



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

COMPLAINT NO. 1103 OF 2019

Lovleen

....COMPLAINANT

VERSUS

Haryana Urban Development Authority

....RESPONDENT

Date of Hearing: 18.03.2025

Hearing: 36th

Present: Mr. Ranjan Arora, Advocate, for the complainant.
Respondent already proceeded against Ex-parte vide order dated 06.02.2025
Mr. Arvind Seth, Advocate, for the respondent through VC.

ORDER

This order of mine will dispose of suo motu question of maintainability of complaint filed under Section 71 of the RERA Act, 2016 (hereinafter to be referred as the Act, 2016) and the Rule 29 of the HRERA, Rules, 2017 (hereinafter to be referred as the Rules, 2017), raised by this Forum

2. In the case in hand, a complaint under Section 71 of the Act, 2016, was filed seeking compensation against the respondent, on dated 31.05.2019,

which was allowed by the learned Predecessor of this Forum on dated 12.01.2022. Thereafter, the respondent went in appeal against order dated 12.01.2022, and Hon'ble Appellate Tribunal vide its order dated 10.01.2025, set aside the order dated 12.01.2022 and remanded back the case to this Forum with following relevant observations and directions;

"4. A perusal of the order shows that a plea was raised by HSVP that the complaint made by the allottee before the Authority was outside the purview of powers vested in the Authority under the 2016 Act, the objective of 2016 Act being altogether different that of Haryana Shehri Vikas Pradhikaran Act, 1977. As per the counsel, 2016 Act has been enacted to regulate the real estate sector while the 1977 Act intends to protect the right of consumer by an internal mechanism. In case of any grievance, the aggrieved party may only have the remedy before the writ court.

5. Learned counsel are ad idem that no finding whatsoever has been given by the Authority on the aforesaid contentious issue.

6. In view of the above, their prayer for remitting the matter to the same Authority for decision afresh after affording adequate opportunity to them is accepted.

7. The appeal filed by HSVP (Appeal No. 377 of 2023) is allowed in these terms. The other appeal (Appeal No. 378 of 2022) is disposed of accordingly. The amount of pre-deposit made along with Appeal No. 377 of 2023 be remitted to the Authority to be retained by it till the decision of the issue. It shall make endeavour to decide the issue as

expeditiously as possible, in any case not later than three months.”

3. On receipt of the order dated 10.01.2025 of Hon'ble Appellate Tribunal, this Forum passed order dated 22.01.2025, in the following manner and posted the case for 06.02.2025;

“The file is taken up today, in view of the directions passed by Hon'ble Appellate Tribunal in Appeal nos. 377 of 2023 and 378 of 2023, wherein following observations have been made at para nos. 6 and 7 of the order dated 10.01.2025, in the following manner;

“6. In view of the above, their prayer for remitting the matter to the same Authority for decision afresh after affording adequate opportunity to them is accepted.

7. The appeal filed by HISVP (Appeal No. 377 of 2023) is allowed in these terms. The other appeal (Appeal No. 378 of 2022) is disposed of accordingly. The amount of pre-deposit made along with Appeal No. 377 of 2023 be remitted to the Authority to be retained by it till the decision of the issue. It shall make endeavor to decide the issue as expeditiously as possible, in any case not later than three months.”

Since, Hon'ble Appellate Tribunal has remitted the case to this Forum to decide afresh after affording


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adequate opportunity to both parties, let, notice of appearance to both the parties be issued for 06.02.2025 for appearance to argue on the subject matter to be decided afresh without being influenced from the observations made by learned predecessor of this Forum in its order dated 12.01.2022.

Now, to come up on 06.02.2025 for appearance of both parties and arguments."

Thereafter, on dated 06.02.2025, this Forum suo motu posed a query regarding maintainability of this complaint in the following manner to be answered by the complainant or its learned counsel;

"Today, case is fixed for the appearance of both parties and for advancement of arguments.

2. *Sh. Ranjan Arora, Advocate, learned counsel for complainant has filed memo of appearance which is taken on record.*

Case called several times but none has appeared on behalf of respondent despite service of notice nor reply has been filed. No further wait is justified as it is already 04:00 P.M. Hence, the present complaint is proceeded against Ex-parte for non-appearance of respondent.

