



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. : 1205 of 2023
Date of Institution: 24.05.2023
Date of Decision: 12.11.2024

Pratibha w/o Mr. Shivam Bansal, r/o House no.1235, Sector 21-D, Faridabad, Haryana.

...COMPLAINANT

Versus

M/s Ferrous Township Pvt. Ltd., through its Managing Director /Chairman/ Director, office at Seth Farm, KH No.41, MG Road, Ghitomi, Near Indian Oil Petrol Pump, New Delhi - 110024

....RESPONDENT

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Hearing: 20th
Present: - Mr. Shivam, husband of complainant.
None for the respondent.

JUDGMENT:

This judgment of mine will dispose of a complaint filed by the complainant namely Pratibha against M/s Ferrous Township Pvt. Ltd. seeking compensation and the interest from this Forum, in accordance with the provisions of Rule 29 of the HRERA Rules, 2017 (hereinafter to be referred as the Rules

2017), read with Sections 71 & 72 of the RERA Act, 2016 (hereinafter to be referred as the Act, 2016).

2. Brief facts of the complaint are that the complainant Pratibha after having gone through the advertisement given by the respondent company i.e. Ferrous Township Pvt. Ltd. (hereinafter to be referred as the respondent), as per which the promoter-respondent assured to have obtained all necessary approvals and licenses to develop the project and to handover the possession within 18 months, booked a plot in the project 'Ferrous Megapolis City, Sector-70, Faridabad and paid initial amount of ₹5,50,000/- on 23.02.2012 and paid amount in total of ₹61,98,568/- up till November 2013, which amount was more than the actual cost of ₹60,30,225/- of the unit. That, since the plot was not handed over despite repeated requests of the complainant made till year 2017 and even the number of the plot of the complainant was changed from B-222 to B-300 malafidely by the respondent, the complainant suffered a lot of humiliation, felt frustrated due to all these illegal activities of the respondent, hence requested the respondent to return the entire amount paid by the complainant along with interest but in vain, so the present complaint was filed. Finally a request was made that since complainant suffered financial losses of the considerate amount resulting into lot of mental agony, pain and harassment to the complainant which cannot be compensated by any means and till date Occupation Certificate has not even been received by the respondent, complainant is entitled to get compensation as per the provisions of the Act, 2016.

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2. On receipt of notice of the complaint, respondent filed reply, which in brief states that complaint is not maintainable in the present form, complainant has not approached the Forum with clean hands, no interest or compensation could be awarded to the allottee in this case where amount has been refunded with interest, complainant having no evidence to prove as to how she suffered mental and physical agony, complaint being barred by limitation etc.

On merits, it has been mentioned that the complainant had opted for joining the project only after having come to know the entire details about the project and was provisionally allotted Plot no.B-222, measuring 268.01 sq. yard and then had deposited the instalments but the project could not be completed because of lot many litigations involved as matter went up to Hon'ble High Court also. That, there has been no intentional delay on the part of the respondent to complete the project and the delay was caused because of unforeseen circumstances beyond its control and in that respect even clause 44 of the Builder Buyer Agreement is there to exempt the promoter. That, the claim of the complainant that the number of plot was changed without its consent is wrong claim because in its subsequent correspondences, the complainant had sought possession of the changed number of plot i.e. B-300 and not of provisionally allotted B-222. That, the complainant has also concealed the fact that it has got refund with interest. That, the complainant has filed the present complaint for compensation without quantifying the amount of compensation and has also did not show as to how he has suffered mental and physical agony because of non-

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completion of the project. That, the complainant filed the complaint in the year 2023 pertaining to the project of the year 2012, hence, the present complaint is hopelessly time barred and because of non-disclosure and calculations to quantify the damages, compensation cannot be granted as loss is sine qua non for the entitlement for compensation. Finally, prayer is made to dismiss the complaint being not maintainable as do not meet the requirements of Sections 12, 14, 18 & 19 of the Act, 2016.

3. During these summary proceedings, the complainant moved application to introduce the quantification of damages in his original complaint but the request was declined by learned Predecessor of this Court. As per record, arguments on merit were also heard and parties had placed on record citations in support of their rival contentions but order was not pronounced till undersigned joined this post. It is also apt to note here that on dated 11.11.2024, the last date given for arguments, none appeared for respondent so this Forum decided to hear ex-parte arguments and also having interest of justice in mind to take judicial notice of the authorities placed on record for the respondent at the time of announcing final judgment.

