HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER, HRERA, PANCHKULA.

Complaint No. : 2309 of 2023
Date of Institution: 02.11.2023
Date of Decision: 10.02.2025

Hitesh Girdhar S/o Sh. C.D. Girdhar, resident of House No. 539, Sector-14, Sonipat, Haryana.

...COMPLAINANT

Versus

TDI Infrastructure Limited, having its Corporate office at 9, Katurba Gandhi Marg, New Delhi-110001.

....RESPONDENT

Hearing: 5th

Present: - Ms. Neelam Singh, Advocate, for the complainant through VC.
Mr. Shubnit Hans, Advocate, for the respondent through VC.

ORDER:

This order of mine will dispose of a complaint filed by the complainant namely 'Hitesh Girdhar S/o Sh. C.D. Girdhar, against TDI Infrastructure Limited, 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, after having gone through the advertisement given by the respondent company i.e. TDI Infrastructure Limited (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, had booked a residential floor in the project, namely, 'Tuscan Floors', TDI City, Kundli, Sonipat, of the respondent by making payment of ₹4,00,000/- on 10.02.2010, following which allotment letter dated 01.02.2011 was issued in favour of complainant and unit no. T-50/GF having area 1164 sq. ft. was allotted. That the complainant entered into floor buyer agreement(hereinafter to be referred as FBA) with the respondent on 13.11.2015. As per clause 30 of the FBA, possession of the floor was to be made within 30 months from the date of agreement, thus the deemed date of delivery was on 12.05.2018. An amount of ₹28,43,186/- against total sale consideration of ₹30,36,926/- has been by the complainant on different dates. It is submitted by the complainant that despite a lapse of more than 13 years, respondent has failed to offer possession of the allotted floor. That till date, respondent has not completed the construction of the project in question including the floor booked. In the

year 2013, complainant had visited the office of respondent and came to know that construction of the allotted unit had not even started due to some dispute on the land on which the tower T-50/GF was planned to be constructed by the respondent. That complainant had opted for a construction linked plan. However, the respondent had demanded and received approximately 91% of total sale consideration despite the fact that no construction was going on at site of the project. For reference order dated 09.08.2022 passed by the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula, in complaint no. 1115 of 2020 titled as 'Hitesh Girdhar vs TDI Infrastructure Ltd.' is mentioned whereby Authority has observed that neither the unit booked by complainant nor project-TDI Tuscan City is complete as local commissioner in its report has conclusively established that the project is incomplete and not ready for usage. Therefore, relief of refund of paid amount with interest was allowed. That delay in development of the project by the respondent has shattered the faith of the complainant and such inordinate delay has frustrated the purpose of purchasing the unit. There is no basic development carried out at site of the project by the respondent and further there is no scope of completion of project even in near future. Therefore, the complainant was left with no other option but to approach this Forum. Hence the present complaint has been filed. That the complainant further submitted that the complainant suffered a lot due to non-delivery of the said unit. The complainant has suffered

financial loss, lots of expenses have been incurred in visiting office and project site, engaging the lawyer and prayed that the respondent be directed to pay a compensation of ₹10,00,000/- on account of financial loss and mental harassment caused to the complainant, by not delivering the possession and ₹2,00,000/- on account of litigation expenses.

3. On receipt of notice of the complaint, respondent filed reply, which in brief states that that due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- Tuscan floors, TDI Tuscan City at Kundli, Sonipat, Haryana. That, when the respondent company commenced the construction of the said project, the RERA Act was not in existence. Therefore, the respondent company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. That the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act. That, the agreement was executed much prior from the date when the RERA Act came into existence. Accordingly, the agreement executed between the parties is binding on the buyer/allottee. Complainant is bound by the terms of the agreement and as such cannot withdraw its consent. The complainant is an educated person and has signed on each and every page of the agreement, hence, each term is

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binding on the complainant. That complainant herein as investor have accordingly invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine. That respondent vide letter dated 09.05.2014 had applied to the Director General of Town and Country Planning, Haryana for grant of occupation certificate which is awaited. Further, it has been submitted that handing over of possession has always been tentative and subject to force majeure conditions and the complainant have been well aware about the same. That, relief has already been granted by Hon'ble Authority in Complaint no.1115 of 2020, decided on 09.08.2022 wherein refund along with interest has been granted to the complainant. This interest includes the interest in the form of compensation which is over and above the compensation as claimed by the complainant in the present complaint, which is not justified. The complainant can not claim double benefit when relief has already been granted by the Authority in the form of interest. Further, it is contended that no documentary evidence has been placed on record by the complainant to support its averments. Finally, the respondent has prayed that the present complaint filed by the complainant may kindly be dismissed with heavy cost, in the interest of justice.