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3. Before proceeding further, this Forum poses a query to learned counsel for complainant as to how the present complaint is maintainable in view of provisions of Rule 29 of HRERA, Rules, 2017, which mandates that complaint under Section 71 of RERA Act, 2016 read with Rule 29 of HRERA, Rules, 2017, is to be filed only when Hon'ble Authority as defined in Section 2(i) of the RERA Act, 2016, in its order, find violation of the provisions of the Act, 2016, established on its record in the complaint filed before it under Section 31 of the Act, 2016. For ready reference, Rule 29 of the Rules, 2017 is reproduced below;

“Rule 29(1)(a) Any aggrieved person may file an application/ complaint with the Adjudicating Officer for adjudging quantum of compensation as provided under sections 12,14,18 and 19, where violation by the promoter has been established by the Authority in an enquiry under section 35, in Form ‘CAO’ or in such form as specified in the regulations, which shall be accompanied by a fee as mentioned in Schedule III in the form of demand draft or a bankers cheque drawn on a Scheduled bank, or online payment in favour of “Haryana Real Estate Regulatory Authority” and payable at the branch of that bank at the station where the seat of the said Authority is situated.”

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The perusal of above provision makes it clear that there is no provision in Rule 29 of HRERA, Rules, 2017, which enables an allottee to apply for compensation under Section 71 of Act, 2016, read with Rule 29 of the Rules, 2017, directly by approaching Adjudicating Officer to get relief without approaching Hon'ble Authority to get relief under Section 35 of the Act, 2016. It is the reason that Form 'CAO', at point no.4, "Facts of the case", requires such information. For ready reference, the contents of point no.4 are reproduced below;

"4. Facts of the case:[give a concise statement of facts and grounds of claim for compensation against the promoter and the contravention or violation of provisions of the Act or the Rules or regulations made thereunder as established by an enquiry under section 35 by the Authority being ground for claim of the compensation, if yes, copy be enclosed];"

With above observations, learned counsel for complainant is posed a question as to how, the present complaint is maintainable under Section 71 of the Act, 2016, when so far no relief under Section 35 of the Act, 2016 has been granted by the Hon'ble Authority while exercising its powers under Section 31 of the Act, 2016.


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On request, now, case is adjourned to 13.02.2025 for arguments on the point of maintainability of the present complaint in view of the observations made above."

In response to the query raised, learned counsel for the complainant has submitted written arguments along with the law laid down by Hon'ble Apex Court in "Union of India (UOI) and Ors. v/s G.S. Chatha Rice Mills and Ors. 2020(374)ELT289(S.C.)" He has mainly argued that since this complaint was filed on dated 31.05.2019 which date is prior to the date of amendment in Rule 29 of the Rules, 2017, carried out vide Notification no. Misc-862/1/83/2019/1TCP dated 12.09.2019, the amended provision would not apply qua the complaint filed prior to the date of notification of amendment in Rule 29. He has further argued that the amendment so made has no retrospective effect, nor, Section 84 of the Act, 2016, which empowers to make or amend rules has specific mention of such amendment being retrospective in nature. Consequently, Rule 29 with amendment can't be considered to be having retrospective effect upon the legality or maintainability of the complaint filed prior thereto. In support of this argument, he has also placed reliance on the law laid down by Hon'ble Apex Court in "C.I.T v/s Dhadi Sahu 1992 SCR, SUPL. (3)" and "Commissioner of Income Tax v/s Vatika Township Pvt. Ltd. (2014) 271 CTR (SC)1". He has also argued that this Forum can't touch upon the question of maintainability in this case, wherein learned Appellate Tribunal

did not deal with such question and also that this Forum is asked only to decide objection of respondent as to “whether or not the Authority was competent to entertain the complaint against the respondent as legally only remedy with the allottee was to avail writ jurisdiction?” and not to decide other issues, if any, afresh. Finally, he has prayed to proceed with the complaint considering it maintainable, to decide the question for which the matter has been remanded back by Hon’ble Appellate Tribunal at Chandigarh.

4. On the contrary, learned counsel for the respondent did not plead anything but claimed that this complaint is not maintainable as observed by this Forum in its order dated 06.02.2025. But despite having been proceeded against ex-parte, there is no application to set aside such order, hence, it is construed that there is no argument for the respondent.

5. Having due regards to the rival contentions and facts on record, to decide the question of maintainability of the complaint, this Forum poses following questions to answer;

(A) Whether this Forum after setting aside of order dated 12.01.2022 by Hon’ble Appellate Tribunal, could decide the complaint on merit afresh, or, is to restrict to give decision “whether or not the complainant had exclusive

remedy to adopt writ jurisdiction, if had any grievances against respondent?"

(B) Whether present complaint is barred by amended provision of Rule 29 of the Rules, 2017, amended vide notification dated 12.09.2019?

