



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### BEFORE THE ADJUDICATING OFFICER

**Complaint No.:** 918/2018  
**Date of Institution:** 07.12.2018  
**Date of Decision:** 13.01.2025

Kanta Malhotra wife of late Shri Badri Nath Malhotra resident of House No. 58,  
Old Housing Board Colony, Rohtak.

...COMPLAINANT

Versus

M/s Parsvnath Developers Ltd., and others

....RESPONDENTS

*P. Lalit*  
*13/1/2025* **Date of Hearing:-** 13.01.2025

**Hearing:-** 82nd

**Present: -** Mr. Sushil Malhotra, Adv., for the complainant through VC.  
Ms. Neetu Singh, Adv., for the respondent through VC.

### ORDER:

This order of mine will dispose of a complaint filed by the complainant namely Ms. Kanta Malhotra against M/s Parsvnath Developers Ltd., and others, 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 Ms. Kanta Malhotra is a third allottee of a residential plot measuring 402 sq. yards bearing No. B-278 in the project 'Parsvnath City Township, Rohtak and paid initial amount of ₹2,85,000/- on 22.09.2009 and paid amount in total of ₹47,80,499/- on the following dates:

Date	Amount paid by the complainant
22.9.2009	₹2,85,000/-
30.7.2010	₹33,800/-
1.10.2010	₹6,05,838/-
6.4.2011	₹8,18,000/-
20.6.2011	₹1,06,622/-
31.2.12	₹3,00,000/-
30.4.2012	₹6,40,000/-
30.3.2013	₹2,48,595/-
17.5.2013	₹40,200/-
15.5.2015	₹4,969/-
31.3.2015	₹4,21,843/-
3.2.2017	₹3,15,607/-
Total	<b>₹38,20,474/-</b>

The complainant has further stated that BBA of the unit no. 278 was executed on 16.5.2013 between the previous owner Shri Dharampal Kularia and the BBA was endorsed in the name of the complainant on dated 23.05.2013. The complainant is the subsequent allottee and derives her right of allotment from Sh. Dharampal Kularia who purchased the booking rights from one Bhupinder Kadyan on 30.07.2010. Original buyer entered the project by remitting the amount of ₹2,85,000/- on 22.09.2009. Complainant has paid a premium of ₹9,60,027/- to Real Estate Agent Mr. Sunil Rajan who facilitated this deed. Complainant paid ₹30,37,855/- to the respondent and ₹40,200/- +

₹4,969/- as Administrative charges plus tax paid to the respondents on account of transfer of plot in the name of the complainant on 17.05.2013 and thus the complainant has paid ₹30,83,024/- to the respondents and the complainant is the subsequent buyer. Complainant has further stated that she is the third purchaser and paid ₹9,60,027/- to the Real Estate Agent over and above the amount of ₹30,83,024/- paid to the respondents. That, during the pendency of this complaint, the complainant filed two applications dated 27.08.2020 under order 1 rule 10 for arraying Shri Sunil Rajan son of Sh. Sant Rajan as respondent no. 5 and the other application for claiming interest of ₹7,37,450/- which she and her son had paid to the HDFC Bank and Fullteron India Credit Company, in the complaint which was partly allowed by this Hon'ble Forum vide order dated 15.12.2020, wherein it was decided that the complainant could claim interest of ₹7,37,450/-, on the basis of which the complainant filed amended complaint dated 27.9.2024, reiterating earlier facts and the facts regarding interest on loan. That, as per point no. 8(a) of the Plot Buyer Agreement, the developer shall endeavor to complete the internal development works and possession will be given within 24 months from the date of the agreement i.e. 16.5.2013. The complainant further stated that the complainant and her son were in regular touch with the respondents no. 1 to 4 and senior authorities of the company but every time company stated that the work will be completed in 2-3 months. The respondents gave assurances for the last 5 years but no positive results. The complainant further submitted that