4. This Forum heard husband of the complainant and has also gone through the record including pleadings and citations for the respondent.

5. In support of its contentions, the husband of the complainant has argued that in the instant case, complainant is very much entitled to get

compensation and the interest thereon even if the amount of compensation is not quantified because it is a beneficial legislature wherein provisions of Civil Procedure Code as such do not apply. He has further argued that otherwise also, it has been admitted fact that despite the complainant having paid more than the basic amount, till November 2013, the project was never completed, nor, the possession of the plot was handed over to the complainant because of which on the complaint of the complainant with Hon'ble Authority at Panchkula, the respondent was ordered on dated 15.03.2023 under Section 37 of the RERA Act, 2016, to get refund of the entire amount with interest, which the respondent finally paid on dated 02.02.2024. He has further argued that as per law laid down by Hon'ble Apex Court in M/s New Tech Promoters and Developers Pvt. Ltd v/s State of UP & Ors etc. (Civil Appeal no.6745-6749 of 2021), the complainant is entitled to get compensation and interest as the said relief is different from the relief granted by the Authority vide order dated 15.03.2023. He has further argued that provisions of Limitation Act are not applicable in case in hand, nor, the complainant is required to give specific proof as to how he suffered mental agony and harassment because the Court can take judicial notice thereof. He has further argued that since the case of complainant falls within the ambit of provisions of Sections 14, 18, 19 and 72 of the Act 2016, she is entitled to get compensation of ₹20,00,000/- for mental agony and harassment, breach of trust, unlawful trade practice along with litigation expenses of ₹1,50,000/- and any other relief which this Forum deem appropriate. In support of his arguments to get compensation,

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he has placed on record the orders and judgments in Complaint no.835 of 2023 titled as Lt. General Retired Ram Kanwar Hooda vs Global Land Masters Infratech Pvt. Ltd., Complaint no.769 of 2021 titled as Bharat Kumar Sen v/s M/s Ansal Properties and Infrastructure Pvt. Ltd., complaint no.1418 of 2019 titled as Anil Kumar Suri & Seema Suri v/s M/s Jindal Reaty Pvt. Ltd., Complain no. 4857 of 2021 titled as Monika Jain and Sanjay Jain v/s Parsvnath Developer Ltd. and Appeal no.423 of 2021 titled as M/s T.G. Buildwell Pvt. Ltd. v/s M/s Agarwal Agencies Pvt. Ltd. and others. Finally, he has prayed to allow the complaint in the manner prayed.

5. On the other hand, as per the documents placed on record for the respondent, who was not represented during the arguments despite last opportunity given as case had been adjourning from 09.01.2024 till today for advancement of arguments. This Forum in the interest of justice has taken judicial note of the citation placed on record for the respondent which from respondent's point of view support contentions raised in its reply, to say that this complaint is barred by limitation. On this point, respondent has played reliance on the law laid down in Raghwendra Sharan Singh vs. Ram Prasanna Singh (Civil Appeal no. 2960 of 2019), Central Coal Fields Limited vs. Lilawati Devi (2001(1)LLJ 1477) and Smt. Mira Madhubani vs. M/s Ireo Grace Real Tech Pvt. Ltd. (HRERA-Gurugram Complaint no.242 of 2018 dated 05.09.2018), State of Maharashtra vs. Hindustan Construction Company & Anr. (Arbitration Appeal No.6 of 2007 decided on 01.02.2013) passed by Hon'ble Bombay High Court and Shalini

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Chhabra & Anr. vs DLF Universal Ltd. (Complaint no.238 of 2023) passed by Hon'ble Authority.

On the point that without asking for relief, present complaint is not maintainable, reliance has been placed on the law laid down in Mrs. Suman Lata Pandey & Anr. v/s M/s Ansal Properties & Infrastructure Ltd. (Appeal No.56 of 2020) passed by UPREAT.

On the point that without providing any evidence of loss caused, complainant cannot seek compensation, reliance has been placed on the law laid down in Raja Ram vs Jai Prakash Singh and Others (Civil Appeal no.2896 of 2009 SC) and Harlal Saini vs Union of India (Writ Petition no.39169 of 2012) passed by Allahbad High Court.