(C) If the amended provision of Rule 29 of the Rules, 2017, is not applicable in this case, still is the complaint maintainable in view of the provisions of Rule 28 of the Rules, 2017, and also as per requirement of clause 4 of format of complaint before Adjudicating Officer?

(D) Conclusion.

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

6(A) Whether this Forum after setting aside of order dated 12.01.2022 by Hon'ble Appellate Tribunal, could decide the complaint on merit afresh, or, is to restrict to give decision "whether or not the complainant had exclusive remedy to adopt writ jurisdiction, if had any grievances against respondent?"

This question has already been answered by this Forum in its order dated 22.01.2025, reproduced earlier wherein it is concluded that this matter has

to be decided afresh from all legal point of view and the issue pointed out before Hon'ble Appellate Tribunal is one of it to be decided later, provided primarily this complaint is found to be filed as per law.

6(B) Whether present complaint dated 31.05.2019 is barred by amended provision of Rule 29 of the Rules, 2017, amended vide notification dated 12.09.2019?

Before deciding this question, following relevant dates are required to be taken note of to decide whether or not amended Rule 29 of the Rules, which was notified on dated 12.09.2019, would apply retrospectively in respect of the present complaint filed on dated 31.05.2019.

- | | |
|---|------------|
| (i) Date on which the present complaint was filed | 31.05.2019 |
| (ii) Date on which amendment in Rule 29(1) was introduced | 12.09.2019 |
| (iii) Date on which the complaint was allowed earlier | 12.01.2022 |

In addition to above relevant dates, it is also to be seen what are the contents of unamended Rule 29 and also the amended one;

Rule 29 Before Amendment:

29. Filing of complaint and inquiry by adjudicating officer sections 12, 14, 18 and 19.

(1) Any aggrieved person may file a complaint with the adjudicating officer for interest and compensation as provided under sections 12, 14, 18 and 19 in Form 'CAO', in triplicate, which shall be accompanied by a fee as mentioned in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank in favour of "Haryana Real Estate Regulatory Authority" and payable at the branch of that bank at the station where the seat of the said Authority is situated.

(2) The adjudicating officer shall for the purposes of adjudging interest and compensation follow summary procedure for inquiry in the following manner, namely:-

(a) upon receipt of the complaint, the adjudicating officer shall issue a notice along with particulars of the alleged contravention and the relevant documents to the respondent;

(b) the respondent against whom such notice is issued under clause (a) of sub-rule (2) may file his reply in respect of the complaint within the period as specified in the notice;

(c) the notice may specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;

(d) on the date so fixed, the adjudicating officer shall explain to the respondent about the contravention

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alleged to have been committed in relation to any of the provisions of the Act or the rules and regulations made thereunder and if the respondent, (i) pleads guilty, the adjudicating officer shall record the plea, and by order in writing, order payment of interest as specified in rule 15 and such compensation as he deems fit, as the case may be, in accordance with the provisions of the Act or the rules and regulations, made thereunder; (ii) does not plead guilty and contests the complaint, the adjudicating officer shall demand and explanation from the respondent;

(e) in case the adjudicating officer is satisfied on the basis of the submissions made that the complaint does not require any further inquiry, he may dismiss the complaint;

(f) in case the adjudicating officer is satisfied on the basis of the submissions made that there is a need for further hearing into the complaint, he may order production of documents or other evidence on a date and time fixed by him;

(g) the adjudicating officer shall have the power to carry out an inquiry into the complaint on the basis of documents and submissions;

(h) the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any documents


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which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry, and in taking such evidence.

(i) on the date so fixed, the adjudicating officer upon consideration of the evidence produced before him and other records and submissions is satisfied that the respondent is, - (i) liable to pay interest and compensation, as the case may be, the adjudicating officer may, by order in writing, order payment of interest as specified in rule 14 and such compensation as he deems fit. (ii) not liable to any interest or compensation, as the case may be, the adjudicating officer may, by order in writing, dismiss the complaint, with reasons to be recorded in writing;

(j) if any person fails, neglects or refuses to appear, or present himself as required before the adjudicating officer, the adjudicating officer shall have the power to proceed with the inquiry in the absence of such person or persons after recording the reasons for doing so.

(3) The procedure for day to day functioning of the adjudicating officer, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.

(4) Where a party to the complaint is represented by an authorised person, a copy of the authorisation to act as such and the written consent thereto by such authorised person,

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both in original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be.