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when the respondents did not hand over the plot to the complainant, latter filed Complainant No. 77 of 2018 before the Hon'ble Haryana Real Estate Regulatory Authority (hereinafter called the HRERA) on 15.2.2018, wherein it was prayed for directions to the respondents to refund the amount deposited by the complainant alongwith interest @24%. The complainant also sought compensation for the delay and the harassment caused to the complainant. That, the complainant further stated that after considering the averments of the both the parties, Hon'ble HRERA vide order dated 4.10.2018 directed the respondents to refund the amount of ₹47,80,499/- alongwith interest to the complainant in accordance with Rule 15 of the HRERA, Rules i.e. @ SBI highest marginal cost of land rate plus 2% within 60 days from the uploading of the order. Regarding other compensations, if permissible, Hon'ble HRERA left the complainant at liberty to approach the Id. Adjudicating Officer.

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That, the complainant has sought relief in the present complaint on account of the fact that the complainant's principle amount was blocked for around 9 years which was commercially used by the respondents, land in Rohtak is more than ₹26,000/- per sq. mtr. as per advertisement of HSVP for Sector 21, Rohtak, and that respondents were involved in unfair trade practice as well as Fraudulent practice. Finally, the complainant sought compensation in the manner that the respondents 1 to 4 be directed to pay an amount of ₹39,58,621/- with interest @ 24% with effect from 22.9.2009 till the date of realisation of the amount plus litigation charges of ₹60,000/-, loan interest of

₹7,37,450/- alongwith interest from the respective dates of payment and also an amount of ₹9,60,027/- on account of mental tension, agony, harassment, considerable amount of financial loss due to exponent increase in rates of building material, cost of construction and increase in cost of property and rental accommodation charges etc.

3. In support of her contentions, complainant on dated 11.12.2019 filed HUDA brochure for sector 21, Rohtak, wherein the rates from ₹20,000/- to ₹26,000/- have been quoted for the plots ranging from 4 marla to 1 kanal. Similar brochures have also been produced in evidence for sectors 77 & 78 of Faridbad, brochure for sector 56-56A-78 Faridabad, HSVP Sector 10, Bahadurgarh, Tata New Heaven Bahadurgarh brochure, HL City Bahadurgarh. Vide application dated 17.3.2021, she has also submitted the various documents on record for perusal of this Forum for adjudication of the case. In addition thereto, the complainant on dated 20.10.2022 submitted documents of complaint no. 1233 of 2018, medical record of her family members, documents of purchase of property in HSVP sectors., LC report for the project. RFA no. 7108 of 2012, civil appeal no. 3581 -3590 of 2020 in case titled Ms/ Imperia Structure Ltd., Vs. Anil Patni and another. She also submitted written submissions on 22.2.2023 vide which it has been stated that the Hon'ble Supreme Court in civil appeal no. 6745-6749 of 2021 M/s Newtech promoters and Developers Ltd. Versus State of UP and others has described in detail the objects and reasons of the Act 2016. The complainant in additional submissions

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submitted on 9.11.2023 reproduced para no. 73 of the judgement passed by the Hon'ble Supreme Court of India in case titled Newtech Promoters Vs. State of UP in civil appeal no. 6745-6749 of 2021. In addition to the citation mentioned above, to get the relief as prayed, she had also placed on record the citations such as Civil Appeal no. 12238 of 2018 titled as **Pioneer Land Infrastructure Ltd., Vs. Govindan Raghavan, date of decision 02.04.2019**, Civil Appeal No. 3864-3889 of 2020 titled as **DLF Home Developers Ltd., (earlier known as DLF Universal Ltd.,) and Anr. Vs. Capital Greens Flat Buyers Association etc. date of decision 14.12.2020**, Lucknow Development Authority Vs. M.K. Gupta 1994 SCC (1) 243 decided on 05.11.1993, Civil Appeal no. 6044 of 2019 Experion Developers Pvt. Ltd. Vs. Sushma Ashok Shiroor decided on 07.04.2022 (SC), Civil appeal no. 7042 of 2019 titled as M/s Laureate Buildwel Pvt. Ltd. Vs. Charanjeet Singh decided on 22.07.2021 (FB), Civil Appeal No. 3581-3590 of 2020 titled as M/s Imperia Structure ltd. Vs. Anil Patni and Anr. decided on 02.11.2020, Vijay Kumar Vs. Haryana Shahari Vikas Pradhikaran HUDA, complaint no. 673/2018 passed by Id. Adjudicating officer HRERA, Panchkula decided on 13.12.2018, Appeal No. 11 of 2021 M/s Omaxe New Chandigarh Extension Pvt. Ltd., Versus Gurmeet kaur Gulati & Anr. passed by Real Estate Appellate Tribunal, Punjab, Abhimanyu Partap singh Vs. Namitha sekhon and Ors. Civil appeal no. 4648 of 2022, M/s Marvel Omega Builders Vs. Shrihari Gokhle, Civil Appeal No. 3207 of 2019, Mona Baghel Vs. Saijan Singh, Civil Appeal No. 734 of 2022, Janta Land Promoters Vs. unionof India,