4. This Forum has heard Ms. Neelam Singh, Advocate, for the complainant and Mr. Shubnit Hans, Advocate, for the respondent and has also gone through the record carefully.

5. In support of its contentions, learned counsel for the complainant has argued that in the instant case, complainant is very much entitled to get compensation and the interest thereon, because despite having played its part of duty as an allottee, the complainant had met all the requirements including payment of sale consideration for the unit booked but it is the respondent which made to wait the complainant to get their unit well in time complete in all respect for more than 13 years, which forced the complainant to go for unwarranted litigation to get the refund along with interest by approaching Hon'ble Authority at Panchkula, which has finally granted on 09.08.2022. He has further argued that the complainant has been played fraud upon by the respondent as it despite having used money deposited by the allottees did not complete the project and enjoyed the said amount for its own cause which amounts to misappropriation of complainant's money on the part of respondent. Finally, he has prayed to grant the compensation in the manner prayed in the complaint.

6. On the other hand, learned counsel for the respondent had argued that the complainant can not claim compensation when relief of refund along with interest had already been granted by the Authority. He has

further argued that there has not been any intentional delay on the part of the respondent to complete the project which got delayed because of the circumstances beyond the reach of the respondent. He has also argued that since the project was launched prior to inception of Act, 2016, provisions of Act, 2016 shall not apply in this case. He also argued that the complaint is barred by limitation, hence, it be dismissed. He has also argued that the complainant can't take benefit of clause 30 of Builder Buyer Agreement, as there has been no willful delay on the part of the promoter to complete the project. Finally, he has prayed to dismiss the complaint.

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

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

(b) Whether the RERA, Act, 2016 and Rules, 2017 bars this Forum to grant compensation when relief of refund with interest has already been granted by Hon'ble Authority?

(c) What are the factors to be taken note of to decide compensation?

(d) 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?

(c) Whether complainant are entitled to get compensation in the case in hand?

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

8(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 the complaint is barred by limitation as project pertains to the year 2005, whereas the complaint was filed in the year 2023.

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 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)SSC'58.

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.

8(b) **Whether the RERA, Act, 2016 and Rules, 2017 bars this Forum to grant compensation when relief of refund with interest has already been granted by Hon'ble Authority?**

The answer to this question is in affirmative.

This question has been answered by Hon'ble Apex Court in Civil Appeal no.(s) 6745-6749 of 2021 titled as "M/s New Tech Promoters and Developers Pvt. Ltd. v/s State of U.P. & Ors." on

dated 11.11.2021, to the effect that relief of adjudging compensation and interest thereon under Section 12,14,18 and 19, the Adjudicating Officer exclusively has the power to determine, keeping in view the provisions of Section 71 read with Section 72 of the Act. The relevant Para of the judgment is reproduced below;

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the Regulatory Authority and Adjudicating Officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Regulatory Authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the Adjudicating Officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the Adjudicating Officer as prayed that, in our view, may intend to expand the ambit and scope of of the powers and functions of the Adjudicating Officer under Section 71 and that would be against the mandate of the Act 2016."

Thus, in view of above law laid down by Hon'ble Apex Court, the reliefs provided under Section 31 and then Section 71 of the RERA Act, 2016 read with Rule 29 of Rules, 2017 are

independent to each other to be granted by two different Authorities.

In nutshell, the plea of bar of granting compensation or interest is devoid of merit.

8(c) **What are the factors to be taken note of 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;

(i) 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.

(ii) How an Adjudicating Officer is to exercise its powers to adjudicate, has been mentioned in a case titled as **Mrs. Suman Lata Pandey & Anr v/s Ansal Properties & Infrastructure Ltd. Appeal no. 56/2020, 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 (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,"

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. The Commission/Forum would then need to determine the loss.

