



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	275 of 2025
Date of filing:	24.02.2025
First date of hearing:	20.05.2025
Date of decision:	06.07.2026

Anoop Singh

S/o Sh. Ranbir Singh,
R/o- 94/1 Seda Majra
Post Office Uchana,
Tehsil Narwana, District Jind, Haryana

.....COMPLAINANT

Versus

Choice Real Estate Developers Pvt. Ltd.

14/185-14/186, Ground Floor,
Malviya Nagar, main Shivalik Road,
New Delhi-110017

...RESPONDENT

Present: - Adv. Randeep Singh, counsel for the complainant through VC.

Adv. Vineet Sehgal, counsel for the respondent through VC.

ORDER: (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 24.02.2025 by the 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, 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.	“Vipul Pratham Apartments”, Sec 10-A, Bawal, Rewari, Haryana
2.	RERA Registered/not registered	Registered
3.	Details of allotted unit.	503, 5th Floor, Tower-1
4.	Allotment letter	13.09.2013
5.	Flat Buyer Agreement	09.12.2013
6.	Possession Clause	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 the provisions, formalities, documentation etc., as prescribed by the Vendor, and all just exceptions, the Vendor based on its present plans and estimates shall endeavour to hand over the possession of the Flat within a period of 60 (sixty)

		months from the date of signing of this Agreement. The Vendee agrees and understands that the Vendor shall be entitled to a grace period of 90 days after the expiry of 60 months, for applying and obtaining the Occupation Certificate in phases in respect of the different towers of the Group Housing complex.
7.	Deemed date of possession	09.12.2018
8.	Total Sale Consideration	₹21,13,433/- (as per revised plan under Buyer Agreement)
9.	Amount paid by the complainant	₹19,37,763/-

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

3. That the complainant had booked a residential unit in the project namely; "Pratham Apartments" in Revenue Estate of Bawal, Sector 10-A, Rewari, Haryana and paid ₹3,00,000/- as booking amount on 10.08.2013. Copy of receipt is annexed as Annexure C-4.
4. That the respondent issued an allotment letter in favour of the complainant on 13.09.2013 vide which unit no. 503 in Tower-1 situated on the fifth floor having a Super Area of 818 sq. ft. was allotted to the complainant. Copy of the allotment letter dated 13.09.2013 is annexed as Annexure C-1.
5. That the flat buyer agreement was executed between the parties on 09.12.2013. The total sale consideration of the above said flat was agreed to be ₹21,13,433/- as per revised schedule of payment, i.e., plan-B (construction linked). Copy of the Flat Buyer's Agreement dated

09.12.2013 and copy of revised schedule of payment is annexed as Annexure C-2 and Annexure C-3, respectively.

6. That as per the flat buyers agreement and the schedule of payment, the complainant has paid a total amount of ₹19,37,763/- to the respondent on different dates against total sale consideration of ₹21,13,433/- until 13.12.2017. Copies of the receipts of payment of ₹19,37,763/- are annexed as Annexure C-4 to C-19.
7. That as per Clause 8.1(a), possession of the unit was to be delivered within a period of 60 months from the date of agreement. However, there is an inordinate delay of more than 10 years, and the respondent has neither effected the sale deed, nor delivered the possession of the above said flat till date.
8. That the complainant made repeated requests to the respondent to develop the said apartment and to handover the possession of the same, but to no avail. Thereafter, the complainant served a legal notice dated 20.05.2024 calling upon the respondent to refund the amount paid by the complainant within 15 days. Copy of legal notice dated 20.05.2024 is annexed as Annexure C-5.
9. Despite making timely payments, the respondents failed to perform its obligation of construction and timely delivery. Respondent has indulged in breach of agreement, deficiency in service and unfair trade practices, due to which the complainant has suffered grave financial hardship, mental



agony, and harassment. In these circumstances, the respondent is liable to refund the paid amount to the complainant alongwith interest.