On the point that interest awarded to allottee in case of refund or delayed compensation, hence, allottee is not entitled to get separate compensation through the present complaint, reliance is placed on the law laid down in Neelkamal Realtors Suburban Pvt. Ltd. & Ors. vs UOI (WPC. 2737 of 2017) passed by High Court of Bombay. Commissioner of Income-tax Shimla vs M/s HP Housing Board, Shimla (Income Tax Appeal No. 36 of 2006) passed by High Court of Himachal Pradesh, Ghaziabad Development Authority vs. Dr. N.K. Gupta (Revision Petition No.2244 of 1999) passed by

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NCDRC and PCIT vs West Bengal Housing Infrastructure Development Corporation (ITA No. 84 of 2018, 85 of 2018) passed by High Court of Calcutta.

Finally, prayer is made that the complaint be dismissed being not maintainable.

7. With due regards to the rival contentions and facts on record, this Forum possess following questions to be answered;

- (a) Whether the law of limitation is applicable in a case covered under RERA Act, 2016 and Rule 2017 made thereunder?
- (b) Whether non-mention of relief sought would make a complaint filed under RERA Act, 2016, as not maintainable?
- (c) Whether the compensation and interest could be denied to the complainant where he or she has got an order of refund from the Hon'ble Authority?
- (d) What are the factors to decide compensation?
- (e) Whether it is necessary for the complainant to give evidence of mental harassment, agony, grievance and frustration caused due to deficiency in service, unfair trade practice and miserable attitude of the promoter, in this case to get compensation or interest?

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Now, this Forum will take on each question posed to answer, in the following manner;

(7a) Whether the law of limitation is applicable in a case covered under RERA Act, 2016 and Rule 2017 made thereunder?

The answer to this question is in negative.

The plea for the respondent is that complaint is barred by limitation as project pertain to the year 2013, whereas complaint was filed in the year 2023 and further placed reliance upon certain authorities like Raghwendra Sharan Singh vs. Ram Prasanna Singh (Civil Appeal no. 2960 of 2019), Central Coal Fields Limited vs. Lilawati Devi (2001(1)LLJ 1477), Smt. Mira Madhubani vs. M/s Ireo Grace Real Tech Pvt. Ltd. (HRERA-Gurugram Complaint no.242 of 2018 dated 05.09.2018), State of Maharashtra vs. Hindustan Construction Company & Anr. (Arbitration Appeal No.6 of 2007 decided on 01.02.2013) passed by Hon'ble Bombay High Court and Shalini Chhabra & Anr. vs DLF Universal Ltd. (Complaint no.238 of 2023) passed by Hon'ble Authority to support such contention.

On the other hand, the plea for the complainant is that the provision of Limitation Act are not applicable in this complaint filed under RERA Act, 2016, hence, plea of limitation raised be rejected.

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With due regards to the rival contentions and facts on record, this Authority is of the view the law of limitation does not apply in respect of a complaint filed under the provisions of the RERA Act, 2016. Rather, Section 29 of the Limitation Act, 1963 specifically provides that Limitation Act, 1963, does not apply to a special enactment wherein no period of limitation is provided like RERA Act, 2016. For ready reference Section 29 of the Limitation Act, 1963, is reproduced below;

Section 29 - Limitation Act, 1963

29. Savings.--

(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.

Section 18(2) of RERA Act, 2016, brings the complaint out of the purview of Limitation Act, 1963.

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Even Hon'ble Apex Court in Consolidated Engg. Enterprises v/s Irrigation Department 2008(7)SCC169, held regarding applicability of Limitation Act, 2016, upon quasi-judicial forums like "Authority" or "Adjudicating Officer" working under RERA Act and Rules thereunder that "Limitation Act would not apply to quasi-judicial bodies or Tribunals." Similar view has been reiterated by Hon'ble Apex Court in case titled as "M.P. Steel Corporation v/s Commissioner of Central Excise 2015(7)SSC58."

Notwithstanding anything stating above, academically, even if it is accepted that law of limitation applies on quasi-judicial proceedings, though not, still in the case in hand it would not have an application in this case as the project has not been completed till date, resulting into refund of the amount to the complainant, so, cause of action for the complainant is in continuation.

Though, for respondent various authorities on the point of limitation as mentioned above, have been placed on record, but none of the same are helpful being distinguishable on facts. In other words, these do not answer the question of applicability of Limitation Act, in the cases filed under RERA Act, 2016. Moreover, no law of Hon'ble Apex Court has been cited which

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differs from the law relied by this Forum on the point of limitation, hence, objection taken about limitation is merit less.

