HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER, HRERA, PANCHKULA.

Complaint No. : 587 of 2023
Date of Institution: 17.03.2023
Date of Decision: 23.01.2025

1. Jasbir Dhaliwal wife of Shri Bachittar Singh Dhaliwal,
2. Divas Dhaliwal daughter of Shri Bachittar Singh Dhaliwal, through her GPA Namely Bachittar Singh Dhaliwal son of Sh. Hardit Singh Dhaliwal, resident of House No. 125, Sector 35-A, Chandigarh.

...COMPLAINANTS

23/1/2025

Versus

M/s Vatika Limited , having its Corporate office at 7th Floor, Vatika Triangle, Block-A, Sushant Lok, Gurgaon through its M.D./Director/Authorised Signatory.

....RESPONDENT

Hearing: 11th

Present: - Mr. Ripudaman Singh, Advocate, for the complainants.
Ms. Vertika H Singh, Advocate, for the respondent through VC.

ORDER:

This judgment of mine will dispose of a complaint filed by the complainants namely 'Jasbir Dhaliwal wife of Shri Bachittar Singh Dhaliwal, Divas Dhaliwal daughter of Shri Bachittar Singh Dhaliwal', through her GPA Namely Bachittar Singh Dhaliwal son of Sh. Hardit Singh Dhaliwal, against M/s Vatika 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 complainants after having gone through the advertisement given by the respondent company i.e. Vatika 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, booked a commercial unit measuring 500 sq. ft. in the project namely 'Vatika Mindscapes' Sector 27, Faridabad. It has been stated that it was assured by the respondent that in case the complainants make payment as per down payment plan, the respondents will pay ₹71.50/- per sq. ft. super area per month as assured return/commitment charges from the date of execution of the agreement till completion of construction of said unit and further pay ₹65/- per sq. ft per month as assured

return/committed charges up to three years from the date of completion of said building or the said unit is put on lease and lease deed is executed, whichever is earlier and the total sale consideration as fixed ₹22,50,000/- inclusive of IDC & EDC charges. The complainants paid ₹23,33,430/- over and above the entire sale consideration on 30.01.2014 and Buyer Agreement in respect of unit no. 614, Block C, 6th floor, was executed between the complainants and the respondents on 08.02.2014. On 06.05.2014, the respondents informed the complainants that the unit would be ready for lease by 31.12.2015 and would pay commitment charges/lease rental @ ₹65/- per sq. ft. per month for super area w.e.f. 31.12.2015. The respondent failed to complete the construction by the year 2015 and hence the respondent paid the committed return to the complainants @ ₹71.50/- per sq. ft. from 08.02.2014 to 28.02.2018. The respondents on 12.03.2018 informed the complainants that the construction work of the building is operational and ready for occupation and the assured return/commitment charges would be revised to ₹65/- per sq. ft. per month from 01.03.2018 as building got operational in the last week of February 2018. The respondents paid commitment charges @ ₹65/- per sq. ft. from 01.3.2018 to 30.09.2018 and from 01.10.2018, nothing has been paid. The complainants further stated that when the complainants visited the project site on 20.11.2018, the construction of Block C was still going on and nowhere near completion. Accordingly on 01.12.2018, the complainants asked the respondents through

23/1/2025

mail about construction progress and to pay the assured return @ ₹71.50/- per sq. ft. instead @ ₹65/- per sq. ft.. The complainants requested the respondents through e-mails many times for possession of the unit but in vain.

3. That the complainants filed complaint No. 1289 of 2021 before the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula, for redressal of their grievances which was allowed vide order dated 31.01.2023 and the respondents were directed to pay a sum of ₹35,750/- per month from October 2018 to January 2023 i.e. ₹22,94,160.92/- and it was also ordered that non-calculated monthly interest will be paid regularly by the respondent till lawful offer of possession is made to the complainants.

23/1/2025

4. That the complainants further submitted that the complainants suffered a lot due to non-delivery of the said commercial unit and in not paying the assured return. The complainants have suffered financial loss, lots of expenses have been incurred in visiting office and project site, engaging the lawyer and prayed that the respondents be directed to pay a compensation of ₹20,00,000/- on account of litigation expenses, deficiency in service, unfair trade practices, financial loss, mental harassment suffered by the complainants and damages for the physical and mental torture, agony, discomfort and undue hardship caused to the complainants, by not delivering the possession and by not paying the committed/assured return.