C. RELIEFS SOUGHT-

10. That the complainant seek following relief and directions to the respondent-
 - i. The respondent may kindly be directed to refund the amount deposited with statutory interest as per Rule 15 as well as compensation for mental harassment and agony along with litigation cost.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

11. The respondent submitted a detailed reply on 08.10.2025 contesting the complainant's claims on several grounds.
12. That each and every averment, contention, and allegation made in the complaint, is contrary to or inconsistent with the true and complete facts of the case. The present complaint is baseless, misconceived, and mala fide, and is liable to be dismissed with costs.
13. That complainant being desirous of purchasing a flat/residential unit in the aforesaid Project approached the respondent and after being completely satisfied in all respects the complainant took extensively deliberated decision of booking a flat/ residential unit in the group housing project known as "Pratham Apartments" and vide application in 2013 had applied for provisional registration of a residential unit in the aforesaid group housing complex, i.e., "Pratham Apartments".



14. That the respondent company in furtherance of the application form so submitted by the complainant and earnest money so received from the complainant made the provisional allotment of a residential flat in the aforesaid group housing project known as "Pratham Apartments" in favour of the complainant. Respondent company along with the said allotment letter had further sent the terms and conditions for allotment of flat as well as schedule of payment which was a construction linked plan as opted by the complainant. The allotment letter, terms and conditions for allotment of flat were voluntarily agreed by the complainant.
15. That the respondent had sent the Flat Buyer Agreement dated 09.12.2013 to the complainant which was voluntarily and consciously executed by the complainant and had undertaken to perform the terms and conditions of the agreement.
16. That respondent company has made every endeavour to finish the development work of the project well within time and the project reached near completion. However, due to force majeure conditions and scenario of covid pandemic, delay was caused in the final development work of the project. The fact of force majeure was duly conveyed to the complainant but the same has been concealed by the complainant by filing the present complaint. Thus, this complaint is liable to be dismissed on the ground of concealment of vital facts.



17. That the complainant has filed the present complaint only to harass and illegally extort money from the respondent company. Once the project is near completion, the complainant cannot be allowed to withdraw from the same.

18. That in view of the aforesaid facts, it is submitted that the captioned complaint deserves to be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT

19. During oral arguments, both parties reiterated their arguments as were submitted in writing. The issues arising therefrom have already been addressed and dealt with in the foregoing paragraphs of this order.

F. ISSUES FOR ADJUDICATION

20. Whether the complainant is entitled to get refund of the amount deposited by him along with interest in terms of Section 18 of RERA, Act of 2016?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

21. The Authority has carefully examined the rival contentions and perused the documents placed on record. It is an admitted fact that Unit No. 503, Fifth Floor, Tower-1 was allotted to the complainant in the project of the respondent namely "Pratham Apartments", Rewari, Haryana through an Allotment Letter dated 13.09.2013. Buyer Agreement was executed between the parties on 09.12.2013. Complainant has made payment of



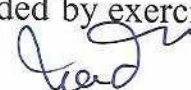
₹19,37,763/- to the respondent out of total sale consideration of ₹21,13,433/-.

22. **Findings on the objections raised by the respondent-**

a. ***Objections regarding force majeure conditions.***

The respondent have raised objections contending that the delay in completion of the unit is attributable to force majeure circumstances including the outbreak of the COVID-19 pandemic.

Force majeure is a French expression which translates, literally, to "superior force". To appreciate its nuances, jurisprudence of the concept under the Indian Contract Act, 1872 needs to be elucidated. In the context of law and business, the Merriam Webster dictionary states that force majeure usually refers to "those uncontrollable events (such as war, labor stoppages, or extreme weather) that are not the fault of any party and that make it difficult or impossible to carry out normal business. A company may insert a force majeure clause into a contract to absolve itself from liability in the event it cannot fulfill the terms of a contract (or if attempting to do so will result in loss or damage of goods) for reasons beyond its control". Black's Law Dictionary defines Force Majeure as follows, "In the law of insurance, superior or irresistible force. Such a clause is common in construction contracts to protect the parties in the event apart of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of



due care. Typically, such clauses specifically indicate problems beyond the reasonable control of the lessee that will excuse performance."