In nutshell, plea of bar of limitation is devoid of merit.

(7b) Whether non-mention of relief sought would make a complaint filed under RERA Act, 2016, as not maintainable?

The answer to this question is also in negative.

At the outset, it is pertinent to mention here that procedure provided under Rule 29 of HRERA Rules, 2017, to proceed with inquiry on a complaint filed under Sections 12, 14, 18 & 19 of the RERA Act, 2016, is summary in nature and provisions of Civil Procedure Code do not apply to it in its entirety. Otherwise also, RERA Act, 2016 and HRERA Rules, 2017 made thereunder, are beneficial in nature it being specially enacted to stream line relationship between promoter and the allottee. It is worth to mention here that a beneficial legislature is to be interpreted in the manner its object is achieved and hyper technical approach be avoided. Further, being a special enactment, it overrides the provisions of general law. To hold so, this Forum has taken strength from the law laid down in Workmen of American Express International Banking Corporation vs. Management of American Express International banking Corporation (1985(4) SSC 71).

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Surendra Kumar Verma vs. Central Government Industrial Tribunal-cum-Labour Court (1981 AIR 422), Har Sharan Varma vs. State of UP (AIR 1985 SC 378), Hindustan Level Ltd. vs. Ashok Vishnu Kate (1985 SCC 1385) and Sant Ram vs. Rajender Lal (AIR1978SC1601). Similarly, it is also settled proposition of law that the special statute will prevail upon the general law. To say so, the latin maxim of "Generalia Specialibus non-derogant" is relied, which says "the general law does not derogate from the special" or that the 'this special law shall prevail over the general'. This principle of interpretation was approved in cases titled as Greenshield vs. The Queen (1958) SCR 216, State of Gujarat vs. Patel Ramji Bhai 1979 SCR 3788.

Having above legal position in mind, this authority observes that even if complainant had failed to add relief clause in the complaint, still it would not make the present complaint non-maintainable because the details given in the complaint to claim compensation are self-sufficient for respondent to know against what he has to defend. Hence, respondent can't claim any pre-judice against non-disclosure of relief clause, nor, can take benefit of provisions of Civil Procedure Code to get this complaint dismissed on the grounds of non-maintainability in the manner claimed.

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Notwithstanding anything stated above, undoubtedly, the complainant did not quantify the amount of compensation, or has failed to give details of heads under which compensation is claimed. But, that itself is not a ground to decline the relief as one of the object of Act 2016, is "to protect the interest of the consumer, being an allottee of a residential unit in the project being developed by the respondent. Even if complainant or counsel, has inadvertently left required details to be filled in the complaint, which otherwise is quite elaborative about cause of action and also about what kind of relief the consumer is asking for, it can't be a ground to deny him the relief which he actually deserves having in mind the fact that the allottee has approached the Authority under special statute which is welfare oriented in nature, thus has overriding impact over the general law.

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As per record, the respondent has referred certain authorities on this point, but having due regards to the same, these are not beneficial for the respondent as pertain to proceedings under Civil Procedure Code and not to RERA Act, 2016.

In view of the forgoing discussion, this Forum reject the plea of respondent against the maintainability of the present complaint on the ground of non-speaking relief clause.

(7c) Whether the compensation and interest could be denied to the complainant where he or she has got an order of refund from the Hon'ble Authority?

The answer to this question is also in negative.

As per law laid down by Hon'ble Apex Court in M/s Newtech Promoters and Developers Pvt. Ltd. v/s State of U.P. & ors etc. Civil Appeal no.6745-6349 of 2021 dated 11.11.2021, an allottee has two distinct remedies, viz, refund of the amount together with interest or interest for delayed handing over of possession and compensation.

In the nutshell, the right of allottee for compensation or interest is independent than relief granted by Hon'ble Authority under Section 31 of RERA Act, 2016.

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(7d)

What are the factors to decide compensation?

On this point, relevant provisions of RERA Act, 2016 and also law on the subject for grant of compensation, are as under;

(a) Section 18 - Return of amount and compensation

- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—
- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
 - (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the

allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

(b) How, an Adjudicating Officer is to exercise its powers to adjudicate, has been mentioned in case titled as Mrs. Suman Lata Pandey & Anr v/s Ansal Properties & Infrastructure Ltd. Appeal no56/2020, by Hon'ble Uttar Pradesh Real Estate Appellate Tribunal at Lucknow dated 29.09.2022 in the following manner;

12.8- The word "fail to comply with the provisions of any of the sections as specified in sub section (1)" used in Sub-Section

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(3) of Section 71, means failure of the promoter to comply with the requirements mentioned in Section 12, 14, 18 and 19. The Adjudicating Officer after holding enquiry while adjudging the quantum of compensation or interest as the case may be, shall have due regard to the factors mentioned in Section 72. The compensation may be adjudged either as a quantitative or as compensatory interest.