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CWP no. 8548 of 2020, Fortanne Infrastructure Vs. Trevpr Dalima Civil Appeal No. 3533 of 2017, Emmar India Vs. Kausal Pal Singh, RERA appeal No. 95 of 2021, Pb.& Haryana High Court, Parsvnath Developers Vs. Shyam sunder Bajaj Appeal No. 321 of 2020 before ld. RERA tribunal, Ghaziabad Developers Ltd., Vs. Balbir Singh, civil Appeal No. 7173 of 2002, Maharashtra Real Estate Regulator Authority, Avinash Saraf, Neha Duggar Saraf Vs. Runwal homes Pvt. Ltd., Complaitnt no. 920 of 2018, Ms. Kusum Lata Vs. Parsvnath Developers Ltd., decided on 27.1.2022.

4. The respondents in its reply to the complaint have submitted that the complainant has been paid the decretal amount as per the ledger entries of the record of the respondent and there remains nothing payable from its side. It is further averred that though the complainant has claimed refund of ₹47,80,499/- but, it has no proof to have paid an amount of ₹9,60,177/-. It is further averred that the complainant has nowhere alleged in the complaint that the respondent ever raised any demand over and above the amount shown/reflected in the ledger; That, complainant is a subsequent buyer who purchased the plot in question in the year 2013 from an open market having been aware of the fact that the respondents had failed to deliver the possession in stipulated time; that, there is only one loan availed by the complainant, HDFC which is not a home loan but a home equity loan which is commercial in nature; that the complainant had entered into an agreement in April 2013 knowing about the status of development at the site. Finally it is averred in the

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reply that the complainant has no cause of action to invoke the jurisdiction of Hon'ble Adjudicating officer, hence, the present complaint be dismissed.

5. It is pertinent to mention here that the respondent despite availing opportunities, did not file amended reply to the amended complaint.

6. During the summary proceeding, Id. Predecessor of this Forum had permitted complainant to examine as CW1 who tendered documents. Similarly, the respondent Shri Parnay Malhotra appeared to depose and was examined. The exhibited documents are Ex. CW-1(1) to CW-1(61) and R-1 to R-30.

This Forum has heard Id. counsel for the complainant and also gone through the record carefully including the written submissions.

7. In support of its contentions, Ld. Counsel for the complainant has argued that in the instant case, complainant is very much entitled to get compensation and the interest thereon as prayed for. He has further argued that it has been an admitted fact that despite the complainant having paid the basic amount as per demands of the respondents, the possession of the plot was never handed over to the complainant because of which on the complaint of the complainant with Hon'ble Authority at Panchkula, the complainant was ordered on dated 4.10.2018 under Section 37 of the RERA Act, 2016, to get refund of the entire amount with interest, execution of which is pending. He has further argued that since the builder had sold the unit despite the knowledge as per documents placed on record as exhibits that the licence has not been renewed,