In India, it is often referred to as an "Act of God". Various courts have, over time, held that the term force majeure covers not merely acts of God, but may include acts of humans as well. The term "Force Majeure" is based on the concept of the Doctrine of Frustration under the Indian Contract Act, 1872; particularly Sections 32 and 56. The law uses the term "impossible" while discussing the frustration of a contract, i.e., a contract which becomes impossible has been frustrated. In this context, "impossibility" refers to an unexpected subsequent event or change of circumstance which fundamentally strikes at the root of the contract. In the case of *Alopi Parshad and Sons Ltd vs Union of India*, AIR 1960 SC 588 and the landmark *Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors* (2017) 2017 3 AWC 2692 SC, the Supreme Court of India has categorically stated *that mere commercial onerousness, hardship, material loss, or inconvenience cannot constitute frustration of a contract. Furthermore, if it remains possible to fulfill the contract through alternate means, then a mere intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated.*

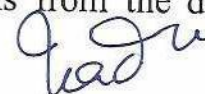
Section 56 of the Indian Contracts Act (Agreement to do impossible act) states that "a contract to do an act which, after the contract is made,



becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful." It is the performance of contractual obligations that must become unlawful/impossible, not the ability to enjoy benefits under the contract. The Supreme Court in *Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017)-2017 3 AWC 2692 SC* lent further insight into interpreting a Force Majeure situation i.e.,

- Events beyond the reasonable control of one party should not render that party liable under a contract for performance, if that event prevents the party's performance;
- The language of the agreement relating to duty to mitigate, best efforts, prudent man obligations to nevertheless perform etc., will all be taken into consideration in understanding the parties' intent;
- Force majeure events must be unforeseeable by both parties;
- The requirement to put the other party on notice must be met with if the contract provides for notice requirements; and
- **Burden of proof rests with the party relying on the defense of force majeure for its inability to perform the obligation.**

In the present case, the respondent were obligated to deliver possession of the unit to the complainant within the period stipulated in the clause 8.1(a) of the Flat Buyer Agreement, i.e., 60 months from the date of



execution of flat buyer agreement, which comes out to be 09.12.2018.

Clause 8.1(a) is reproduced below-

“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 Vendors and all just exceptions, the Vendor based on its present plans and estimates shall endeavour to hand over the possession of the Flat within a period of 60 (sixty) months from the date of signing of this Agreement. The Vendee agrees and understands that the Vendor shall be entitled to a grace period of 90 days, after the expiry of 60 months, for applying and obtaining the occupation certificate in phases in respect of the different towers of the Group Housing Complex.”

As per HRERA 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. However, the completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 09.12.2018 which is much prior to 25.03.2020. By the time that the Covid-19 pandemic halted the construction activities, the construction of the project in question should have already been completed and possession should have been delivered to the complainant. Therefore, in view of above said notifications and observations, no extension is granted to the respondent for the project in question. Furthermore, reliance is placed on judgement passed by Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs*



Vedanta Ltd & Anr. bearing OMP (1) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020 dated 29.05.2020 has observed that:

"69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September, 2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself"

Therefore, as far as delay in delivery of possession of the unit in question is concerned, respondent cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition.

