HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. **COMPLAINT NO. 828 OF 2021**

Sube Singh Yadav ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 3rd

2. **COMPLAINT NO. 1035 OF 2021**

Bhawani Shankar ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

3. **COMPLAINT NO. 1066 OF 2021**

Kanchan Arora ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

4. **COMPLAINT NO. 1067 OF 2021**

Manisha Rani ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

5. COMPLAINT NO. 1075 OF 2021

Suraj Chauhan and Priya Chauhan ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

6. COMPLAINT NO. 1076 of 2021

Rajkawar Kataria and Laxmi ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

7. COMPLAINT NO. 1088 OF 2021

Kishore Jha ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

8. COMPLAINT NO. 1150 OF 2021

Sunita Sabharwal ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

9. COMPLAINT NO. 1151 OF 2021

Rama Rana and Virender Singh Rana ...COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

10. COMPLAINT NO. 1155 OF 2021

Narender Singh ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

11. COMPLAINT NO. 1324 OF 2021

Sunita Kumari and Dilbag Singh Nara ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

12. COMPLAINT NO. 1381 OF 2021

Abhey Singh ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

13. COMPLAINT NO. 1382 OF 2021

Lal Singh ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

14. COMPLAINT NO. 1412 OF 2021

Shabd Prakash and Surbhi Choudhary ....COMPLAINANT

VERSUS

Ferrous Infrastructure Pvt. Ltd. ....RESPONDENT

Hearing : 2nd

CORAM: **Rajan Gupta** **Chairman**
Dilbag Singh Sihag **Member**

Date of Hearing: 07.04.2022

Present: - Mr. Abhay Jain, learned counsel for complainant through video conferencing.

Sh. Sourabh Goel, learned counsel for respondent through video conferencing.

ORDER (RAJAN GUPTA - CHAIRMAN)

1. All captioned complaints are taken up together as facts and grievances of all complaints are more or less identical and relate to the same project of the respondent. Complaint no. 828 of 2021 titled Sube Singh Yadav Vs M/s Ferrous infrastructure Pvt. Ltd. has been taken as lead case for disposal of the matters.

2. Complainant had booked apartment bearing no.37, TF floor in Tower J admeasuring 1130 sq. ft. in respondent's project " Ferrous City " Phase II, situated at Dharuhera, Rewari by paying a booking amount of Rs. 10,00,000/- on 14.09.2013. BSP of the apartment was Rs. 27,40,250/- against which complainant had already paid an amount of Rs. 12,59,764/- Both the parties signed builder buyer agreement on 25.01.2014. As per Clause 13 and 14 of

the agreement, possession of booked property was to be delivered within 30 months with a grace period of 180 days, therefore, deemed date of possession in this case was 25.01.2017. However, no offer of possession has been made by respondent. Therefore, complainant sought relief of delivery of possession of apartment along with permissible interest as per Rule 15 of HRERA Rules, 2017 framed under RERA Rules, 2016 from the deemed date of possession till handing over of possession after obtaining the occupation certificate from competent Authority.

3. Learned counsel for complainant reiterated the factual matrix of the case as narrated above and stated that there has been delay of more than five years since deemed date of possession of apartments expired and no offer of possession of apartment has been made by respondent promoter.

4. Respondents in their written reply have basically argued that they have not been able to complete the project due to force majeure circumstances, which inter-alia includes non-development of external services like road, sewerage, water supply system, electricity sub-station etc. by the State government authorities. Further, respondents have deposited almost full external development charges amounting to Rs. 9.18 crores against demand of Rs. 10.59 crores. The external development charges were deposited by the year 2010, accordingly, reasonable expectation of respondents were that all external services would be provided within a reasonable time thereafter. In

their written submissions, respondents have pointed out that even land for development of external services is yet to acquire by State government authorities. It has been averred by respondents that their project has got stalled on account of non-provisioning of external services despite having paid full external development charges. Respondents have argued that Town & Country Planning department should be made a party in this case, therefore, this complaint is not maintainable for the reasons of non-joinder of necessary parties.