Rule 29 After Amendment:

29. Filing of complaint/ application for inquiry to adjudge quantum of compensation by adjudicating officer, in respect of compensation under sections 12, 14, 18 and 19. —

(1) (a) Any aggrieved person may file an application/ complaint with the adjudicating officer for adjudging quantum of compensation as provided under sections 12, 14, 18 and 19, where violation by the promoter has been established by the Authority in an inquiry under section 35, in Form 'CAO' or in such form as specified in the regulations, which shall be accompanied by a fee as mentioned in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank or online payment in favour of "Haryana Real Estate Regulatory Authority" and payable at the branch of that bank at the station where the seat of the said Authority is situated.

(2) The adjudicating officer shall for the purposes of adjudging compensation follow summary procedure for inquiry in the following manner, namely: —

(a) upon receipt of the complaint, the adjudicating officer shall issue a notice to the respondent promoter along with particulars of the contravention and the copy of the complaint seeking compensation and supporting relevant documents regarding compensation demanded by the

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allottee (aggrieved person) to be paid by the respondent promoter;

(b) the respondent against whom such notice is issued under clause (a) may file his reply in respect of admissibility of the compensation and quantum of compensation within the period as specified in the notice;

(c) the notice shall specify a date and time for further hearing and the date and time for the hearing shall also be communicated to the complainant;

(d) the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any documents which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry i.e. adjudging quantum of compensation. [section 71(3)]

(e) while holding inquiry for adjudging the quantum of compensation or interest (compensation expressed in term of interest i.e. compensatory interest) as the case may be, the adjudicating officer shall have due regard to the following factors, -

(i) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(ii) the amount of loss caused as a result of the default;

(iii) the repetitive nature of the default;

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(iv) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

(f) before announcing his award, a show cause notice shall be issued to the promoter respondent opposite party; specifying therein the quantum of compensation proposed to be paid along with reasons thereof. After considering the reply of the promoter (respondent), evidences and documents all facts and circumstances and taking into account of the factors mentioned in section 72. The adjudicating officer shall announce his final award regarding quantum of compensation.

(g) the quantum of compensation to be paid to the allottee (complainant) by the promoter (violator respondent) may be expressed in the form of lump sum amount to be paid to the allottee (complainant) or in percentage of interest on the amount paid by the allottee (complainant) to the promoter (respondent).

(h) any compensation payable by the promoter to the allottee in terms of the Act or the rules and regulation made there under shall be payable by the promoter to the allottee within a period of ninety days from the date on which compensation has been adjudged by the adjudicating officer.

(3) The procedure for day to day functioning of the adjudicating officer, which have not been provided by the Act or the rules made thereunder, shall be as specified by regulations made by the Authority.


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(4) Where a party to the complaint is represented by an authorised person, a copy of the authorisation to act as such and the written consent thereto by such authorised person, both in original, shall be appended to the complaint or the reply to the notice of the complaint, as the case may be”

It is also worth to note here that the complainant has not got any relief from the Hon’ble Authority against the Builder/Promoter till date and was bound to file complaint as per form CAO provided in regulations as per both unamended and amended Rule 29.

The above described facts, make two following things clear;

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- (i) As per unamended Rule 29, there was no condition precedent to apply for relief of compensation that Authority in an inquiry must have established violation by the promoter prior thereto, a fact otherwise introduced through amendment. However, condition to file complaint as per form CAO prescribed was there;
 - (ii) In the case in hand, when the complaint was originally filed, there was no procedural requirement as per Rule 29, the then, to have got favourable findings from Hon’ble Authority after enquiry under Section 35 of the Act, 2016.

If this be so, now a legal question arises, whether it was mandatory for the complainant to have followed the amended provision of Rule 29 after introduction of amendment?

Before commenting on this aspect, it is required to be cleared on record that the amendment in Rule 29 was an amendment in procedural law and not in substantive law and alteration in the form of procedure are always retrospective in character unless there is some good reason or other why they should not be. To hold so, this Forum has placed reliance on the law laid down by Hon'ble Apex Court in "Nani Gopal Mitra v/s the State of Bihar AIR 1970 SC 1636," wherein while dealing with question of retrospective character of amended procedural law, Hon'ble Apex Court after having placed reliance on the law laid down in 'James Gardner v/s Edward A. Lucas (I) and the King v/s Chandra Dharma (I), (1905) 2K.B 335, (1936) I CH 237, (1960) AC 965,' had concluded that "pending cases although instituted under the old Act but still pending are governed by the new procedure under the amended law, but where procedure was correctly adopted and concluded under the old law can't be opened again for the purpose of applying the new procedure." In other words, while procedural amendments are generally retrospective, they should not create new disabilities or obligations that affect transactions already completed.

In simple words, procedural amendments apply to pending cases unless they impose new duties or create new rights.

