



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. : 1007 of 2023

Date of Institution: 27.04.2023

Date of Decision: 20.01.2025

Shashi Bhasin w/o Prem Bhasin, r/o House no.92A, Ward no.7, Sadaura,
Ambala, Haryana.

...COMPLAINANT

Versus

M/s Ansal Housing and Construction Ltd., office at 606, 6th Floor, Indra
Prakash, 21, Barakhamba Road, New Delhi-110001

....RESPONDENT

Hearing: 8th

Present: - Sh. Neeraj Gupta, Adv. for the complainants.
Sh. Ashish Verma, Adv. for the respondent.

ORDER:

This order of mine will dispose of a complaint filed by the complainant namely Shashi Bhasin against M/s Ansal Housing & Construction

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Ltd. seeking compensation 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 complainants booked Shop no. 36, First Floor in "Espania Floors" Yamuna Nagar. The booking of the shop was done on 09.03.2011 and an allotment letter was signed between the parties on 04.07.2012. It is also mentioned that respondent demanded amount from allottee without taking interest in construction and complainants came to know that occupation certificate/ completion certificate has not been obtained by respondent. Vide letter dated 28.06.2017, respondent send offer of possession of unit with demand of some additional amount. Later on complainants came to know that the letter dated 28.06.2017 was against the law, having no legal sanctity as no Occupation Certificate by the Town and Country Planning Department was issued. The complainants had paid total amount of ₹9,23,200/- till date towards the sale price of shop. As per clause 28 of agreement, the offer of possession was agreed within a period of 42 months i.e. upto 03.01.2016. That, the shop was not handed over despite repeated requests of the complainant made. In response to RTI application, reply dated 17.03.2021 was received by complainant in which it is clearly mentioned that "no occupation certificate is issued for shopping complex Galleria." The respondent is charging double

actual carpet area , which is illegal as in the statement provided by respondent the Super area is shown to be 244.32 sq. ft. and Carpet Area shown to be 125.40 sq. ft. Finally, a request was made that since complainants suffered financial losses of the considerate amount resulting into lot of mental agony, pain and harassment to the complainant which cannot be compensated by any means and till date Occupation Certificate has not even been received by the respondent, complainant is entitled to get compensation as per the provisions of the Act, 2016. Finally, complainants have prayed to be granted litigation charges of ₹2,10,000/- for filing three complaints before the Authority and Adjudicating officer, ₹10,00,000/- for mental agony, harassment, stress causing irreversible mental issues and health deterioration and anxiety for a period of 12 years, or in alternate, award 13.4% interest as compensation on deposited amount, ₹20,00,000/- for loss of opportunity to the complainant who has to start business after retirement, compensation of ₹1,00,000/- for repetitive nature of default and any other relief which this Forum deem appropriate. With the complaint, some annexures have also been attached i.e. Allotment letter, offer of possession, customer ledger, RTI and order of refund passed by the Authority.

3. On receipt of notice of the complaint, respondent filed reply, which in brief states that complaint is not maintainable in the present form, as complainant has not approached the Forum with clean hands, no interest or compensation could be awarded to the allottee in this case where amount has

been refunded with interest, and also mentioned that complaint barred by principle of Res-judicata as the complainant has already been granted refund alongwith interest on 18.01.2023 in Complaint no. 349 of 2019. It is also mentioned that complaint is barred under Code of Civil Procedure Order 2 Rule 2 which provides for avoiding multiplicity of litigation and also barred by limitation etc. Finally, request is made to reject the complaint being devoid of merits.

