



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	696 of 2024
Date of filing:	13.05.2024
First date of hearing:	30.07.2024
Date of decision:	28.09.2026

Pawan Yadav

S/o Sh. Sohan Lal,
R/o- House No. 219-P,
Sector 10-A, Gurugram, Haryana-122004

.....COMPLAINANT

Versus

1. Vipul Ltd.

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

2. Choice Real Estate Developers Pvt. Ltd.

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

....RESPONDENT(s)

Present: - Adv. Pankaj Yadav, counsel for the complainant through VC.

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

ORDER: (NADIM AKHTAR –MEMBER)

1. Present complaint has been filed on 13.05.2024 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	Un-Registered
3.	Details of allotted unit.	Flat no. 904, 9th Floor, Tower-1
4.	Allotment letter	16.08.2013
5.	Flat Buyer Agreement	Not executed
6.	Possession Clause	Not available



7.	Due date of possession	Not available
8.	Total Sale Consideration	₹21,13,433/- (as per revised plan schedule dated 29.11.2013)
9.	Amount paid by the complainant	₹18,18,798/-

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

3. That the complainant booked a residential unit in the project namely; "Pratham Apartments" Sector 10-A, Bawal, Rewari, Haryana and paid ₹3,00,000/- as booking amount on 04.07.2013. Copy of acknowledgment receipt dated 10.08.2013 is annexed at Page No. 31 (Annexure 3) with the complaint book.
4. That the complainant paid a total sum of ₹16,75,177/- towards the booking/purchase of the flat up to 18.07.2017, as and when demanded by the respondent-company. Copy of the acknowledgement receipts are annexed with the complaint book.
5. That in violation of Section 13 of the Real Estate (Regulation and Development) Act, 2016, the respondents accepted amounts from the complainant without complying with the statutory requirement of entering into a duly executed and registered agreement for sale.
6. That respondents had promised to hand over possession of the flat within the stipulated period. However, despite issuance of the allotment letter



dated 16.08.2013, possession of the flat was not offered to them within the period contemplated under the agreement.

7. That the complainant repeatedly approached the respondents through letters, e-mails, telephone calls and personal visits to ascertain the status of construction of the flat. Respondents did not furnish any satisfactory response and continued to represent that construction activities were progressing at full swing. However, during visits to the project site by the complainant, the construction activities were not found to be progressing as represented. Further, respondents continued to raise demands for payment from the complainant without adhering to the payment plan and without achieving the corresponding stages of construction.
8. That in accordance with Section 19(4) of the Act, an allottee is entitled to claim refund of the amount paid along with interest and compensation where the promoter fails to comply with the terms of the agreement for sale or is unable to give possession of the apartment.
9. That the conduct of the respondents demonstrated that they were never inclined to deliver possession of the flat within the stipulated period. Due to the delay in completion of the project, complainant has lost faith in the representations and commitments made by the respondents.
10. That the complainant has suffered loss of confidence, mental agony, harassment and stress on account of the alleged failure to deliver possession and non-responsive conduct. In these circumstances, the



respondents are liable to refund the paid amount to the complainant alongwith interest.

C. RELIEFS SOUGHT-

11. That the complainant seek following relief and directions to the respondents-
 - i. To direct the respondents to return/refund full amount deposited by the complainant amounting to ₹16,75,177/- (Sixteen lacs seventy five thousand one hundred and seventy seven only) along with interest from the date of receipts at the rate prescribed by the Act, 2016.
 - ii. Cost of the complaint be allowed to the tune of ₹10,000/-.
 - iii. Pass any other order which this Hon'ble Authority deems fit and proper.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT(s)-

12. The respondents submitted a detailed reply on 26.03.2025 contesting the complainant's claims on several grounds.
13. 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.
14. That the present complaint deserves to be dismissed on the ground of non-joinder of necessary parties as all the payments were made by the complainant to Choice Real Estate Developers Pt. Ltd. but for the reasons



best known to the complainant, the said company has not been made a party in the present complaint.