12.9 – The Adjudicating Officer, thus, has been conferred with power to directed for making payment of compensation or interest, as the case may be, “as he thinks fit” in accordance with the provisions of Section 12, 14, 18 and 19 of the Act after taking into consideration the factors enumerated in Section 72 of Act.

(c) What is to be considered by the Adjudicating Officer, while deciding the quantum of compensation, as the term “compensation” has not been defined under RERA Act, 2016, is answered in Section 71 of the Act, 2016, as per which as Adjudicating Officer “thinks fit in accordance with provisions of relevant sections. Section 72, further elaborate the factors which read as under;

Section 72: Factors to be taken into account by the adjudicating officer.

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72. While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

(d) For determination of the entitlement of complainant for compensation due to default of the builder/developer the Hon'ble Supreme Court in M/s Fortune Infrastructure (now known as M/s. Hicon Infrastructure) & Anr. Vs. Trevor D'Lima and Others, Civil Appeal No.(s) 3533-3534 of 2017 decided on 12.03.2018, held as under:-

“Thus, the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises, then on basis of rent actually paid by him. Along with recompensing the loss

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the Commission/Forum may also compensate for harassment/injury, both mental and physical.”

In the aforesaid case, Hon’ble Apex Court laid down the principle for entitlement of the compensation due to loss or injury and its scope in cases where the promoter of real estate failed to complete the project and defaulted in handing over its possession.

- (7e) Whether, it is necessary for the complainant to give evidence of mental harassment, agony, grievance and frustration caused due to deficiency in service, unfair trade practice and miserable attitude of the promoter, in this case to get compensation or interest?

Before deliberating on this aspect, it is necessary to deliberate upon admitted facts to be considered to decide the lis;

- | | | |
|-------|--|-------------------------------|
| (i) | Project pertains to the year – | 2012 |
| (ii) | Proposed Handing over of possession – | 18 months |
| (iii) | Basic sale price - | ₹60,30,225/- |
| (iv) | Total amount paid - | ₹61,98,568/- |
| (v) | Period of payment – | from 28.02.2012 to 14.11.2013 |
| (vi) | Occupancy certificate -
Whether received till
Filling of complaint | NO |

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(vii) Date of filing of complaint filed under Section 12, 18 & 19 of RERA Act, 2016	24.05.2023
(viii) Date of filing of complaint under Section 31 before Hon'ble Authority	15.07.2020
(ix) Date of order of Authority	15.03.2023
(x) Date when total refund made	02.02.2024

It is matter of record that the project advertised in the year 2012, did not get completion certificate till filing of the complaint on dated 24.05.2023 and also that the complainant on its part had performed his part of duty by paying more than the basic price of the plot. Admittedly, basic price of the plot was ₹60,30,225/- whereas between Feb 2012 till 14.11.2023, the complainant paid ₹61,98,568/-. It is also admitted on record that the complainant did not get possession of plot initially allotted, or even of the changed one. There can also be no denial that allottee of the apartments generally spend their lifetime earning or even obtain loans for purchasing the apartment and they are not at equal footings with that of promoter, who is in dominating position. The position of the allottee becomes more pitiable and sympathetic when he or she has to wait for years together to get the possession of plot allotted despite having played its bid but on the contrary it

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is the promoter who enjoys the amount paid by consumer during this period and keep on going to delay the completion of the project by not meeting legal requirements on his part to get the final completion from competent Authority about fulfilling which such promoter knew since the time of advertisement of the launch of project. Further, the conduct of the promoter to enjoy the amount of consumer paid is nothing but misappropriation of the amount legally paid as the promoter did not hand over the possession within stipulated time, which the promoter was legally bound to do. It is not out of place to mention here that if the promoter/respondent had a right to receive the money from allottee to hand over the possession in time, he is bound to face the consequences for not handing over the possession in time. Here, it is worth to quote a Latin maxim "ubi jus ibi remedium," which means "where law has established a right, there should be a corresponding remedy for its breach." If this be the legal and factual position, the promoter is not only bound to refund the amount but also to compensate the allottee for disappropriate gain or unfair advantage on the part of promoter within the meaning of Section 72(a) of the Act 2016, of the amount paid. It is not out of place to mention here that the first installment the promoter received from the allottee was in Feb 2012 and final in November