4. On 03.07.2024, complainant filed the rejoinder, which in brief states that maintainability raised by respondent is baseless and liable to be rejected as it is settled principle of law that Res judicata is only applied when issue has been finally decided by the Court, and the issue of compensation has not been decided in Complaint No. 349 of 2019. Complainant has also referred to decision of Hon'ble Supreme Court in the case of M/s Newtech Promoters and Developers Pvt. Ltd. vs. State of U.P. & Others Civil Appeal No.(6745-6749 OF 2021) decided on 11.11.2021, wherein it is held that issue of deciding the compensation is with Adjudicating Officer as per Section 71 of RERA Act read with Section 18 and not with RERA Authority. Regarding bar of limitation, it is mentioned that Limitation Act is not applicable to RERA Act, as there is no specific provision in the Act, and it is settled law that The Limitation Act is applicable to the courts and not to the Tribunals, unless the special Act governing the issues provides specifically for the applicability of the Limitation

Act or special act itself has the provision of limitation. It has been specifically mentioned that refund order dated 18.01.2023 has not been complied till date.

5. This Forum has heard Sh. Neeraj Gupta, Advocate, for the complainant and Sh. Ashish Verma, Advocate, for the respondent and has also gone through the record carefully.

6. In support of its contentions, learned counsel for the complainant has argued that in the instant case, complainant is 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 amount for the unit booked but it is the respondent who made to wait the complainant to get their unit well in time complete in all respect for more than 12 years, which forced the complainant to go for unwarranted litigation to get the refund by approaching Hon'ble Authority at Panchkula, which has finally granted the refund with interest thereon. He has further argued that the complainant has been played fraud upon by the respondent as it despite having used money deposited by the allottee, 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. He has also argued that in this case Res-judicata and Order 2 Rule 2 Code of Civil Procedure will not have an application as Hon'ble Authority has no jurisdiction to entertain the issue of

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grant of compensation. Finally, he has prayed to grant the compensation in the manner prayed in the complaint.

7. On the other hand, learned counsel for the respondent has argued that this complaint as such is not maintainable as same is barred by principle of res-judicata as the Authority has already granted refund in Complaint No. 349 of 2019 Titled as "Shashi Bhasin vs. Ansal Housing & Construction Ltd." He has further argued the present complaint is clearly barred under Civil Procedure Code Order 2 Rule 2 which clearly provides for avoiding multiplicity of litigation. Therefore, multiple proceedings on the same cause of action are abuse of court process of law. He has further argued that the complaint is barred by law of Limitation as admittedly offer of possession was made to complainant by the respondent in the year 2017 and now after a gap of 6 years especially after decision of the identical complaint, the present complaint has been filed much after the period of 3 years. Finally, he has requested to dismiss the complaint with costs.

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

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

- (b) Whether the principle of Res Judicata or Order 2 Rule 2 CPC, would be applicable in the case in hand ?
- (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?
- (e) Whether complainants entitled to get compensation in the case in hand?

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

(8a) 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 offer of possession was made in 2017, whereas complaint was filed in the year 2019.

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.

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(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)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,

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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.

(8b)

Whether the principle of Res Judicata or Order II Rule 2 CPC, would be applicable in the case in hand ?

The answer to this question is also in negative.

Since, the reliefs to be provided under Section 31 and Section 71 of the RERA Act, 2016 read with Rule 29 of Rules, 2017, are independent to each other and are to granted by two different authorities, principal of Res-judicata would not apply. To hold so this Forum has taken strength from the law laid down by Hon'ble Apex Court in M/s New Tech Promoters and Developers Pvt. Ltd. v/s State of U.P. & Ors., decided on 11.11.2021, wherein difference between two remedies has been highlighted. Similarly, Order II Rule 2 CPC, would not apply as the relief which Adjudicating Officer can grant in the form of compensation, the Hon'ble Authority can't, so there was no legal requirement for the complainant to have sought relief of compensation from Hon'ble Authority.

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(8c)

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.*


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(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;

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


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

(8c)

Whether complainants 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	2012
ii)	Proposed Handing over of Possession	42 months i.e. 03.01.2016
iii)	Basic sale price -	₹10,50,576/-
iv)	Total amount paid	₹9,23,200/-
v)	Period of payment	Not specified in details
vi)	Occupancy Certificate whether received	NO

	till filing of complaint	
vii)	Date of filing of complaint under Section 31 before Hon'ble Authority	30.01.2019
viii)	Date of order of Hon'ble Authority	18.01.2023
ix)	Date when total refund made	No amount refunded till date
x)	Date of filing complaint under Sections 12,18 & 19 of RERA Act, 2019	27.04.2023