complexity of the project was not informed, title not clear, land not available with it due to acquisition, non-clearance of Govt. dues etc., the complainant is not required to lead any other evidence to prove that there had been violations of the provisions of sections 12, 14, 18 of the Act, 2016 on the part of the respondent. He has also argued that the non-payment of the refund with interest as directed by Hon'ble Authority, in time and further bouncing of the cheques given towards the payment of the refund by the judgement debtor to the complainant around 74 years of age now, are the other factors which duly prove as to how the complainant, a senior citizen, has been mentally and physically harassed by the respondent, hence, she is entitled to get compensation in the manner prayed. He has further argued that the necessity to get Home Equity Loan had arisen because for the incomplete project of the builder, bank was not ready to give home loan, so, taking Home Equity Loan to pay for the unit purchased as per the documentary proof placed on record by the complainant, she cannot be debarred from getting the interest paid over the loan taken to pay for the unit. 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. 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 she suffered mental agony, harassment, loss of opportunity because the Forum itself can take judicial notice thereof. He has

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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, based on the law relied, she is entitled to get compensation as prayed. In support of his arguments to get compensation, he has placed reliance on the law described above in para no. 3 above of this order. Finally, he has prayed to allow the complaint in the manner prayed for.

8. On the other hand, Ld. Counsel for the respondents has argued that the present complaint is not maintainable as neither requirement of section 72 of the Act 2016, has been met by the complainant, nor, because of bar of limitation, the complaint is maintainable. She has further argued that the complainant is a third allottee who had purchased the unit from the open market, thus not an original allottee, hence not entitled to get compensation as per law on the subject because the complainant was aware about the status of the project when purchased. She has also argued that details of the payment given by the complainant are wrong as only an amount of ₹30,37,855/- was paid out of ₹47,80,499/- as otherwise claimed because the cheques of ₹9,60,177/- as mentioned in the complaint were never credited in the account of the respondent and in the review order of Hon'ble Authority, the complainant has not been held entitled to get the same. She has further argued that the complainant is also not entitled to get compensation for the payment allegedly made by the complainant to pay the interest over the loan amount taken as there is nothing on record that the said loan was taken as a Home Loan. Rather,

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through the documents placed on record, the complainant herself has indicated that the said loan was a Home Equity Loan, thus commercial in nature to be used for any purpose including payment of home loan. She has further argued that the complainant cannot claim harassment since the time of inception of project as the original allottee could because she had stepped in to the shoes of original allottee only after having come to know about the actual status of the project existing at that time and further that whatever the relief in the given circumstances complainant, being transferee, was entitled to, has already been given by Hon'ble authority in the form of refund with interest, which stands fully paid. She has also argued that the claim is time barred as complainant joined project in the year 2013 but filed complaint in the year 2018 after more than five years. Finally, she has prayed that the complaint be dismissed being not maintainable.

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

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

(B) What are the factors to be considered to decide compensation by the Adjudicating Officer?

(C) 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 a case to get compensation or interest as per Rule 29 of Rules 2017, read with sections 71 & 72 of the Act, 2016?



(D) Whether a subsequent purchaser/allottee is entitled to get compensation, as per the facts and circumstances of the present case?

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

**Question (A): 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 2009, whereas complaint was filed in the year 2018.

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

With due regards to the rival contentions and facts on record, this Forum 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.*

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

Further Hon'ble Apex Court in Consolidated Engg. Enterprises v/s Irrigation Department 2008(7)SCC169, has held

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regarding applicability of Limitation Act, 2016, upon quasi-judicial forums like “Authority” or “Adjudicating Officer” working under RERA Act and Rules thereunder to the effect 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 stated 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, if finally held entitled to get compensation.

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

**Question(B):- What are the factors to be considered to decide compensation by the Adjudicating Officer?**

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

**(i) Section 18 - Return of amount and compensation**

(i) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

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(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.**

(ii) 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;

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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 (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.

(iii) 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 “ he may direct to pay such compensation of interest, as the case may any be, as he thinks fit in accordance with the provisions of any of those sections,”

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Section 72, further elaborate the factors to be taken note of, which read as under;

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

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.

(iv) For determination of the entitlement of complainant for compensation due to default of the builder/developer Hon'ble Apex 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 , has 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.