15. That complainant being desirous of purchasing a flat/residential unit in the aforesaid Project approached the respondents 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".
16. 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 bearing no. 904 in Tower 1 at 9th Floor, 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.
17. That the respondents had sent the Flat Buyer Agreement dated 20.01.2014 to the complainant which was voluntarily and consciously executed by the



complainant and had undertaken to perform the terms and conditions of the agreement.

18. 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.
19. 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.
20. That in view of the aforesaid facts, the captioned complaint deserves to be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENTS-

21. 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-

22. 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-

23. The Authority has carefully examined the rival contentions and perused the documents placed on record. It is an admitted fact that Unit No. 904, 9th Floor, Tower-I was allotted to the complainant in the project of the respondents namely "Pratham Apartments", Rewari, Haryana through an Allotment Letter dated 16.08.2013.
24. Further, complainant vide application dated 23.07.2025 had impleaded Choice Real Estate Developers Pvt. Ltd. as a necessary party in the pleadings. Ld. counsel for the respondents in the last order dated 27.07.2026 has also orally stated that the reply filed by the respondent dated 26.03.2025 is common for both the respondents.
25. **Findings on the objections raised by the respondents-**

1) With regard to execution of the Flat Buyer's Agreement (FBA)-

- The respondents have contended that the Flat Buyer Agreement dated 20.01.2014 was sent to and voluntarily executed by the complainant. However, despite the said assertion, the respondents have failed to place on record any duly executed copy of the Flat Buyer Agreement or any other document evidencing its execution by the complainant. Thus, the



plea of the respondents regarding execution of the Flat Buyer Agreement remains unsubstantiated.

- Further, the Authority finds merit in the contention of the complainant that the respondents accepted payments substantially beyond the permissible limit without there being an executed Agreement for Sale between the parties. Section 13(1) of the Real Estate (Regulation and Development) Act, 2016 specifically provides that a promoter is not entitled to accept a sum of more than 10% of the cost of the apartment as an advance payment from a person without first entering into the Agreement for sale. The said provision is reproduced as under:

13(1) "A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force".

- In the present case, the total sale price of the allotted unit/flat was ₹21,13,433/-, whereas the complainant has allegedly paid ₹16,75,177/- to the respondents. The amount received by the respondents against the total sale consideration was substantially in excess of the statutory threshold of ten per cent. In the absence of an executed Agreement for Sale, the respondents cannot derive any advantage from its own failure to ensure execution of the agreement before accepting such substantial payments.



- Accordingly, for the purpose of determining the period within which the possession ought reasonably to have been offered, the Authority is constrained to proceed in the absence of any executed FBA containing a stipulated date of possession.
- Authority observes that there is no builder buyer agreement executed in the present complaint and the allotment letter which was issued to the complainant on 16.08.2013 does not stipulate any time frame for handing over possession. Authority observes that in absence of a clause with respect to handing over of possession in the Allotment letter, it cannot rightly ascertain as to when the possession of said flat was due to be given to the complainant. It has been observed that period of 3 years is reasonable time for development of a project and handing over of possession as held by **Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr.** In the present matter, the allotment was made on 16.08.2013. Authority considers a period of three years from the date of allotment to be a reasonable period for completion of the project and handing over possession. Therefore, deemed date of possession works out to be **16.08.2016.**



2) With regard to force majeure conditions such as COVID-19-

- The respondents 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 respondents were obligated to deliver possession of the unit within 3 years from the date of allotment, i.e., 16.08.2016. 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 16.08.2016 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 respondents 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 1.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, respondents cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition.

- Authority observes that respondents have not fulfilled this obligation within the agreed timelines. There is delay on the part of the respondents and the various reasons given by the respondents such as force majeure and Covid pandemic are not convincing enough as the deemed date of possession becomes year 2016 as per the allotment letter and incidents which have been mentioned by the respondents are after this period; therefore the respondents cannot be allowed to take advantage of the delay on their part by claiming the delay on above accounts. So, the plea of respondents to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

26. **Whether the complainant is entitled for refund or not?** In this regard, it is an admitted fact that complainant had applied for allotment of a residential flat in the aforesaid project of respondents in 2013. The respondents within a reasonable time of booking were expected to complete all necessary steps for delivering possession of the purchased unit. After collecting money from the complainant, the respondents were 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.



