HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**319 of 2025**
Date of filing:	**19.05.2025**
First date of hearing:	**22.07.2025**
Date of decision:	**05.10.2026**

Ompal
S/o Sh. Kaptan Singh,
Village Manikapur, P.O. Baznagar Safeda,
District Kasganj, Uttar Pradesh-207402, and
R/o - House No- 740, Part 1, Sector 6
Dharuhera, Rewari, Haryana- 123110

....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. Sunil Kumar, 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 19.05.2025 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", Sector 10-A, Bawal, Rewari, Haryana
2.	RERA Registered/not registered	Registered
3.	Details of allotted unit.	Flat no. 506, 5th Floor, Tower-1
4.	Allotment letter	27.08.2013
5.	Flat Buyer Agreement	Not executed

6.	Possession Clause	Not available
7.	Due date of possession	Not available
8.	Total Sale Consideration	₹31,37,568/- (as per schedule of payment)
9.	Amount paid by the complainant	₹7,33,546/-

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" Sector 10-A, Bawal, Rewari, Haryana.

4. That the complainant paid a total sum of ₹7,33,546/- towards the booking/purchase of the flat as per payment schedule. 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 respondent accepted amounts from the complainant without complying with the statutory requirement of entering into a duly executed and registered agreement for sale.

6. That the complainant repeatedly approached the respondent through letters, e-mails, telephone calls and personal visits to ascertain the status of construction of the flat. However, despite the lapse of more than ten years from the date of booking, respondent allegedly failed to commence/complete the construction activity, which is in violation of the rights of the complainant under Section 19 of the Act.

7. That the complainant has lost confidence in the respondent on account of its failure to deliver possession of the flat within the promised period and its non-responsiveness to repeated requests of the complainant. Further, the conduct of the respondent amounts to unfair trade practice and deficiency in services and the complainant has lost faith in the representations and commitments made by the respondent.

8. That despite having received payments from the complainant towards the project, the respondent failed to complete/develop the project even after a considerable period of time. Respondent cancelled/forfeited the booking and failed to refund the amount paid after deducting 10% of the basic sale price. Copy of the cancellation letter is annexed with the complaint book.

9. 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 respondent is liable to refund the paid amount along with interest to the complainant after deduction of 10% of the amount.

C. **RELIEFS SOUGHT-**

10. That the complainant seek following relief and directions to the respondent-

i. Direct the respondent to return/refund the balance amount paid by the complainant after deduction of 10% of the Basic Sale Consideration received by the respondent, along with interest at the prescribed rate from

the date of cancellation, in accordance with the provisions of the Act, 2016.

ii. Direct the respondent to pay ₹75,000/- (Rupees Seventy-Five Thousand only) towards legal expenses incurred by the complainant.

iii. Grant any other damages, interest or relief which the Authority may deem fit and proper in the facts and circumstances of the case, in favour of the complainant and against the respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT-

11. The respondent submitted a detailed reply on 31.10.2025 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, 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 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 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 is not entitled for refund of total amount with interest after deduction of 10% of basic sale consideration rather at best the

complainant is entitled for refund of total amount after deducting 10% of basic sale consideration without interest.

18. That the complainant has filed the present complaint only to harass and illegally extort money from the respondent company.

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

E. ARGUMENTS OF LEARNED COUNSELS FOR THE COMPLAINANT AND RESPONDENT-

20. During the course of hearing, 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. ISSUE FOR ADJUDICATION-

21. 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-

22. The Authority has carefully examined the rival contentions and perused the documents placed on record. It is an admitted fact that Unit No. 506, 5th Floor, Tower-1 was allotted to the complainant in the project of the respondent namely "Pratham Apartments", Rewari, Haryana through an Allotment Letter dated 27.08.2013. The complainant had opted for a construction-linked payment plan and, as per the complainant, he had paid a total amount of ₹7,33,546/- towards the said unit.

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

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

- Respondent has contended that the Flat Buyer Agreement was sent to and voluntarily executed by the complainant. However, despite the said assertion, the respondent has 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 respondent regarding execution of the Flat Buyer Agreement remains unsubstantiated.
- 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 27.08.2013 does not stipulate any time frame for handing over possession. Authority observes that in the 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 complainants. 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 27.08.2013. 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 **27.08.2016**.

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

- The respondent has 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 was obligated to deliver possession of the unit within 3 years from the date of allotment letter, i.e., by 27.08.2016. 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 27.08.2016 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 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 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, respondent cannot be allowed to claim benefit of COVID19 outbreak as a force majeure condition.

- Authority observes that respondent has 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 deemed date of possession becomes year 2016 as per the allotment letter 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.

24. **Whether the complainant is entitled for refund or not?** It is noticed that the respondent itself issued the Final Notice dated **01.10.2014**, followed by the letter dated **10.11.2014**, whereby the allotment of the complainant was cancelled on the ground of non-payment of outstanding dues. However, the said cancellation also requires examination in the context of the nature of the payment plan and the subsequent conduct of the respondent.