It is matter of record that the project advertised in the year 2012, did not get completion certificate till filing of the complaint on dated 27.04.2023 and also that the complainant on its part had performed his part of duty by paying more than the basic price of the plot. Admittedly, basic price of the plot was ₹10,50,576/- whereas the complainant paid ₹9,23,200/-. It is also admitted on record that the complainant did not get possession of shop allotted. There can also be no denial that allottee of the shops generally spend their lifetime earning or even obtain loans for purchasing the shops and they are not at equal footings with that of promoter, who is in dominating position. The position of the allottee becomes more pitiable and sympathetic when he or she has to wait for years together to get the possession of shop allotted despite having played its bid. But, on the contrary, it is the promoter who enjoys the amount paid by allottee during this

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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 allottee paid is nothing but misappropriation of the amount legally paid as the promoter did not hand over the possession within stipulated time, which the promoter was legally bound to do. It is not out of place to mention here that if the promoter/respondent had a right to receive the money from allottee to hand over the possession in time, 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 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 allottee had paid ₹9,23,200/- but record is silent as to when the payment of instalment had started and when the last payment was made.


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However, it is not in dispute that the promoter neither completed the project, nor refunded the amount received till allottee having been forced to approach Hon'ble HRERA Authority, Panchkula, to get the refund 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 ₹9,23,200/-, for the last more than 12 years, for the sake of repetition it is held that it can definitely be termed as disproportionate gain or unfair advantage, as enumerated in Section 72(a) of the Act. In other words, it had been loss to allottee as a result of default on the part of promoter which continuous 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 of the default of respondent for the period starting from 2012 till date and also misutilization of the amount paid by the complainant to the respondent. In fact, the


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facts and circumstances of this case itself are proof of agony undergone by the complainant so long, hence, there is no need to look for formal proof of the same. Further, there can't be denial to the effect that the allottee 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 decree holder to file the complaint/execution petition by engaging counsel(s) at different stages, and also that because of escalation of prices of shop in last twelve years, the decree holder may not be in a position to purchase the same shop now, which amounts to loss of opportunity to the allottee. These factor also enable an allottee to get compensation.

In view of the forgoing discussions, the complainant is held 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?

As far as the question about amount of compensation payable, this Forum holds that it is a case wherein lump sum amount of compensation is payable as the complainant has not

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explained the period of instalments paid, which otherwise could have helped this Forum to access the compensation having in mind as to from which period to which period the respondent enjoyed amount paid as instalments.

In the given circumstances, wherein the complaints had paid ₹9,23,200/- as per Hon'ble Authority's order which the promoter enjoyed for almost twelve years, this Forum hold the complainant entitled to get ₹5,00,000/- in lum sum having in mind the amount paid as compensation from the promoter which the promoter shall be liable to pay within 90 days from the date of this order. In case, the promoter fails to pay this amount within stipulated period, than in that case the rate of interest would be payable in view of the law discussed below;

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.

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 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;

The 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.

Further, 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 allottee has opted for refund than unit in a project and second case where he has gone for 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 upto 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

10. Reverting back to the facts of the case under consideration, having the above discussed legal position in mind, it is concluded that if the respondent do not pay sum of ₹5,00,000/- in lum sum to the allottees within stipulated time of 90 days from the date of this order, the allottee(s) shall be entitled to get interest on delayed payment at the rate prescribed under Rule 15 of Rules, 2017, from the date of this order, till the amount is finally paid by the respondent to the allottees.


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

The total compensation comes to ₹5,00,000/- + ₹30,000 = ₹5,30,000/- (Rupees Five Lakhs Thirty Thousand Only) plus the interest on delayed payment in the manner ordered above, if such situation arises.

12. The present complaint stands **disposed of** in the manner observed above. File be consigned to record room after uploading of this order on the website of the Hon'ble Authority.


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MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
20.01.2025

Note: This order contains 26 pages and all the pages have been checked and signed by me.


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MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
20.01.2025