposit of each payment at the rate prescribed under the Act.
 - ii. To direct the respondent to pay ₹ 10,00,000/- to the complainant in the as compensation for mental agony, torture and physical harrasment and inconvenience suffered by the complainant due to conduct of the respondent.



- iii. To direct the respondent to pay ₹ 10,00,000/- to the complainant for indulging into unfair trade practice by the respondent.
- iv. To direct the respondent to pay ₹ 75,000/- to the complainant as litigation expenses.
- v. Any other relief or claim which the Hon'ble Authority deems appropriate.

10. During hearing, Id. counsel for the complainant reiterated the submissions as already made in the complaint file.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 16.09.2024 pleading therein:

11. It is submitted that the present complaint is liable to be dismissed as the Flat Buyer Agreement was executed in the year 2012 i.e., more than 4 years before the Real Estate (Regulation & development Act), 2016 came into force. Therefore, in humble submission of the respondent, the provisions of RERA Act are inapplicable to the present agreement. The RERA Act cannot be said to have retrospective application and impose limits, retrospective.

12. That the present complaint pertains to an un-registered project of the Respondent therefore, in view of the latest judgment by Hon'ble Supreme Court in the case **Newtech promoters and developers Put. Ltd. Versus state of up and others (2021)** this Hon'ble Authority would not have the



jurisdiction to entertain the present complaint filed under the Real Estate (Regulation and Development) Act, 2016.

13. That the present complaint is grossly barred by limitation and this Hon'ble Court does not have jurisdiction to entertain a time barred claim. Moreover, in absence of any pleadings regarding condonation of delay, this Hon'ble Court could not have entertained the complaint in the present form.
14. It is submitted that on 24.10.2011, complainant had booked a residential unit in the project in question bearing no.B-030-G for an area measuring 1755 sq. ft. On 07.12.2012, a flat buyer agreement was executed between the complainant and the respondent as per which the basic selling price was fixed as ₹ 36,15,675/- after availing a discount of ₹ 1,11,825/- . Against the basic selling price, the complainant has only deposited an amount of ₹ 7,41,756/- till date with the respondent.
15. The complainant had opted for a construction linked payment plan. All the payment demands have been made as per the agreed payment plan. Further, the interests of the complainant were protected under clause 9(c) of the builder buyer agreement in which it is clearly agreed that in case of delay in possession of the unit beyond the stipulated period, subject to force majeure and other circumstances, the respondent shall pay to the buyer compensation of ₹ 5/- per sq. ft. of the super built up area of the unit per month for the period of delay.



16. With regards to the project in question it is submitted that in the year 2007 the respondent had proposed to develop the sid project under various Collaboration Agreements/ Development Agreements with the Landowner had planned to develop the project for total land admeasuring 112.956 acres (hereinafter referred to as "Project Land"). That on 03.03.2007 DTCP granted the Petitioner ten licenses for establishment of project bearing No. 129 to 138 of 2007, for setting up of a residential colony on area measuring 112.956 acres which is falling in the revenue estate of Village Dharuhera, District, Rewari. The license was valid up to 02.03.2016.
17. Respondent has already applied for renewal of license which was still pending before the DTCP, Haryana. Copies of the License 129-138 of 2007 up to 02.03.2016 and application for renewal up to 02.03.2020 are annexed herewith as Annexure R-4 and Annexure R-5 respectively.
18. Respondent has completed all the development work in the project related to the infrastructures and basic amenities. It is further submitted that all the basic facilities and amenities like road, electricity, water, sewage, storm water etc, are duly available at the project site.
19. Further it is submitted that the respondent has already obtained all the necessary approvals from the competent authorities. That on 25.05.2016, the Office of Senior Town Planner (STP), Gurgaon affirmed to DTCP, Haryana vide Memo No. STP (G)/ 2016/712 dated 25.05.2016 that all the development works of the project-site as per the approved layout plan have

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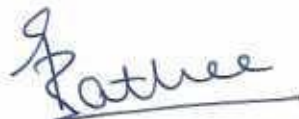
- been completed. Copy of the memo no. STP (G)/2016/712 dated 25.05.2016 issued by Senior Town Planner (STP) is annexed herewith as Annexure R-6.
20. That on 21.02.2021 inspection visit at project site was conducted by the Ld. CTP, H-RERA, Panchkula and the observations noted by the Ld. CTP, were submitted before the Hon'ble Authority.
21. Respondent is willing to offer an alternate property to the complainants subject to mutual consent of the complainant and the respondent company.
22. That there is no intentional delay on the part of the respondent company. The project has been delayed for reasons beyond the control of respondent company. Now, the respondent endeavors to streamline and complete the project to offer possession at the earliest.

E. ISSUES FOR ADJUDICATION

23. 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

24. On perusal of record and after hearing both the parties, Authority observes that the respondent in the present complaint has raised a preliminary objection with regard to maintainability of present complaint on various grounds accordingly dealt herein:



- i. One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondent has argued that 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. 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, as per recent judgement of Hon'ble Supreme court in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021** it has already been held that the 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(c) 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.