5. On receipt of notice of the complaint, respondent filed reply, which in brief states that complaint is not maintainable in the eye of law, complainant has not approached the Forum with clean hands, concealed the material facts, complaint is misrepresentation, no cause of action exists in favour of the complainants. This complaint is not said to be fall within the jurisdiction of this ld. Forum. It has been further submitted by the respondents that upon the enactment of the Banning of Unregulated Deposit schemes Act, 2019, the assured return or any committed returns on the deposits schemes have been banned. The respondent company having not taken registration from SEBI Board cannot run, operate, continue an assured return scheme as provided under section 3 of the BUDS, Act as the same is punishable under the law. Thus, the assured return scheme proposed and floated by the respondent has become infructuous due to the operation of law and relief prayed by the complainants cannot survive. In support of his contentions, the respondents have produced the following citations:

(i) Naresh Prasad Vs. Vatika ltd. In CS No. 338 of 2022 ld. ACJ (SD) Gurugram vide order dated 19.4.2022.

(ii) Brhimjeet & Ors. Vs M/s Landmark Apartments Pvt. Ltd., complaint no. 141 of 2018, Hon'ble HRERA, Panchkula has taken the same view as observed by Maharashtra RERA in Mahesh Pariani.

(iii) Bharam Singh & Ors Vs. Venetian LDF Projects LLP Complaint no. 175 of 2018 HARERA, Gurugram.

(iv) Jasjit Kaur Grewal Vs. M/s MVL Ltd. Complaint no. 58 of 2018 Hon'ble HRERA Gurugram.

Further, she has mentioned that the issue regarding assured return is already pending adjudication before Hon'ble Punjab and Haryana High Court in CWP no.26740 of 2022 titled as "Vatika Ltd. versus Union of India and Anr." wherein a significant order dated 22.11.2022 is passed restraining the respondents from taking any coercive criminal action, including recovery proceedings against the present judgement debtor.

6. That this matter can only be adjudicated in civil proceedings and the complaint deserves to be dismissed being not maintainable. The complainants cannot challenge terms of the agreement qua delay compensation and interest which was signed without any coercion or undue influence. That Tower C of the project is registered with RERA Panchkula. On account of Pandemic of Novel corona virus, the Ministry of Housing, GOI has declared the pandemic as a force Majeure situation and the last date of completion had been extended. That as per clause 15 of the builder buyer agreement, it was agreed that complainants shall receive assured return of ₹71.50/- per sq. ft. upon upon payment of 100% of basic sale consideration up to completion of construction and after that assured return will be paid

₹65/- per sq. ft. up to three years when unit is put on lease or whichever is earlier. That the respondents have paid ₹19,70,313/- to the complainants up to September 2018 till the completion of the construction work. That, the respondent has further stated that Block C of the project was completed as stated in the letter dated 12.03.2018 and the respondent cannot be compelled to commit an illegality by making payment of assured returns in violation of provisions of BUDS, Act, 2019. The complainants have been paid the assured returns @ ₹65/- per month per sq. ft. till September 2018. No harassment or financial loss has been caused to the complainants due to the respondents. The respondent has prayed that the present complaint filed by the complainants may kindly be dismissed with heavy cost, in the interest of justice.

7. Learned counsel for the respondent further submitted that relief has already been granted by Hon'ble Authority in Complaint no.1289 of 2021, decided on 31.01.2023 wherein assured return along with interest has been granted to the complainants. She referred to para no. 14(ii) of the order dated 31.01.2023 passed by Hon'ble Authority to show that interest prescribed under Section 18 of the Act has already been granted to the complainants. This interest includes the interest in the form of compensation which is over and above the compensation as claimed by the complainants in the present complaint, which is not justified. The complainants can not claim

double benefit when relief has already been granted by the Authority in the form of interest.

8. This Forum has heard Sh. Ripudaman Singh, Advocate, for the complainants and Ms. Vertika H Singh, Advocate, for the respondent and has also gone through the record carefully.

9. In support of its contentions, learned counsel for the complainants has argued that in the instant case, complainants are very much entitled to get compensation and the interest thereon, because despite having played its part of duty as an allottee, the complainants had met all the requirements including payment of entire sale consideration for the unit booked but it is the respondent who made to wait the complainants to get their unit well in time complete in all respect for more than 11 years, which forced the complainants to go for unwarranted litigation to get the possession along with payment of assured return by approaching Hon'ble Authority at Panchkula, which has finally granted on 31.01.2023. He has further argued that the respondent forced the complainants to visit time and again to its offices to get the unit, thus to spend unnecessary money on travelling and physical harassment. He has further argued that the complainants have 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. In support of his contentions, he has placed on record order dated 15.12.2022 in Appeal no.423 of 2021 passed by Hon'ble Appellate Tribunal in 'M/s T.G. Buildwell Private Ltd. versus Rohit Gupta and others' and order dated 16.05.2022 in Appeal no.305 of 2021 titled as 'Anil Kumar Suri and anr versus Jindal Reality Private Limited'. Finally, he has prayed to grant the compensation in the manner prayed in the complaint.