5. Respondents have further argued that a Complaint No. 654 of 2021 titled Ferrous Allottees Association Versus Ferrous Infrastructure Pvt. Ltd. has been filed before this Authority in which the Association of Allottees have sought to take over the project and complete it at their own level because respondent-promoter is failing to discharge their responsibility. Respondents have argued that the captioned bunch of complaints cannot be pursued any further on account of pendency of such Complaint No. 654 of 2021 filed by the Association.

6. Respondents have further argued that in respect of non-provisioning of external services they had approached Hon'ble Punjab & Haryana High Court by filing a Civil Writ Petition No. 18226 of 2017 titled as M/s Ferrous Infrastructure Private Limited versus State of Haryana. Hon'ble Punjab &

Haryana High Court has sought a report from the State Government in this regard.

7. Respondents have also argued that an amount of Rs. 19.86 crores, excluding interest is still recoverable from allottees of the project. This amount is sufficient to complete the project, but allottees are not paying because of non-availability of external services, and for this reason of non-payment they have not been able to complete the project. Respondents have argued that it is due to such force majeure circumstances that they have not been able to complete their project for no fault of theirs. It is the State Government and Town & Country Planning department which is severely defaulting in discharging their responsibilities due to which not only the promoter, but also allottees of the project are suffering badly.

8. Authority has given thoughtful consideration to the written submissions made by complainants as well as the respondents. It has also given due consideration to the oral arguments submitted in which the issues raised in written submissions were re-emphasized. After considering all facts and circumstances, Authority observes and orders as follows:-

(i) Respondents have argued that a complaint No. 654 of 2021 has been filed by an Association of allottees for taking over of the project and for completion at their own level. For that reason, it has been argued

that relief sought by allottees in captioned complaints cannot be granted.

This argument is not acceptable at all for the reasons that outcome of complaint No. 654 of 2021, filed by the Association of allottees, is uncertain. Secondly, the Association of allottees have been granted a right by Section 8 of the Act to take over the project in the event of promoter not being able to complete. Respondents are trying to deny the rights granted to the complainants by Section 18 of the Act, by citing their own failure to complete the project. They are trying to take a wrongful advantage of their own wrong doing. Authority cannot accept this argument.

(ii) A licence No. 202 of 2007 was granted to respondent-promoter for development of a group housing colony on land measuring 10.142 acres in Village Garhi Alawalpur, Tehsil Dharuhera, District Rewari and the licence was valid upto 30.07.2009.

(iii) As is evident from information contained in all the captioned complaints, Builder-Buyer Agreements (BBA) were executed between the year 2012 and 2014. It is also evident that most of external development charges had been paid by respondent-company to Town & Country Planning department between the years 2008 to 2010.

(iv) The BBA executed between complainants and respondents stipulated that booked property will be delivered in 36 months with a grace period of 180 days, accordingly, property was meant to be delivered within 42 months i.e. 3.5 years. Accordingly, deemed date of possession in different case works out to be falling in the years 2016 to 2017.

(v) Basic information of dates of agreement, basic sale price, amounts paid by complainants to respondents and deemed date of possession is tabulated below in respect of each of the captioned complaints :-