Loss could be determined on the 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 the 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 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."

8(d) **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?**

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

8(c) **Whether complainant are entitled to get compensation in the case in hand?**

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	2005
(ii)	Proposed Handing over of possession	As per clause 30 of independent flat buyer dated 12.05.2018, 30 months from the date of FBA (13.11.2015)
(iii)	Basic sale price	₹30,36,926/-
(iv)	Total amount paid	₹28,43,186/-
(v)	Period of payment	05.03.2010-29.03.2017
(vi)	Occupancy certificate Whether received till Filing of complaint	NO
(vii)	Date of filing of complaint under Section 31 before Hon'ble Authority	12.10.2020

(viii)	Date of order of Authority	09.08.2022
(ix)	Date of filing of complaint filed under Section 12, 18 & 19 of RERA Act, 2016	02.11.2023
(x)	Date when total refund made, if made	Part-payment made in the following manner

Sr. No.	Date	Amount
1.	25.07.2023	₹5,00,000/-
2.	11.01.2024	₹5,00,000/-
3.	18.03.2024	₹5,00,000/-
4.	01.08.2024	₹5,00,000/-
5.	14.10.2024	₹5,00,000/-

It is a matter of record that the project advertised in the year 2005, did not get completion certificate till filing of the complaint on dated 02.11.2023 and also that the complainant on its part had performed their part of duty by paying 91% of the basic price of the unit. Admittedly, the basic price of the plot was ₹30,36,926/- whereas the complainant paid ₹28,43,186/- till 29.03.2017.

It is also admitted on record that the complainant did not get possession of the unit allotted. There can also be

no denial that allottees of the unit generally spend their lifetime earning and they are not at equal footings with that of the promoter, who is in a dominating position. The position of the allottees becomes more pitiable and sympathetic when he or she has to wait for years together to get the possession of a unit allotted despite having played its bid. But, on the contrary, it is the promoter who enjoys the amount paid by allottees during this period and keep on going to delay the completion of the project by not meeting legal requirements on its part to get the final completion from competent Authority about fulfilling which such promoter knew since the time of advertisement of the launch of the project. Further, the conduct of the promoter to enjoy the amount of allottees paid is nothing but misappropriation of the amount legally paid as the promoter did not hand over possession, 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 the allottee to hand over the possession in time, it 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 the 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 as per record, the allottees had paid ₹28,43,186/-. However, it is not in dispute that the respondent neither completed the project, nor handed over possession till allottee having been forced to approach Hon'ble HRERA Authority, Panchkula, to get refund along with interest after having indulged in unwarranted forced litigation by the promoter at the cost of allottees personal expenses, which it has not got till date. 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 by this Forum without seeking any proof thereof.

In view of the above, since, the promoters had been using the amount of ₹28,43,186/-, for the last more than 13 years, for the sake of repetition it is held that it can definitely

be termed as disappropriate gain or unfair advantage, as enumerated in Section 72(a) of the Act. In other words, it had been loss to allottees as a result of default on the part of the promoter which continues till date. Thus, it would be in the interest of justice, if the compensation is ordered to be paid to the complainant after taking into consideration, the default of respondent for the period starting from 2010 till date and also misutilization of the amount paid by the complainant to the respondent. In fact, the facts and circumstances of this case itself are proof of agony undergone by the complainant for so long, hence, there is no need to look for formal proof of the same. Further, there can't be denial to the effect that the allottees must have had to run around to ask the promoter to hand over the possession and also that if the unit provided in time, there was no reason for the complainant to file the complaints/execution petition by engaging counsel(s) at different stages, and also that because of escalation of prices of unit in last 13 years, the complainant may not be in a position to purchase the same unit now, which amounts to loss of opportunity to the allottees. These factors also enable an allottee to get compensation.

In view of the forgoing discussions, the complainant is entitled for compensation.

9. Once, the complainant has been held entitled to get compensation, now it is to be decided how much compensation is to be granted, on which amount, what would be rate of interest and how long the promoter would be liable to pay the interest?