Having the above law laid in mind, in the absence of anything to the contrary to the knowledge of this Forum, it is safe to conclude that since, in the case in hand, the complaint was filed as per unamended Rule 29, and at that time the complainant had adopted right procedure prevalent, the complainant can't be expected to be following the amended provision later which created new obligation on the part of the complainant to perform. Hence, this Forum is in agreement with learned counsel for the complainant that amended Rule 29(1) will not have application in this case.

In nutshell, it is concluded that the present complaint for non-compliance of amended Rule 29 of the Rules, 2017, can't be held not maintainable.

6(C) If the amended provision of Rule 29 of the Rules, 2017, is not applicable in this case, still is the complaint maintainable in view of the provisions of Rule 28 of the Rules, 2017, and also as per requirement of clause 4 of format of complaint before the Adjudicating Officer?

Before answering this question, this Forum would like to reproduce the relevant provisions of Rule 28(m) of the Rules, 2017 and contents of format

of filing complaint under Section 71 of the Act, 2016, which were in existence from the very beginning since the inception of the Rules 2017, and that period is prior to filling of present complaint for compensation;

Rule 28, of the HRERA, Rules, 2017 deals with procedure for filing complaint with Authority (Section 31) and inquiry into allegations of contravention or violations (Section 35) and disposal of complaint (Section 36, Section 37 and Section 38).

The relevant clause dealing with procedure as to when complaint before Adjudicating Officer would lie for compensation, has been prescribed in sub Rule (m) to Rule 28, in the following manner;

Rule 28 (m) of HRERA, Rules, 2017:

"If the complaint in form 'CAO' filed before the adjudicating officer for adjudging quantum of compensation, the complaint shall be admissible from the stage of concluding inquiry by the Authority that respondent being promoter has violated or contravened provisions of the Act or the rules or regulations made thereunder warranting liability of the promoter to pay compensation to the allottee under the provisions of the Act or the rules or regulations made thereunder. The Authority may refer the matter to the adjudicating officer for adjudging the quantum of compensation payable to the complainant allottee, and direct both the parties to appear before the adjudicating officer on the

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appointed day. The quantum of compensation payable to the complainant may be expressed by the adjudicating officer in the form of lump sum amount or in the form of percentage of interest on the amount paid by the complainant to the respondent promoter (compensation expressed in terms of interest i.e. compensatory interest).”

*“Column 4 of form CAO. **Facts of the case:**[give a concise statement of facts and grounds of claim for compensation against the promoter and the contravention or violation of provisions of the Act or the Rules or regulations made thereunder as established by an enquiry under section 35 by the Authority being ground for claim of the compensation, if yes, copy be enclosed];”*

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The above described procedure laid for entertaining a complaint for compensation, make it clear that the complaint for compensation would lie only when the enquiry by Hon'ble Authority is completed which is the reason the said factum is required to be included by the complainant in its complaint for compensation at column 4 of its format given. It is worth to note here that for admissibility of complaint, the word 'shall' has been used, which has to be construed in the manner it is used in this beneficial statute, without giving different connotation as welfare oriented statutes are to be interpreted in the manner it is intends to. If this be the legal and procedural requirement, even if at the time of filling of the complaint for compensation, Rule 29, the then, did not

require disposal of complaint by Hon'ble Authority in favour of the allottee but certainly the Rule 28, then & now and the format given to file complaint before Adjudicating Officer, had this procedural mandate to be fulfilled by the complainant in this case, which has not been done as admittedly the complainant has no proof of conclusion of enquiry by the Hon'ble Authority on his complaint, if filed under Section 31 of the Act, 2016, if any. Further, it will not be out of place to mention here that Rule 28 of the Rules 2017, comes prior to Rule 29, meaning thereby to comply with unamended Rule 29, the complaint was required to meet the requirements of its preceding rule i.e. Rule 28, which it has not done, nor had required information to be added in the unamended format for complaint before the Adjudicating Officer. So, the present complaint can't be held maintainable, it being not filed in consonance with the provisions of Rule 28 of the HRERA, Rules, 2017 and the format of complaint given before CAO in Regulations.

6(D) Conclusion.

In view of the forgoing discussion, the present complaint for compensation is dismissed being not filed as per the procedure laid under Rule 28 of the HRERA, Rules, 2017 and the format given to file complaint in the

RERA Act, 2016, with liberty to the complainant to file afresh in accordance with law.

Let, file be consigned to record room after uploading order on the website of the Authority.

An intimation regarding disposal of this complaint be also given to Hon'ble Appellate Tribunal, Chandigarh, for its kind information regarding disposal within stipulated time given.

Narinder Kaur
(Law Associate)


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