27. It is pertinent to mention that Authority vide its order dated 08.04.2025, had specifically directed the complainant to furnish a clear and detailed clarification with respect to the amount paid to the respondents, along with supporting documentary evidence. In compliance with the aforesaid direction, complainant filed an application dated 23.07.2025, placing on record the receipts of the payments made to the respondents and also submitted that the complainant was seeking refund of an amount of ₹16,75,177/- along with applicable interest. However, upon careful scrutiny and perusal of the material available on record, particularly the payment receipts appended by the complainant, this Authority observes that the complainant had, in fact, paid a cumulative amount of ₹18,18,798/- to the respondents. The said payment receipts form part of the record and unequivocally substantiates the actual amount deposited by the complainant.
28. At this stage, it is apposite to observe that a litigant or allottee cannot be made to suffer due to any inadvertent omission, clerical error, or negligence on the part of counsel, especially when the documentary evidence available on record clearly reflects the correct factual position. The settled principle of law is that procedural or technical lapses attributable to counsel should not defeat the substantive rights of a party, more particularly in matters concerning refund of hard-earned money deposited by an allottee. In view of the aforesaid facts and circumstances,



and having regard to the documentary evidence available on record, this Authority deems it just, proper, and equitable to consider the actual amount reflected in the receipts for the purpose of adjudication of the present complaint. Consequently, the complainant is held entitled to refund of the entire amount of ₹18,18,798/- deposited with the respondents, along with applicable interest.

29. The respondents in the present case have not completed the project within a reasonable time and have been utilizing an amount of ₹18,18,798/-, already paid by the complainant, for all these years without paying any interest. Such conduct of the respondents being unreasonable and unconscionable cannot be legally sustained. Since it is the respondents who have failed to discharge their 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.
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. 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 respondents, therefore, Authority finds it to be a fit case for allowing refund in favour of complainant.

31. 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”.

32. 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.
33. 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. 28.09.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2%, i.e., 10.80%.
34. The definition of term ‘interest’ is defined under Section 2(z) 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;*
35. From above discussion, it is amply proved on record that the respondents have not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund along with interest. Thus,



respondents 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 receipts of payments	Date of order	Interest from date of payments till date of order
1.	₹3,00,000/-	10.08.2013	28.09.2026	₹4,25,905 /-
2.	₹2,16,510/-	23.09.2013	28.09.2026	₹3,04,557 /-
3.	₹2,69,998/-	12.11.2013	28.09.2026	₹3,75,802 /-
4.	₹2,02,211/-	13.09.2014	28.09.2026	₹2,63,202 /-
5.	₹1,18,214/-	01.12.2014	28.09.2026	₹1,51,107 /-
6.	₹1,20,020/-	24.02.2015	28.09.2026	₹1,50,397 /-
7.	₹97,498/-	31.03.2015	28.09.2026	₹1,21,165 /-
8.	₹96,609/-	02.06.2015	28.09.2026	₹1,18,259 /-
9.	₹96,993/-	10.08.2015	28.09.2026	₹1,16,749 /-
10.	₹96,993/-	02.11.2015	28.09.2026	₹1,14,338 /-
11.	₹97,790/-	10.05.2016	28.09.2026	₹1,09,780 /-
12.	₹97,931/-	26.09.2016	28.09.2026	₹1,05,910 /-
13.	₹8,031/-	13.12.2016	28.09.2026	₹8,500 /-
	Total= ₹18,18,798/-			Total= ₹23,65,671 /-



36. Further, the complainant is seeking 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

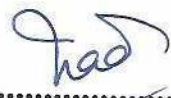
37. Hence, the Authority hereby passes this order in the present complaint and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i.) Respondents are directed to refund the total amount along with interest as per calculations given in para 35 of this order. It is further clarified that respondents will remain liable to pay the interest to the complainant till the actual date of realization of the 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.

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]