- ii. Respondent has raised an objection that the present complaint, as it pertains to an unregistered project of the respondent therefore the same is not maintainable under RERA Act, 2016. Said plea of



respondent regarding rejection of complaint on ground of jurisdiction stands rejected. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint. Jurisdiction in matters of unregistered projects has already been decided by the Authority vide its order dated 30.03.2022 in compliant case no. 191 of 2020 titled **Mrs. Rajni & Mr. Ranbir Singh vs. M/S Parsvnath Developers Ltd.'** and same is followed in the present case as well. Relevant part is reproduced below:-

"Looked at from another angle, Promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Section 3 of the Act. The Argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot benefit of summary procedure provided under the RERA Act for redressal for their grievances. It is a classic argument in which in violator of law seeks protection of law by misinterpreting the provisions to his own liking. 14. The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-à-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get way from discharging their obligations towards allottee by

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not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them acceptable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome. ”

- iii. Another objection raised by the respondent is that the complaint is barred by limitation. In this regard it is observed that since, the promoter has till date failed to fulfil its obligations to hand over the possession of plot in question bearing no. B-030-G in its project all the while retaining the amount paid by the complainant, the cause of action is recurring and the ground that complaint is barred by limitation stands rejected. Further reference in this regard is made to the judgement of Apex court **Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise** wherein it is observed that the Indian Limitation Act applies only to courts and does not apply to quasi-judicial bodies. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such as a quasi judicial tribunal, or even an executive authority. RERA is a special enactment with particular aim and object covering certain issues and violations relating to housing sector. Provisions of the limitation Act 1963 thus 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 Courts.



For the foregoing reasons, the arguments of the respondent company against maintainability of present complaint stands rejected.

25. As per facts and circumstances complainant had booked a residential unit in the project of the respondents namely "Parsvnath Elite Floors" situated in Dharuhera, Rewari. A flat buyer agreement was executed between the parties with respect to a unit bearing No. B-030-G, admeasuring 1755 sq ft. for a basic sale consideration of ₹36,15,675/- against which the complainant has paid an amount of ₹7,41,756/- till 2011. As per clause 9(a) construction of the unit was to be completed within a period of twenty four months from the date of start of commencement of construction on the individual plot on which the unit is located along with a grace period of six(06) months, after receipt of all approvals for commencing and carrying on construction subject to force majeure. It is pertinent to mention that the particular date of start of commencement of construction on the individual plot on which the unit is located has not been disclosed by the respondent.
26. Complainant is aggrieved by the fact that despite a lapse of more than 13 years from the date of execution of the agreement, respondent is not in a position to deliver possession of the booked unit as the construction work is not complete at the project site.
27. Admittedly delivery of possession has been delayed beyond the stipulated period of time. As per clause 9(a) of the agreement, the deemed date of



possession is to be calculated from twenty four (24) months from the date of start of commencement of construction works. Here it is pertinent to mention that the exact date of start of construction of the specific plot on which the unit in question was to be constructed has not been given by either of the parties. Moreover, on perusal of the possession clause, this Authority is of the view that said clause is completely vague, arbitrary and favouring the respondent only. Therefore, the deemed date of completion of the unit shall be considered from 24 months along with 6 months grace period from the execution of the flat buyer agreement dated 07.12.2012, which in this case works out to 07.12.2014. Further, it is a matter of fact that the respondent promoter has till date neither handed over possession nor completed the construction of the unit, thus, the respondent has failed to fulfill its obligation to handover the possession within stipulated/agreed time.

28. The respondent has 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. In this regard it is observed that throughout its pleadings, respondent has failed to bring to fore the force majeure conditions which had caused delay in construction of the project. Mere submissions of the respondent without any documentary evidence cannot be accepted. In



absence of any proof, the benefit of such circumstances cannot be awarded to the respondent. 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.

29. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainant by 07.12.2014. However, respondent has failed to complete construction of the project and deliver possession within stipulated time. Now even after a lapse of 10 years from the due 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. Respondent has submitted that basic infrastructure and facilities are available at site and that the respondent can offer possession of an alternate unit, but again the respondent has failed to attach latest photographs of site and/or the unit in question to give weight to its claim with regard to handing over of possession of the unit in foreseeable future. In such circumstances, the complainant who is already waiting since 07.12.2014, cannot be forced to wait further for delivery of possession of the booked unit for an indefinite amount of time. 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 RERD Act 2016.



30. 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."

31. 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.

32. Authority observes that the project i.e. " Parsvnath Elie Floors" is already delayed by several years. It is still not complete and admittedly the



respondent is not in a position to complete the project within reasonable time. The complainant wishes to withdraw from the project of the respondents, 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 respondent. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. Section 18 of RERA Act, 2016 is reproduced below for reference:

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building,- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason. He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed"

Further, the definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

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(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"

33.Hence, Authority directs the respondents 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 SBI (MCLR)+ 2 % which as on date



works out to 10.85% (8.85% + 2.00%) from the date amounts were paid till the actual realization of the amount.

34. Authority has got calculated the interest on total paid amount from date of payments till date of order(i.e 11.11.2025) 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.	3,73,000/-	24.10.2011	5,69,137/-
2.	3,68,755.72/-	13.08.2007	5,56,851/-
Total=741755.72/-			11,25,988/-
Total payable to complainant=741755.72+11,25,988=18,67,743.72/-			

35. The complainant is seeking compensation for mental pain, agony, harassment and depression caused to the complainant 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. Therefore, the



complainant is advised to approach the Adjudicating Officer for seeking the aforementioned reliefs.

G. DIRECTIONS OF THE AUTHORITY

36. 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 along with interest @ 10.85% ₹18,67,743.72/- to the complainant. Interest shall be paid up till the time period as provided under Section 2(z) i.e till actual realization of amount.
 - ii. A period of 90 days is given to the respondents 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.
37. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.


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DR. GEETA RATHEE SINGH
[MEMBER]