Sr. No.	COMPLAINT NO.	DATE OF AGREEMENT	BASIC SELLING PRICE (BSP) (In Rs.)	TOTAL AMOUNT PAID BY THE COMPLAINANT (In Rs.)	DEEMED DATE OF POSSESSION
1.	828/2021	25.01.2014	27,40,250/-	12,59,764/-	25.07.2017
2.	1035/2021	27.07.2013	21,25,000/-	25,01,054/-	27.01.2017
3.	1066/2021	24.12.2012	20,50,000/-	22,55,193/-	24.06.2016
4.	1067/2021	31.12.2012	20,40,000/-	20,83,259/-	01.07.2016
5.	1075/2021	07.01.2013	20,50,000/-	22,62,025/-	07.07.2016
6.	1076/2021	17.01.2013	20,50,000/-	17,40,442/-	17.07.2016
7.	1088/2021	17.01.2013	21,00,000/-	23,38,880/-	17.07.2016
8.	1150/2021	11.01.2013	20,75,000/-	21,42,476/-	11.07.2016
9.	1151/2021	22.12.2012	21,50,000/-	21,87,230/-	22.06.2016
10.	1155/2021	31.12.2012	20,80,000/-	21,20,338/-	01.07.2016
11.	1324/2021	26.12.2012	20,50,000/-	22,62,025/-	26.06.2016
12.	1381/2021	28.02.2013	20,75,000/-	16,18,857/-	28.08.2016
13.	1382/2021	17.01.2013	20,75,000/-	22,85,030/-	17.07.2016
14.	1412/2021	10.12.2012	21,25,000/-	23,25,801/-	10.06.2016

It can thus be inferred that though, surely, no effort has been made by State Government to provide external services for the colony, but

at the same time promoters kept on accepting consideration amount from complainants thereby kept assuring the complainants that their completed apartments will be delivered by due date of offering possession. Respondents were fully aware that external services had not been laid nor are they likely to be laid in near future, but still they went ahead with the project and kept impliedly assuring the complainants that their apartments would be completed.

9. Authority would first deliberate upon contractual relationship between the promoter on one hand and the allottees on the other.

(i) It is observed that allottees are not aware of technicalities of providing external services by different agencies of the State Government. They only understand that the colony in which they had booked their apartment is being developed by a promoter who has lawfully received licence from State Government for development of the colony. It is reiterated that the fact of having obtained licence assures the allottees that their colony is being developed in a lawful manner and under proper authority of the State Government.

(ii) Allottees kept making payments on implied assurance of the respondent that a properly and lawful constructed apartments in the colony along with all facilities and amenities will be delivered to

them within time period stipulated in the agreement. It is reiterated that the act of accepting full consideration amount from the complainants itself is an assurance to the allottees that their apartment will be delivered within agreed time frame.

(iii) At no stage during the period when consideration amount was demanded and received by respondent-company were the complainants made aware of the major risk factor that external services in the colony cannot be provided within foreseeable time period; or that completion of the project will get badly delayed on account of default by State Government agencies in laying external services. Nothing has been placed on record to show that any communication to this effect was made by respondent-company with allottees of project. By demanding and accepting full consideration amount, allottees were impliedly given to understand that everything is fine and respondent-promoter is on course to discharge his obligation of completing the colony and their apartments and delivering them within stipulated time frame.

(iv) The question that arises here is whether at this belated stage respondent can refuse to discharge their legal obligations or deny their contractual obligations towards allottees on account of default on the part of State Government agencies ?

The answer of this Authority is 'No'. The promoter has agreed to discharge his obligation towards allottees and same should have been discharged, especially when allottees have fully discharged their obligations. It is to be noted that licence for the colony was received in the year 2007. The agreements with the allottees were made in the years 2012-2014. At the time of agreements, process of land acquisition for laying external services had not commenced. Laying of external services in foreseeable future was not certain. Despite that, respondents kept on selling the apartments. Agreements with allottees should have been made when respondents were reasonably assured that they will be able to complete the colony within time frames being agreed. The promoter was fully aware that no effort has been made by State Government agencies for acquisition of land and for issuing or awarding tenders for execution of external services, but still they continued to collect consideration amount from allottees.