Authority observes that respondent have not fulfilled this obligation within the agreed timelines. There is delay on the part of the respondent and the various reasons given by the respondent such as force majeure and Covid pandemic are not convincing enough as the due date of possession was in the year 2018 as per the agreement and incidents which have been mentioned by the respondent are after this period; therefore the respondent cannot be allowed to take advantage of the delay on their part by claiming the delay on above accounts. So, the plea of respondent to



consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

Authority is of view that if the respondent had completed the construction within 60 months of execution of agreement, i.e., by 09.12.2018, then a time period of 90 days was provided for applying for occupation certificate. Here in this case, respondent did not abide by the terms of agreement and failed to complete construction within stipulated time. Even till date, respondent has not applied for the Occupation Certificate. Time period of more than 6 years taken by respondent to complete the construction work and receipt of occupation certificate is not a reasonable duration. Respondent herein is claiming benefit out of its own wrong. Such a proposition is not acceptable being devoid of merit. Hence, grant of 90 days grace period is not given to the respondent and the deemed date of possession is taken and considered as **09.12.2018**.

b. Whether the complainant is entitled for refund or not?

23. In this regard, it is an admitted fact that complainant had applied for allotment of a residential flat in the aforesaid project of respondent in 2013. The respondent within a reasonable time of booking was expected to complete all necessary steps for delivering possession of the purchased unit. After collecting money from the complainant, the respondent was not expected to prolong the completion of the project unreasonably because



such conduct on his part was bound to frustrate the very benevolent purpose with which the scheme was formulated.

24. The respondent in the present case has not completed the project within a reasonable time and has been utilizing an amount of ₹19,37,763/-, already paid by the complainant, for all these years without paying any interest. Such conduct of the respondent being unreasonable and unconscionable cannot be legally sustained.
25. Since it is the respondent who has failed to discharge his obligations as mentioned under Section 11(4) of the RERA Act, the complainant acquires an unqualified right to withdraw from the project on account of delayed delivery of possession and demand refund of the paid amount along with interest.
26. 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. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. 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."

The decision of the Hon'ble 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, Authority finds it to be a fit case for allowing refund in favour of complainant.

27. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

"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".

28. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable

and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

29. Consequently, as per website of the State Bank of India, i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date, i.e. 06.07.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2%, i.e., 10.80%.

30. 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;

31. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund along with interest. Thus, respondent will be liable to pay the complainant, interest from date of payments till the actual realization of the amount. Authority has got calculated the total amount along with interest as per detail given in the table below:

Sr.no.	Principle amount	Date of payments	Date of order	Interest from date of payments till date of order
1.	₹3,00,000/-	10.08.2013	06.07.2026	₹4,18,448/-
2.	₹1,08,255/-	23.09.2013	06.07.2026	₹1,49,588/-
3.	₹5,000/-	24.09.2013	06.07.2026	₹6,908/-
4.	₹3,73,252/-	02.06.2014	06.07.2026	₹4,87,931/-
5.	₹2,01,545/-	18.09.2014	06.07.2026	₹2,57,624/-
6.	₹1,18,098/-	26.11.2014	06.07.2026	₹1,48,198/-
7.	₹96,609/-	14.02.2015	06.07.2026	₹1,18,945/-
8.	₹21,489/-	18.02.2015	06.07.2026	₹26,432/-
9.	₹96,609/-	02.04.2015	06.07.2026	₹1,17,601/-
10.	₹96,609/-	28.05.2015	06.07.2026	₹1,16,001/-
11.	₹96,993/-	11.08.2015	06.07.2026	₹1,14,309/-
12.	₹96,993/-	04.11.2015	06.07.2026	₹1,11,870/-
13.	₹97,790/-	13.05.2016	06.07.2026	₹1,07,263/-
14.	₹97,931/-	21.09.2016	06.07.2026	₹1,03,621/-
15.	₹4,210/-	13.12.2016	06.07.2026	₹4,351/-
16.	₹1,26,380/-	23.10.2017	06.07.2026	₹1,18,878/-
	Total= ₹19,37,763/-			Total= ₹24,07,968/-

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32. Further, the complainant is seeking compensation on account of mental harassment 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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

33. Hence, the Authority hereby passes this order in the present complaint 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 total amount along with interest as per calculations given on page no. 17 of this order. It is further clarified that respondent will remain liable to pay the



interest to the complainants till the actual date of realization of the 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.

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



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NADIM AKHTAR
[MEMBER]