25. The allotment in question was admittedly under a **construction-linked payment plan**. The respondent was, therefore, required to raise demands in accordance with the stages of construction/development contemplated

under the applicable terms and conditions. The respondent has not satisfactorily demonstrated that the construction corresponding to the demands raised from the complainant had actually been carried out or that the requisite stages of construction had been achieved before the cancellation of the allotment.

26. Further, the subsequent status of the project is also relevant. Despite the passage of considerable time from the date of allotment, the respondent has not demonstrated that the construction of the project has been completed or that an **Occupation Certificate/Completion Certificate** has been obtained in respect of the project/unit. Consequently, the respondent cannot contend that the complainant could presently be required to await possession of the unit despite the prolonged failure to complete the project.

27. As regards the deduction/forfeiture of 10% of the Basic Sale Consideration, the relevant contractual provisions also require consideration. Clause 6 of the allotment terms provides, inter alia, that the earnest money shall be deemed to be 10% of the total Sale Consideration and authorises the Company to forfeit such earnest money, along with other permissible amounts, in the event of non-fulfilment of the terms and conditions contained therein and in the Flat Buyer's Agreement. Clause 16 further provides that time is of the essence and stipulates the consequences of delay in payment of installments, including the Company's right, in the event of failure of the allottee to pay the installment along with interest, to

forfeit the earnest money and cancel the allotment. The said clauses, therefore, contemplate forfeiture upon the occurrence of the conditions stipulated therein and do not confer an unconditional or automatic right upon the respondent to retain 10% of the Sale Consideration in every case of cancellation.

31. In the present case, cancellation dated 10.11.2014 occurred on the ground of non-payment of dues. However, the allotment was admittedly made under a construction-linked payment plan. The respondent has not placed sufficient material on record to establish that the installments demanded from the complainant, on the basis of which the cancellation was effected, had become due in accordance with the corresponding stages of construction contemplated under the payment schedule. The respondent has also not established that the requisite construction had been carried out up to the stage corresponding to the amounts demanded from the complainant. This aspect assumes significance particularly when the respondent has failed to demonstrate completion of the project even till date and no Occupancy Certificate has been obtained. Further, even after cancellation of the allotment, the respondent admittedly did not refund the amount deposited by the complainant in accordance with the contractual consequences of cancellation.

32. The position is further required to be considered in the context of the subsequent conduct of the parties. The complainant has now categorically

expressed its unwillingness to continue with the project and has sought withdrawal and refund on account of the prolonged failure to complete the project. The project has not been shown to have been completed and no Occupancy Certificate has been obtained till date. The respondent's plea of force majeure/COVID also does not explain the failure in the present case, since the allotment was made on 27.08.2013 and the reasonable period for completion had expired much prior to the COVID-19 pandemic. It is further noticed that the complainant, through counsel, has itself sought refund after deduction of 10% of the Basic Sale Consideration, and the respondent has agreed to such deduction. However, such submission or concession cannot, by itself, determine the extent of the respondent's legal entitlement to forfeit the earnest money. The Authority is required to examine the contractual and statutory entitlement independently. An inadvertent concession or submission made by counsel for the complainant cannot operate to the prejudice of the allottee or confer upon the respondent a right to retain an amount which it has otherwise failed to establish as lawfully forfeitable. The allottee cannot be made to suffer on account of such inadvertent submission of counsel.

33. Accordingly, in the facts and circumstances of the present case, the respondent has failed to establish the factual foundation necessary for invoking the forfeiture contemplated under Clauses 6 and 16 to the extent of 10% of the Basic Sale Consideration. Consequently, the said deduction

cannot be mechanically allowed merely because the same has been mentioned in the prayer of the complaint and agreed to by the respondent. The amount refundable to the complainant is, therefore, liable to be determined on the basis of the amount actually paid by the complainant, subject to such other lawful adjustments, if any, as are specifically established on record.

34. At this stage, it is also pertinent to note that the complainant is no longer seeking possession of the unit and has expressed its desire to withdraw from the project and seek refund of the amount paid. In view of the prolonged delay and the fact that the project has not been shown to have been completed, the complainant cannot be compelled to remain indefinitely invested in the project. Since it is the respondent who has failed to discharge its 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.

35. 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.*"

36. In view of the above discussion, complainant is, therefore, entitled to seek **refund of the amount paid along with applicable interest under Section 18 of the Act.**

37. 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".*

38. 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.

39. 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%.

40. 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;*

41. 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 receipts of payments	Date of order	Interest from date of payments till date of order
1.	₹4,00,000/-	10.08.2013	05.10.2026	₹5,68,701/-
2.	₹3,33,545/-	24.09.2013	05.10.2026	₹4,69,778/-
	Total= ₹7,33,545/-			Total= ₹10,38,479/-

42. 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

43. 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 at para 41 of this order. It is further clarified that respondent 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 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]