Before answering this question, this Forum would like to reproduce the provisions of Section 18 of the Act, 2016, Rules 15 and 16 of HRERA, Rules, 2017 and also definition of 'interest' given in Section 2(za) of the RERA Act, 2016;

Rule 15 - Prescribed Rate of Interest - [Proviso to section 12, section 18 and sub section (4) and sub-section (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.]

Rule 16- Timelines for refund of money and interest at such rate as may be prescribed, payment of interest at such rate as may be prescribed:- [Section 18 and Section 19].-

(1). Any refund of money along with the interest at such rate as may be prescribed payable by the promoter in terms of the Act, or rules and regulations made there under shall be payable by the promoter to the allottee within a period of ninety days from

the date on which such refund alongwith interest such rate as may be prescribed has been ordered by the Authority.

(2) Where an allottee does not intend to withdraw from the project and interest for every month of delay till handing over of the possession at such rate as may be prescribed ordered by the Authority to be paid by the promoter to the allottee, the arrears of such interest accrued on the date of the order by the Authority shall be payable by the promoter to the allottee within a period of ninety days from the date of the order of the Authority and interest for every month of delay shall be payable by the promoter to the allottee before 10th day of the subsequent month.

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.

Section 2(za) *- "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
Explanation. For the purpose of this clause
(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

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Perusal of provisions of Section 18(1)(b) make it clear that in case of refund or compensation, the grant of interest may be at such rate as prescribed in this behalf in the Act. It is not out of place to mention here that Section 18(1)(b), not only deals with cases of refund where allottee withdraws from project but also the cases of compensation as is evident from the heading given to this section as well as the fact that it has mention of refund and rate of interest thereon including cases of compensation. Further, perusal of provisions of Section 18(1)(b) of the Act, 2016, indicate that the allottee shall be entitled to get refund or compensation, as the case may be, with interest at the rate prescribed in the Act, 2016.

Rule 15 of the Rules 2017, defines the "rate" as "State Bank of India highest marginal cost of lending rate+2% with proviso".

Further, Rule 16 provides for the time limit to refund money and interest thereon and interest is to be as per the rate prescribed in Rule 15 in case of matters covered under Proviso to section 12, Section 18 and Section 19 (4) and 19(7) of the Act, 2016. It further deals with two situations, one, where the allottee has opted for a refund rather than a unit in a project and second case where he has gone for the project but there is delay in delivery. Hence, it cannot be said that the Rule 16 deals with only one situation out of two mentioned therein as sub rule (1) and sub rule (2) respectively. It is not out of place to mention here that this Rule deals with cases related to Section 18 & 19 of the Act, 2016.

How long the interest would remain payable on the refund or compensation, as the case may be, is provided in Section 2(za) of the Act, 2016, which says that cycle of interest would continue till the entire amount is refunded by the promoter. In other words, if the provisions of Section 18 read with Rule 15 read with Rule 16 and Section 2(za) are interpreted co-jointly, then it would mean that in case of refund or compensation, as the case may be, the promoter will be liable to pay the interest from the date the promoter received the

amount or any part thereof till the date the amount of refund or compensation, as the case may be, or part thereof along with up to date interest is refunded/paid, even if not specified in the order under execution. However, the situation is different in case of an allottee's default in payments to the promoter till the date it is paid. With this legal position, it is safe to conclude in the case in hand, still in view of Explanation (ii) to Section 2(za) the allottee will be entitled to get the interest up to date of the final payment at the rate prescribed in Rule 15.

RELIEF

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10. Reverting back to the facts of the case under consideration, having the above discussed legal position in mind, it is concluded that respondent is directed to make payment of compensation as calculated below in relief; having in mind the provisions of Rule 15;

The calculation of compensation as verified by the Account Branch of Hon'ble Authority is tabulated below:

Amount Paid by decree holder (in ₹) and date	Amount paid by judgment debtor (in ₹)	Time period	Rate	Compensation Amount (in ₹)