10. On the other hand, learned counsel for the respondent had argued that this complaint as such is not maintainable as this Forum has no jurisdiction to entertain the present complaint as claim of the complainants regarding assured return can't be adjudicated under the provisions of Act, 2016 and Rules framed thereunder. She has further argued that complainants did not claim interest and compensation when relief has already been granted by the Authority at the higher rate i.e. SBI MCLR+2% which at that time was 10.60%. She 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. Finally, she has prayed to dismiss the complaint.

23/1/2025

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

(a) Whether the present complaint under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, pertaining to relief of 'assured' return is maintainable under the RERA Act, 2016 read with Rules 2017?

(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?

(e) Whether complainants are entitled to get compensation in the case in hand?

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

12(a) **Whether the present complaint under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, pertaining to relief of 'assured' return is maintainable under the RERA Act, 2016 read with Rules 2017?**

The answer to this question is in affirmative.

As per Rule 29 of Rules, 2017, a complaint before Adjudicating Officer is maintainable only when violation by the promoter has been established by the Authority in an enquiry under section 35 of the Act, 2016. Since, in the case in hand, Hon'ble Authority has already answered this question in Complaint no. 343 of 2021 titled as 'Tanya Mahajan versus Vatika Ltd.' vide order dated 03.02.2022, this Forum is not required to answer the same. For ready reference, the relevant portion is reproduced below;

> *"7. Authority has gone through all facts and circumstances of these matters. It has gone through written statement as well as oral arguments put-forth by both sides. It observes and orders as follows:*
>
> *i. Claim of the complainant is that they are allottees of the project as is clearly establish from nature of the project and the nature of the builder-buyer agreement*

executed between complainant and respondent company. Respondent company has failed to keep its promises of paying assured returns and also have not completed the project and offered possession after obtaining Occupation certificate.

ii. The case of the respondents is that the complainants are not allottees, they are mere depositors. Assured returns had been paid to the complainants up to December, 2018, but after promulgation of BUDS ordinance on 21.02.2019 and coming into force of the BUDS Act on 31.07.2019, the respondents are prohibited from paying assured returns to complainants. Further, the agreement executed between parties is only a lease agreement. Respondents have been paying due returns to the complainants, but had stopped payments after coming into force the BUDS Act as law has prohibited them from making payments of assured returns to the complainants.

iii. Authority would first of all refer to nature of the agreement executed between both the parties. Clause-A, B & C of opening recitals of the agreement provides that respondents-company is owner in possession of 8.793 acres land in revenue estate of Sarai Khawaja, Tehsil and District Faridabad, Sector-27, Faridabad. M/s Vatika I.T. Parks Pvt. Ltd. i.e. respondent no.2 had obtained licence No. 1133 of 2006 from Director, Town & Country Planning Department, Haryana, for constructing upon the said land an IT park. Clause-C of the opening recital states that Director, Town & Country Planning Department, has already approved demarcation/ zoning plans and building plans of the said IT park

vide their memo No. 16150 and 1315 dated 20.06.2007 and dated 08.04.2008. It further states that said IT park has been named as "Vatika Mindscapes".

iv. *Clause D, E, F & G repeatedly refers to complainants as buyers and to respondents as developers. Clause E clearly stipulates that complainant/buyer have approached the developer for purchase of units of approximately 500 sq. ft. super area on 4th floor of the building block-C of the project.*

v. *A cursory reading of the opening recital A to H leaves no doubts that respondents are builder-promoters of the project 'Vatika Mindscapes'. They have properly obtained licence from State Government. They have got their building plans etc. duly approved. They have properly negotiated for sale of specified and identified units to the complainants.*

This by itself leaves no doubt that the respondents are developers and complainants are buyers and a proper builder-buyer relationship exists between both the parties and any dispute relating to the agreement between them is referable to this Authority only. Jurisdiction of the Authority, therefore, for dealing with this dispute is undisputable and objections raised by respondents to the jurisdiction of the Authority are without any basis.

vi. *In Clause-1 (a) of the agreement, unit allotted to the complainant is properly identified. In Clause-2 (a) of the agreement, basic sale consideration as well as principles regulating the payments of the basic sale consideration also, have been clearly and unmistakably stipulated. It appears, there were multiple payment options available, however, complainants*

23/1/2025

herein chose the option of down payments. An option of deferred payment was also available but complainant did not opt for the same.