(v) Licence of the colony was granted in the year 2007 which was initially valid till 2009. Respondents got it renewed from time to time. They kept depositing external development charges. However, they actually started selling apartments from the year 2012 onwards. At that stage, they were fully aware that Town and

Country Planning department is in total default in performance of its responsibilities. Respondent should not have commenced sale of the apartments when there was no sign of laying external services. Despite that, they sold apartments to the allottees. Now, promoters cannot be allowed to take shelter behind the plea of force majeure circumstances to defend themselves in respect of their legal obligations towards allottees. The plea of force majeure circumstances therefore, cannot be accepted. It does not apply at all. Respondents were fully aware of ground situation at the time of effecting sales. In fact, they along with Town and Country Planning department have let down ordinary citizens who may have invested their life time savings to get a house for their family. The allottees have been left high and dry both by promoters as well as by Town and Country Planning department. Accordingly, lawful obligations of promoters towards allottees will remain enforceable. Accordingly, allottees are entitled to delay interest in accordance with Rule 15 of the RERA Rules, 2017 and provisions of Section 18 of the RERA Act, 2016 for the entire period of delay from the deemed date of possession upto the date when actual possession is delivered.

(vi) Authority would look at the situation from another angle. Most of the licences issued by Town and Country Planning department are in such areas where external services do not exist and it may take indeterminate period of time to lay those services. This fact is known to everyone. Most of the builders understand that they have to develop their projects with or without such external services. Non-providing of external services do not cause hindrance in completing the project and laying all internal services. In fact, it is an implied understanding between the department and the promoter that till the time such external services are laid, they have to provide these services internally. Majority of the projects in the State have been and are being developed with such understanding.

Accordingly, the argument being put forth by the respondent is nothing but an excuse to avoid its liability towards the complainants. Therefore, mere argument that they have not been able to complete the project because of non- development of external services cannot be accepted. Nothing stopped the respondents from completing the project and offering possession to the allottees without linking internal services with external systems. External services will be laid and completed by the State Government agencies in due course of time. Agreeably, though the

Town and Country Planning department cannot be absolved of its responsibility of laying external services, but this cannot be considered as a force majeure circumstance to allow the promoter not to complete their part of the project and apply for grant of Occupation Certificate.

10. Authority now will deal with the question of non-development of external services by State Government departments.

(i) The system of developing urban areas in Haryana is that a master plan is declared under Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 under which usage land in the notified area is defined. No construction without obtaining change of land use and without obtaining licence from Town & Country Planning department can take place in such controlled area/ master plan area.

(ii) Private colonisers thereafter are encouraged to develop plotted or group housing colonies within the areas notified in the master plan. The master plan contains broad layout of the sectors including sector roads, system of providing electricity, water supply, drainage system, sewage disposal system, etc.

(iii) It is the responsibility of the Town & Country Planning department to provide external services. They have to arrange land, prepare

plans, award contracts and get works of such external services executed through an appropriate executing agency.

The policy of the State Government is that the cost of development of such external services is proportionately loaded upon entire urbanisable area of the sector/master plan. For meeting proportionate cost, estimated external development charges are levied by Town & Country Planning on private colonisers. The external development charges payable by colonisers are notified from time to time and are conveyed to them before grant of licence. All licencee colonisers are obliged to pay stipulated external development charges.

(iv) Licence of present colony under discussion was granted in 2007 and was initially valid upto 2009. Thereafter, it was renewed from time to time. When the licence was granted only for two years, Town & Country Planning department would have anticipated that external services of the colony would be completed within this period. Anyhow, external development charges @ Rs. 1.04 crores per acre were paid by respondent-promoter between the year 2008-2010. It was therefore a legitimate expectation that after payment of external development charges, requisite services would be laid within a

reasonable period of time. Delay of a year or two, may also be acceptable.

(v) Further, arrangement within the State Government is that, while the external development charges are collected by Town & Country Planning department but they do not have their own independent engineering wing to execute those works. All over the State, works of external services is executed by Haryana Shaheri Vikas Paradhikaran (HSVP), formerly known as Haryana Urban Development Authority (HUDA). It is to be noted that HSVP is only an engineering/executing wing which carries out requisite development works on the directions of Town & Country Planning department, as per licences granted by them, or as per master plan notified by them. While HSVP is the executing arm of Town & Country Planning department, the HSVP cannot be held responsible for not creating external services. The responsibility for creating external services shall remain that of the licencing departments and the department which has been collecting external development charges from the promoters and assuring laying of those services.