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*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 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. Similarly, Hon’ble Three Judge Bench of the Hon’ble Apex Court in **Charan Singh Vs. Healing Touch Hospital & Ors. (2000) 7 SCC 668**, had earlier held regarding assessment of damages in a case under Consumer Protection Act, in the following manner;

*“While quantifying damages, Consumer Forums are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application. While awarding compensation, a consumer forum has to take into account all*

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*relevant factors and assess compensation on the basis of accepted legal principles, and moderation. It is for the consumer forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant is liable to establish his charge.”*

**Question(C): 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 a case to get compensation or interest as per Rule 29 of Rules 2017, read with sections 71 & 72 of the Act, 2016?**

The answer to this question is that no hard and fast rule could be laid to seek proof of such feelings from an allottee. He/she may have documentary proof to show the deficiency in service on the part of the builder and even this Forum could itself take judicial notice of the mental and physical agony suffered by an original allottee due to non-performance of duties on the part of the promoter, in respect of the promises made to lure an allottee to invest its hard earned money to own its dream house without realising the hidden agendas or unfair practices of the builder in that project.

In nutshell, to award a compensation, the Forum can adopt any procedure suitable in a particular case to decide the availability of factors on record entitling or disentitling an allottee to get

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compensation which is the reason even under Rule 29 of the Rules 2017, it is not compulsory to lead evidence.

**Question (D): Whether a subsequent purchaser/allottee is entitled to get compensation in the facts and circumstances of the present case?**

After having discussed law to be taken note of to decide compensation by the Adjudicating Officer, now it is to be seen whether, in the present case, wherein the complainant, is third allottee as had got transferred the unit from second purchaser namely Sh. Dharampal Kularia who had purchased it from original allottee namely Sh. Bhupinder Kadyan, is entitled to get compensation in the manner prayed in its complaint?

Before, answering this question, it is required to reproduce certain claimed facts on record, which are on under;

1.	Booking of plot	22.09.2009	
2.	Booking in the name of original allottee Shri Bhupinder Kadyan	30.07.2010	
3.	Amount paid upto 03.02.2017 (w.e.f. 22.09.2009 to 03.02.2017) 12 instalments)	₹47,80,499/-	
4.	BBA executed with second allottee Shri Dharampal Kularia	16.05.2013	After BBA with earlier allottee on 16.05.2013
5.	BBA endorsed in the name of the complainant, the third allottee	23.05.2013	Rs. 4669+ Rs. 4,21,483/-+ Rs. 3,15,607/-
6.	Four instalments paid after BBA with third allottee	3	Rs. 4660/- + Rs. 4,21,483/- = Rs. 3,15,607/-

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7.	Date when Shri Bhupinder Kadyan sold its rights to Sh. Dharampal Kularia, the second allottee	30.07.2010	
8.	As per complainant, the amount paid to second allottee and to agent	₹30,83,024/- to second allottee	
9.	Amount of interest paid on Home Equity Loan	₹7,37,450/-	
10.	As per point 8 (a) of BBA the work was to be completed within 24 months from the date of agreement	16.05.2015	
11.	Complaint filed before Hon'ble Authority	15.02.2018	
12.	Date of order of refund	04.10.2018	
13.	Date of filing of present complaint before Adjudicating officer	07.12.2018	

The above facts, make it clear that when the present

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complainant purchased or got transferred the unit to her name after executing Builder Buyer Agreement on dated 23.05.2013, after making required payments to the second allottee or the promoter, the project was incomplete, which is the reason the Hon'ble Authority has ordered for refund with interest in favour of the complainant vide order dated 04.10.2018, execution of which is pending before this Forum, wherein decretal amount has been paid and question yet to remain decided regarding entitlement of complainant to get interest on delayed payment, if any.

Now, only thing to be decided is whether or not in the given circumstances, a third allottee of the same unit who is

seeking compensation, could legally be held entitled to get the compensation having the factors mentioned in Section 72 of RERA Act, 2016, in mind?

