



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	465 of 2024
Date of filing.:	19.04.2024
First date of hearing.:	28.05.2024
Date of decision.:	14.10.2025

Malini Priya D/o G N Mishra
R/o B2 0104, Sobha City
Sector 108, Babupur, Gurugram
Haryana-122006

....COMPLAINANT

VERSUS

1. Choice Real Estate Developers Pvt. Ltd,
Vipul Techsquare, Golf Course Road,
Sector-43, Gurgaon, Haryana -122009

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

....RESPONDENTS

Present: - Mr.Kunal Thappa, Counsel for the complainant
through Vc.
None for the Respondent

Kathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed by complainant under Section 39 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with relevant rules 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.	Residential Complex.
3.	RERA Registered/not registered	Registered vide no. 38 of 2018
4.	Details of the unit.	1001, 10th Floor, Tower 01,
5.	Date of Allotment	17.08.2013



6.	Date of plot buyer agreement	17.08.2018
7.	Possession clause in floor buyer agreement	Clause 8.1(a) :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 48(Forty Eight) 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 48 (Forty-Eight) 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	17.08.2022
8.	Total sale consideration	₹28,76,104/-
9.	Amount paid by complainant	₹29,09,760/-
10.	Offer of possession.	None



B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Complainant had booked a unit in the project of the respondents namely, "Pratham" situated in Bawal, Sector 10 A, District Rewari, Haryana on 17.08.2013. Vide allotment letter dated 17.08.2013 unit bearing No. 1001 on 10th Floor in Tower 01, measuring 1125 sq ft. super area was allotted to the complainant.
4. That at the time of booking, the complainant opted for a construction link payment plan. Complainant has paid all the instalments as and when demanded by the respondents. The total sale consideration of the unit was fixed at ₹28,76,104/- against which the complainant has paid an amount of ₹29,09,760/- till date.
5. It is submitted that due to the objections raised by the Director General, Town and Country Planning, Haryana, respondents revised the building plan of the project in question and increased the area of the unit in question from 1125 sq. ft to 1160 sq. ft.
6. That a builder buyer agreement qua the unit was executed between the complainant and the respondents on 17.08.2018. As per clause 8.1(a) of the agreement, possession of the floor was to be delivered within a period of 48 months from the date of execution. Said period expired on 17.08.2022.



7. That complainant had deposited the complete amount which was demanded by the respondent 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. Upon site visit, it was revealed 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. Further, the complainant was not allowed to take photographs of the unit and/ or project by the security guards present at the site. As per agreement possession of the unit should have been delivered by 17.08.2022 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.
8. At the time of registration with the Authority, the respondents have disclosed that basic amenities are yet to be made available at the site. In the application dated 27.07.2019, respondents had stated that the possession of the unit will be handed over by 31.03.2020. As is evident, the respondents are not in a position to deliver possession of the booked unit in the foreseeable future. The whole project is at stand still and no construction work has been going since past many years. Such conduct amounts to serious deficiency. Respondents have been unfairly utilizing the huge amount paid by the

G. Lathee

complainant. Complainant has been devoid of his hard earned money and without possession of the booked unit.

9. 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

10. In view of the facts mentioned above, the complainants pray for the following reliefs):-

- i. To direct the respondents (jointly and severally) to refund the complete amount which has been deposited with the respondents by the complainant with interest from the actual date of deposit of each payment as per the Real Estate (Regulation & Development) Act, 2016 R/w Haryana Real Estate (Regulation & Development) Rules, 2017 at the rate prescribed under the Act. Calculation sheet is annexed herewith as ANNEXURE C-7.
- ii. Any other relief or claim which the Hon'ble Authority deems appropriate.



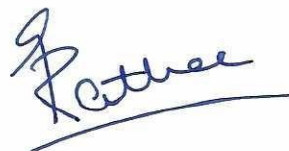
D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 27.09.2024 pleading therein:

11. 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".
12. Complainant, desirous of purchasing a unit in the aforesaid project approached the respondents. After being satisfied in all respects the complainant vide application made in 2013 had applied for provisional registration of a residential unit in the aforesaid group housing complex. At the time of application, the complainant had opted for construction linked payment plan.
13. 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. 1001 in Tower-1 at 10th 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.



14. That thereafter, a builder buyer's agreement was executed between the complainant and the respondents on 17.08.2018. As per clause 8.1(a) of the floor buyer's agreement, possession of the unit was proposed to be handed over within a period of 48 months from the date of execution of the said agreement along with a grace period of 90 days.
15. Respondent has 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. Respondent 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.
16. 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.