(vi) Respondent-promoters have placed on record information dated 22.1.2014 obtained under Right to Information Act, in which Town & Country Planning department has plainly refused to own any

responsibility in respect of laying external services. They have put entire responsibility on HUDA for providing external services. They have made no mention whether they had directed HUDA to create external services, or whether they had deposited the amounts collected towards external development charges with HUDA. Information on the similar lines has been conveyed on subsequent occasions as well. Meaning thereby, the licencing authority, which collects all the EDC charges and is responsible for coordinated urban development is refusing to own any responsibility for laying those services without stating what efforts have been made by them to get the services laid. It is a serious situation.

(vii) An application of respondent-promoter for registration of their project is under process in the project section of the Authority. Information regarding providing external services in the vicinity of their colony in question was demanded from the department by this Authority. Town & Country Planning department, vide their letter dated 4.4.2022 have reported as follows:-

1. "The External development Charges are the charges which are used for the development of External development works such as water supply, sewerage, drains, provisions of

treatment and disposal of sewage, roads, electrical works, etc. by a authority and the rates of EDC in respect of Urban Estate, Dharuhera are fixed by HUDA (Now HSVP).

2. Further, HSVP is the authority which uses collected EDC for the development of various sectors in the state. The department has collect total EDC amounting to Rs. 26033.30 lacs till 23.02.2022 in Dharuhera, out of which EDC amounting to Rs. 104.55 crore upto 31.03.2021 has been utilized by HSVP for development.
4. This department does not have any timeframe w.r.t. the development of External Development works, as the development works are carried on by HSVP. As desired the construction of development works are carried out by HSVP in Sector-19, Dharuhera. In the regards,this department is not any liable for the development of External Development works and the status of development works to be carried out may be sought from HSVP. In view of the aforesaid submission it is submitted that the matter for the development of External Development works does not pertains to this department.
5. Moreover, it is also pertinent to mention here that as per the provisions of LARR Act-2013, the acquisition for the public purposes is difficult and since then no acquisition of land for public purpose is happening. However, the deliberation is being made by the government to derive a method for acquiring land for public purpose."

(viii) It is surprising that Town & Country Planning department is issuing licences and asking for payment of external development charges. They have been collecting external development charges; and imposing penalty/interest for delayed payment of external development charges; but at the same time completely denying their responsibility for executing those external development works. In fact, they are expressing their helplessness that it is very difficult for them to develop external services because no acquisition of land for public purpose is happening.

(ix) A question that arises here is that if Town and Country Planning department is so helpless in acquiring the land and are expressing their complete inability to develop external services; and is also expressing that it is some other department i.e. HSVP, which has to fulfil those obligations, then why are they notifying master plans; why are they issuing licences; and why are they collecting external development charges from licensees? Department should issue licence only for that area where external services have been planned to be laid in the foreseeable future.

(x) It is a serious situation. Aforesaid letter dated 4.04.2022 represents complete lack of coordination between Town and Country Planning department and HSVP. This situation must be corrected in the

interest of orderly growth and development of real estate sector which constitute 10% economy of Haryana.

(xi) Town and Country Planning department and its officials well understand that hefty external development charges (EDC) are initially paid by developers to the department, but developer recovers it from allottees proportionately later on. Thus, EDC is actually paid by allottees of the houses. It accordingly, casts a responsibility on the State to discharge its obligation of creating those services in respect of which allottees have made payments. It is to be understood that money taken from public for a specific purpose is deemed to be held in trust. Public entrusts its money to State officials for discharging their responsibility. Not discharging those obligations clearly amounts to breach of trust. It is a wrongful omission on part of the department for which it must be held liable. Omission on part of department is causing injury to public, allottees and promoters. Department must hold itself responsible for such acts of negligence and omission.