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2013, total amounting to ₹61,98,568/-, but the promoter neither completed the project, nor refunded the amount received till allottee having been forced to approach Hon'ble HRERA Authority to get the refund after having indulged in unwarranted forced litigation by the promoter at the cost of his personal expenses, which he finally got on date 02.02.2024. During this period, obviously, the allottee had to suffer inconvenience, harassment, mental pain and agony during the said period bringing its case within the ambit of Section 72(d) of the Act, 2016 as such feelings are to be felt sensed without any proof thereof.

In view of the above, since, the promoters had been using the amount of ₹61,98,568/-, for the last more than 11 years, for the sake of repetition it is held that it can definitely be termed as disproportionate gain or unfair advantage, as enumerated in Section 72(a) of the Act. In other words, it had been loss to allottee as a result of default on the part of promoter which remained continuous till the refund is made starting from the first date of instalment paid on dated 28.02.2012. Thus, it would be in the interest of justice, if the compensation is ordered to be paid to the complainant after taking into consideration of the default of judgment debtor for the period starting from Feb 2012 till Feb 2024 and also misutilization of the amount paid by the complainant to

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the respondent. In fact, the facts and circumstances of this case itself are proof of agony undergone by the complainant so long, hence, there is no need to look for formal proof of the same

Undoubtedly, there is mention of the observations made in case titled as Suman Lata Pandey's case (supra) in the pleadings of respondent to say about formal proof but having due regards to the same benefit of it is not available to the judgment debtor on two counts. Firstly, Hon'ble Apex Court in M/s Fortune's case (supra) has a different view which case has not been discussed in Suman Lata Pandey's case. Secondly, in the case in hand facts and circumstances are itself proof in favour of complainant to prove its contentions.

In totality, the complainant is held to be entitled for compensation. After having concluded that the complainant deserves compensation, it is to be seen what would be the rate of interest.

In this regard, this Forum relies upon the law laid down by Hon'ble Apex Court in Civil Appeal no.6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUM OMR homes Pt. Ltd.) and Ors., wherein it is held that "for default of the

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promoter compensation @ 6% p.a. is to be paid to the allottee/home buyer.”

RELIEF

In view of the forgoing discussion, the compensation to the complainant is awarded in the following manner;

8. The calculation of compensation is tabulated below:

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹5,50,000/-	28.02.2012 to 12.11.2024	6%	₹4,19,688/-
₹9,57,556/-	21.04.2012 to 12.11.2024	6%	₹7,22,338/-
₹6,03,022/-	14.06.2012 to 12.11.2024	6%	₹4,49,541/-
₹11,47,753/-	28.08.2012 to 12.11.2024	6%	₹8,41,476/-
₹11,47,753/-	27.10.2012 to 12.11.2024	6%	₹8,30,156/-
₹8,96,242/-	28.03.2012 to 12.11.2024	6%	₹6,25,847/-
₹4,00,000/-	11.10.2013 to 12.11.2024	6%	₹2,66,367/-
₹4,96,242/-	14.11.2013 to 12.11.2024	6%	₹3,27,683/-
₹61,98,568/-			₹44,83,096/-


9. Since, complainant has been forced to file the complaint to get his legal right of compensation, complainant is granted ₹30,000/- as litigation charges.

10. The total compensation comes to ₹44,83,096/- + ₹30,000 = ₹45,13,096/- (Rupees Forty Five Lakhs Thirteen Thousand and Ninety Six).

11. In these terms, the present complaint is partly allowed. The respondent is directed to pay amount of ₹45,13,096/- (Rupees Forty Five Lakhs Thirteen Thousand and Ninety Six) within 90 days to the complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.

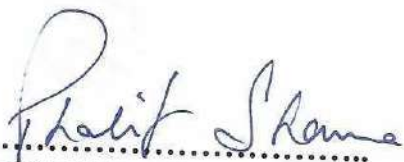
12. The present complaint stands **disposed of**. File be consigned to record room after uploading of this order on the website of the Authority.

12.11.2024


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MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER

Note: This judgement contains 25 pages and all the pages have been checked and signed by me.

12.11.2024


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MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER