HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER
COMPLAINT NO. 582 OF 2023

Mona Sachdeva and Yoginder Pal Sachdeva ....COMPLAINANTS

VERUS

BPTP Ltd. ....RESPONDENT

Date of Hearing: 20.03.2024

Hearing: 9th

Present: Mr. Sanjeev Gupta Advocate, for the complainants through VC.
Mr. Hemant Saini, Advocate with Ms. Neha, Advocate, for the respondent.

20/3/2024

ORDER

Today, case is fixed for rejoinder, if any, otherwise for proceedings in accordance with provisions of Rule 29(2)(d) of Rules, 2017.

2. Rejoinder not filed. Learned counsel for complainants has requested one more opportunity to file rejoinder.

2. Before proceedings further, on perusal of record file, this Forum poses a query to learned counsel for complainants 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."*

29/3/25

The perusal of above provision makes it clear that there is no provision in Rule 29 of 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 after enquiry 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];"*

Notwithstanding anything stated above, even perusal of Rule 28 of Rules, 2017, which lays down the procedure as to how the complaint be filed before the Hon'ble Authority under Section 31 of the Act, 2016 and enquiry thereon is to be conducted within the meaning of under Section 35 of the Act, 2016, for its disposal within the meaning of Section 36, 37, 38 of the Act, 2016, indicates that the complaint for compensation is admissible from the stage of concluding enquiry by Hon'ble Authority. For ready reference relevant provisions of Rule 28(2)(m), of Rules, 2017 is reproduced below:

> ***Rule 28(2) (m) of 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 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)."

The above mentioned relevant provision also, makes it mandatory for filing a complaint for compensation that such complaint shall be admissible on the concluding enquiry of Authority, holding therein that promoter has violated or contravened the provisions of Act 2016. The word used is 'shall' and not 'may', hence compliance of terms of admissibility is mandatory in nature.

3. 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 after enquiry 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.

4. Learned counsel for the complainant has agreed to the above raised query and requested to withdraw the present complaint being not-mainatable in view of provisions of Section 71 of RERA Act, 2016 read with Rule 29 of HRERA, Rules, 2017, seeking permission to file afresh in accordance with law.

Heard. Request allowed.

On request, present complaint is **dismissed** being non-maintainable 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.

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MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
20.03.2025

Narinder kaur
(Law Associate)