11. As observed above, however, relationship of the respondent-promoters with allottees of a project has to be kept separate from the relationship of respondent promoter with the State Government. While in the former case respondent-promoter will be fully answerable and liable towards allottees for

the reasons already stated, but at the same time, Town and Country Planning department also cannot shirk from its direct responsibility towards promoters, and indirect responsibility towards home buyer allottees. The letter dated 04.04.2022 as quoted above leads to an unmistakable conclusion that in case Town & country Planning department is refusing to discharge their responsibility in creating external services, they will be equally liable towards promoter as well as towards allottees if any damage is suffered by them on account of non- performance of their obligations.

The Authority at this stage would reiterate its view conveyed repeatedly that the act of granting licences is a solemn and sovereign assurance of the State Government to the general public that the colony for which licence has been issued would be laid as per approved plan and within the time frame provided. The question to be answered is how can a colony be developed properly, if development of external services has not even been planned ?

The Authority will send a copy of this order to Additional Chief Secretary, to Government of Haryana, Town & Country Planning Department, for appropriate corrective action not only in respect of this project, but also in respect of whole of the State where similar problems are being faced. Authority would strongly recommend to the department to review their policies of preparing master plans and granting licences. The concept of external development charges itself needs a thorough review in the over all

public interest, as well as in the interest of harmonious growth and development of economy of the State.

12. In view of forgoing discussions, Authority would dispose of the present bunch of complaints with the order that possession of booked apartments shall be delivered by respondent-promoter to the allottees whenever they complete the project and obtain occupation certificate from authorities concerned. However, since inordinate delay has already been caused, respondent-promoters are ordered to pay upfront interest to all the allottees as per provisions of Section 18 of the RERA Act, 2016 and Rule 15 of RERA Rules, 2017. The upfront interest is being calculated from the due date of offering possession upto the date of passing this order i.e. 07.04.2022. Allottees would be further entitled to monthly interest for each month of further delay caused. Upfront interest and monthly interest payable to each complainant is shown in the table below:-

Sr. No.	COMPLAINT NO.	AMOUNT PAID BY THE COMPLAINANT (In Rs.)	DEEMED DATE OF POSSESSION	UPFRONT DELAY INTEREST CALCULATED BY AUTHORITY TILL 07.04.2022 (In Rs.)	FURTHER MONTHLY INTEREST (In Rs.)
1.	828/2021	12,59,764/-	25.07.2017	5,51,124/-	9,763/-
2.	1035/2021	25,01,054/-	27.01.2017	11,15,434/-	17,894/-
3.	1066/2021	22,55,193/-	24.06.2016	12,14,153/-	14,478/-
4.	1067/2021	20,83,259/-	01.07.2016	10,14,179/-	14,656/-
5.	1075/2021	22,62,025/-	07.07.2016	11,07,552/-	16,042/-
6.	1076/2021	17,40,442/-	17.07.2016	7,59,836/-	11,058/-
7.	1088/2021	23,38,880/-	17.07.2016	12,45,502/-	18,126/-
8.	1150/2021	21,42,476/-	11.07.2016	9,51,076/-	13,802/-
9.	1151/2021	21,87,230/-	22.06.2016	9,83,815/-	14,149/-
10.	1155/2021	21,20,338/-	01.07.2016	10,34,687/-	14,944/-
11.	1324/2021	22,62,025/-	26.06.2016	10,24,121/-	14,728/-
12.	1381/2021	16,18,857/-	28.08.2016	6,77,523/-	9,474/-
13.	1382/2021	22,85,030/-	17.07.2016	11,14,528/-	16,220/-
14.	1412/2021	23,25,801/-	10.06.2016	10,65,911/-	15,329/-

The respondent shall pay the above stated upfront interest and monthly interest to the complainants within the period of 90 days as provided in Rule 16 of the RERA Rules, 2017.

13. **Disposed of** with above directions. Files be consigned to record room and order be uploaded on website of the Authority.

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]