To answer the question, this Forum hold that despite being an “allottee” within the meaning of Section 2(d) of the RERA Act, 2016, the complainant may be entitled to get the relief of refund and interest thereon from Hon’ble Authority under Section 31 of the Act, 2016, which she has got but not for compensation because it is the original allottee who actually suffered mental and physical agony due to default of builder but not the subsequent allottee i.e. complainant, who knowing fully well of the consequences of default on the part of the builder in delaying completion of project, still elected to join in by purchasing it from open market, as it may probably be a distress sale on the part of second allottee because of delay in completion of project. Meaning thereby, the complainant accepted to undergo sufferings of kind, if any, due to ongoing default on the part of builder, thus she can’t expect to be compensated for such delay. It is not out of place to mention here that had it been a case of request for refund with interest due to delay in delivery of possession or delayed possession charges, the Hon’ble Authority dealing with, was bound to give benefit thereof in view of recent

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law laid down by Hon'ble Apex Court in M/s Laureate Buildwell Pvt. Ltd. vs Charanjit Singh, Civil Appeal no.7042 of 2019, decided on 22.07.2021. Admittedly, such relief has already been provided. But, benefit of law laid down in M/s Laureate's case (supra), having due regards to the same, can't be given in case of request for compensation, raised under RERA Act, 2016 and not under Consumer Protection Act, by a subsequent allottee, as the said issue was not discussed in this quoted case. If in such like cases, compensation is granted, it would amount to rewarding a person for intentionally wrong done. Otherwise also, till Builder Buyer Agreement was executed with third allottee i.e. complainant, there was no occasion for the present complainant to have suffered any agony w.e.f. the year 2009 onwards and thereafter also no chance to claim harassment on her part as she knew the consequences of joining a project which was already under turmoil and ineffective. Rather, the Principle "Buyer be Aware" would also act against the subsequent allottee in this case. It is also not out of place to mention here that right to get refund with interest and the right to get compensation under RERA Act, 2016, are two different remedies available with an allottee unlike under Consumer Protection Act and both these remedies need specific factors to be considered by the concerned

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Forum to grant the relief. In other words, these remedies being independent to each other, would not give right to an allottee to claim both as of right e.g. an original allottee can be held entitled to both reliefs but not a subsequent transferee who may get refund but not compensation despite falling within the meaning of definition of "allottee" given under Section 2(d) of the Act, 2016, as had not been victim of sufferings which original allottee initially faced believing builder's false promises. It would be justified to observe here that feelings of sufferings or agony or harassment or pains etc. are subjective, means restricted to individual only, which cannot be transferred from original allottee to subsequent to enable later to claim compensation. Infact, such feeling of sufferings cannot be equated with transfer of money from one to another, which is the reason subsequent allottee may be held entitled to get refund with interest but certainly not compensation within the meaning of section 72 of the Act, 2016.


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Thus, in totality it is concluded that in this case, the subsequent allottee may be entitled for the relief of refund with interest as has already been granted by Hon'ble Authority but she certainly is not entitled to get compensation for the wrong knowingly done. Otherwise also, no question arises to compensate her since the time of inception of project in the year 2009.

Though, learned counsel for the complainant has quoted various citations to support its case, but none of it pertain to right of subsequent allottee to get compensation in the given circumstances of the present case, under Section 71 read with section 72 of the Act, 2016 and Rule 29 of Rules 2017 made thereunder. Hence, having due regards to the same, these are of no benefit to the complainant. Similarly, any order passed by co-ordinate authority being not binding upon this Forum, could be used by the complainant to get compensation.

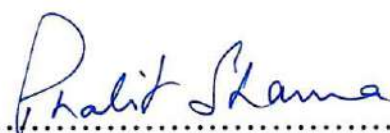
13. In view of the foregoing discussions, the present complaint of the complainant is dismissed being devoid of merit. File be consigned to record room after uploading the order on the website of the Authority.

13.01.2025

  
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MAJOR PHALIT SHARMA  
ADSJ(Retd.)  
ADJUDICATING OFFICER

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

13.01.2025

  
.....  
MAJOR PHALIT SHARMA  
ADSJ(Retd.)  
ADJUDICATING OFFICER