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

E. ISSUES FOR ADJUDICATION

18. Whether the complainants are 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

19. Factual matrix of the captioned complaint reveals that the complainant had booked a residential unit in the project of the respondent namely "Pratham Apartments" situated in Bawal, Sector 10 A, District Rewari, Haryana . Vide allotment letter dated 17.08.2013 complainant was allotted a unit bearing No. 1001 on 10th Floor in Tower 01, measuring 1125 sq ft. super area(later increased to 1160 sq. ft) was allotted to the complainant. The total sale consideration of the unit was ₹ 28,76,104/- against which the complainant has paid an amount of ₹29,09,760/-. As per clause 8.1(a) of the builder buyer agreement dated 17.08.2018, possession of the unit was to be delivered within a period of 48 months from the date of execution. Said period expired on 17.08.2022. 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. Complainant is aggrieved by the fact that despite a lapse of more than 4 years from the proposed deemed date of possession, respondent is not in a position to deliver possession of the booked unit as the construction work is not complete at the project site.

20. Admittedly, delivery of possession has been delayed beyond the stipulated time. Complainant had booked the unit in question in the year 2013. As per builder buyer agreement dated 17.08.2018, possession of the unit should have been delivered within a period of 48 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 48 months for filing and pursuing the grant of occupation certificate in respect of different towers of group housing complex. It is observed 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, the deemed date of possession shall be considered to be 48 months from the date of signing of the builder buyer agreement which comes out to be 17.08.2022 .



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. Respondent has 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.

Further, the respondent has cited COVID-19 as force majeure condition banning construction activities thus causing a delay in construction of the project. In this regard, Authority observes that Covid-19 Pandemic outbreak hit construction activities post 22nd March 2020, thereafter, nation-wide lockdown was imposed by the Central Government which caused reverse migration of labourers, break in supply chain of construction material etc. and thus, all the construction activities across the country came at a halt. Further, the Ministry of Housing and Urban Affairs issued an advisory for extension of



registration of all real estate projects due to the force majeure event of Covid-19 pandemic for a period of six months w.e.f. March, 2020. In furtherance of the said advisory, all the RERA Authorities including the Haryana Real Estate Regulatory Authority granted general extension to all the real estate projects. The said extension was further extended in the year 2021 for a period of three months due to the second wave of Covid-19 pandemic. Therefore, Authority observes that as per reasoning mentioned above, the deemed date to handover possession was 17.08.2022. As per HREERA notification dated 26.05.2020 and 02.08.2021, an extension of 9 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 17.08.2022, i.e, after 25.03.2020. Therefore, a grace period of 9 months is to be given over and above the due date of handing over possession in view of above said notifications, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date of handing over of possession comes out to 17.05.2023.

21. As per observations recorded in preceding paragraph, the possession of the unit should have been delivered by 17.05.2023. However, as per the submission of the respondent the project in question is still in final stages of completion and the project is yet to receive occupation certificate. Even at present, the respondents are not in a position to handover possession of the unit question to the complainant in foreseeable future. Though the 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. Learned counsel for the respondents has admitted that occupation certificate is yet to be received. In such circumstances, the complainant cannot be forced to wait further for delivery of possession of the booked unit for an indefinite amount of time for a unit for buyer's agreement was executed back in 2018. 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. In this instance the 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.

22. 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."

23. 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 RERA 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. 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 HIREA 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"

24. 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 10.85% (8.85% + 2.00%) from the date amounts were paid till the actual realization of the amount.

25. Authority has got calculated the interest on total paid amount from date of payments till date of order (i.e 14.10.2025) and same is depicted in the table below:

Sr. No.	Principal Amount (in ₹)	Date of Payment	Interest Accrued till date of order i.e 14.10.2025 (in ₹)
1.	400000	10.08.2013	529004
2.	318882	25.09.2013	417365
3.	389157	24.01.2014	495346
4.	420420	10.11.2014	498897
5.	444747	22.04.2015	506215
6.	148249	13.06.2015	166447
7.	148838	14.08.2015	164365
8.	193788	02.11.2015	209396
9.	105111	12.05.2016	107578
10.	150276	23.09.2016	147817
11.	11166	04.01.2017	10641
12.	193541	10.10.2017	168396
Total: 29,24,175/-			34,21,467/-
Total payable to complainant: 63,45,642/-			



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 @ 10.85% ₹ 63,45,642/- to the complainant as specified in para 25 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.


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DR. GEETA RATHEE SINGH
[MEMBER]