₹4,00,000/- paid on 05.03.2010	₹5,00,000/- paid on 25.07.2023	05.03.2010-25.07.2023 (₹5,00,000/- paid on 25.07.2023) on ₹4,00,000/-	11.10%	₹5,94,960/-
₹4,35,622/- paid on 31.08.2010		31.08.2010-25.07.2023 (₹5,00,000/- paid on 25.07.2023) on ₹1,00,000/-	11.10%	₹1,43,296/-
	₹5,00,000/- paid on 11.01.2024	31.08.2010-11.01.2024 (₹5,00,000/- paid on 11.01.2024) on remaining amount of ₹3,35,622/-	11.10%	₹4,98,286/-
₹2,82,081/- paid on 17.03.2011		17.03.2011-11.01.2024 (₹5,00,000/- paid on 11.01.2024) on ₹1,64,378/-	11.10%	₹2,34,148/-
	₹5,00,000/- paid on 18.03.2024	17.03.2011-18.03.2024 (₹5,00,000/- paid on 18.03.2024) on remaining amount of ₹1,17,703/-	11.10%	₹1,70,060/-
₹1,50,000/- paid on 13.04.2011		13.04.2011-18.03.2024 (₹5,00,000/- paid on 18.03.2024) on ₹1,50,000/-	11.10%	₹2,15,492/-
₹1,36,926/- paid on 21.05.2011		21.05.2011-18.03.2024 (₹5,00,000/- paid on 18.03.2024) on ₹1,36,926/-	11.10%	₹1,95,127/-
₹4,250/- paid on 20.02.2014		20.02.2014-18.03.2024 (₹5,00,000/- paid on 18.03.2024) on ₹4,250/-	11.10%	₹4,756/-
₹2,86,498/- paid on 22.08.2014		22.08.2014-18.03.2024 (₹5,00,000/- paid on	11.10%	₹96,905/-

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			18.03.2024) on ₹91,121/-		
		₹5,00,000/- paid on 01.08.2024	22.08.2014-01.08.2024 (₹5,00,000/- paid on 01.08.2024) on remaining amount of ₹1,95,377/-	11.10%	₹2,15,858/-
	₹2,83,498/- paid on 14.10.2014		14.10.2014-01.08.2024 (₹5,00,000/- paid on 01.08.2024) on ₹2,83,498/-	11.10%	₹3,08,648/-
	₹2,80,498/- paid on 16.03.2015		16.03.2015-01.08.2024 (₹5,00,000/- paid on 01.08.2024) on ₹21,125/-	11.10%	₹22,016/-
		₹5,00,000/- paid on 14.10.2024	16.03.2015-14.10.2024 (₹5,00,000/- paid on 14.10.2024) on remaining amount of ₹2,59,373/-	11.10%	₹2,76,151/-
	₹2,84,625/- paid on 06.10.2015		06.10.2015-14.10.2024 (₹5,00,000/- paid on 14.10.2024) on ₹2,40,627/-	11.10%	₹2,41,264/-
			06.10.2015-10.02.2025 (Date of order) on remaining amount of ₹43,998/-	11.10%	₹45,707/-
	₹2,84,625/- paid on 06.11.2015		06.11.2015-10.02.2025 (Date of order)	11.10%	₹2,92,996/-
	₹14,563/- paid on 29.03.2017		29.03.2017-10.02.2025 (Date of order)	11.10%	₹12,737/-
	Total- ₹28,43,186/-				₹35,68,407/-

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

The total compensation comes to ₹35,68,407/- + ₹30,000/- = ₹35,98,407/- (Thirty five lakh ninety eight thousand four hundred seven rupees only).

12. In these terms, the present complaint is partly allowed. The respondent is directed to pay an amount of ₹35,68,407/- + ₹30,000/- = ₹35,98,407/- (Thirty five lakh ninety eight thousand four hundred seven rupees only) 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 the next 45 days.

It is further directed that if the payment is not made in the manner directed within stipulated time, in view of the provisions of Section 2(za) of the Act, 2016, the respondent shall be liable to pay interest on delayed payment as per the provisions of Rule 15 of the Rules, 2017, till realization of the amount.

13. The present complaint stands **disposed of** in view of the above observations. File be consigned to record room after uploading of this order on the website of the Authority.

Phalit Sharma

MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
10.02.2025

Note: This judgement contains 30 pages and all the pages have been checked and signed by me.

Phalit Sharma

MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
10.02.2025