vii. *Clause-4, particularly clause 4.4, specifies the area deliverable to complainants, including covered area of the unit as well as pro-rata share of common areas of the entire building. Definition of the common area has also been specified in the agreement.*

viii. *Reading of the remaining clauses of the agreement there is no doubt that this was a proper builder-buyer agreement as per prevailing market practice.*

ix. *Clause-15, however, provides for payment of assured monthly returns. From a reading of this clause 15, it is absolutely clear that ordinarily the payments in a real estate project are made in instalments or in accordance with construction linked plan but if entire consideration is paid upfront, some interest becomes payable to the buyer by way of incentive for monthly upfront payment. In this case, complainants chose to make down payments and in return claim monthly assured returns. As per law, interest on the entire payments made is payable after due date of offering possession. It is but natural that if payment is made up-front, complainant allottees would be entitled to return on their up-front payments made which in this case has been named assured monthly returns.*

23/11/2023

8. Authority, therefore, has no hesitation in coming into a conclusion that a proper builder-buyer relationship exists between respondents and complainants because complainants had booked the unit for its physical delivery to them. Before completion of the project assured payment @ ₹71.50 per sq. ft. per month was agreed and

after completion it was to be @ ₹65 per sq. ft. per month. Complainants are very much entitled to possession of the booked unit and its leasing as per their wish after taking over of possession. The respondents have not fulfilled their promise of offering possession to complainant. Complainants therefore are entitled to relief sought i.e. possession of the unit along with payment of overdue assured returns as per provisions of the agreement.

9. Respondents have taken a technical argument that BUDS Act has come into force w.e.f. July, 2019 and an ordinance preceding that was passed by Parliament of India in February, 2019. Further, under BUDS Act, unregulated deposits are prohibited, therefore, respondents' argument is that since the complainants are not allottees, they are depositors, therefore, they fall within the prohibitions provided in the BUDS Act.

10. Respondents have cited provisions of Sub Section 4 of Section 2 of the BUDS Act in which definition of deposits has been given. Opening line of the definition of the deposit reads ...

> *"…. an amount of money received by way of an advance or loan or in any other form by any deposit taker with a promise to return whether of a specified period or otherwise either in cash or any kind or any specified service……"*

Authority observes that none of the conditions listed in the aforesaid definition of "deposits" are fulfilled in the captioned complaints. The money paid by the complainants cannot be called advance or loan. It was very much a consideration for purchase of specified and identified apartments/ units in the duly licenced real estate project of the respondents. Further, definition deposit stipulates an essential condition that the deposit has taken with 'a promise to return after a specific period'. This condition is also not fulfilled in the present case. Provisions of the agreement do not at all provide for return of the money paid by the complainants. It only provides for delivery of a pre-identified constructed unit in the lawfully licenced project of the respondents. The

arguments of the respondents, therefore, are summarily rejected because consideration amount paid by complainant by no stretch of imagination can be categorised as deposits of finance for return in the form of investment bonus, profit or in any other form.

11. Respondents are desperately trying to deny legitimate rights of the complainants as are admissible to them in terms of the builder-buyer agreement executed and in terms of Real Estate (Regulation and Development) Act, 2016.

12. The Authority observes that respondents have still not obtained occupation certificate. Real estate project can be said to be complete only upon receipt of occupation certificate or part completion certificate. Having not received the Occupation certificate, project is still on going. The respondents have got this project registered with the Authority vide Registration No. 196 of 2017 dated 15.09.2017. The complainants are therefore, entitled to lawful possession of the unit after obtaining occupation certificate thereof by the respondents. Till such time as a lawful offer of possession is made, complainants are entitled to get agreed monthly assured returns @ ₹71.50 per sq. ft. Authority reiterates that agreed monthly assured returns in fact is a substitute of prescribed interest as provided for in Section 18 of the Act. Had the quantum of monthly assured returns not provided for in the agreement, Authority would have ordered payments of interest for the entire period of delay at the rate provided for in Rule 15 of the Rules i.e. MCLR+2%. But since a specific agreement exists between parties for payment of monthly assured returns @ ₹71.50 per sq. ft. per month, Authority will abide by provisions of agreement in this case. Admittedly, monthly assured returns @ ₹71.50 per sq. ft. which amounts to ₹35,750/- per month is payable. This amount had been paid up to December, 2018. Accordingly, monthly returns @ ₹35,750/- will be paid for the entire period from January 2019 till February 2022 i.e. the month of passing of this order. This amount works out to ₹15,63,803/-. It is also ordered that non-calculated monthly interest will be

paid regularly by the respondents till lawful offer of possession is made to the complainants.

The above described law, if applied in the case in hand, leads to only one conclusion that the objections so raised in its reply by the respondent are nothing but a delay tactic adopted to prolong the case as once the question of lack of jurisdiction has already been dealt with by the Hon'ble Authority, this Forum can't deal with same issue further. Otherwise also, the order passed by the Authority has not been set aside so far, thus, in no circumstances, this Forum can entertain objections raised, when the Hon'ble Authority has already considered such an issue in its orders.

12(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 71 of the RERA Act, 2016 read with Rule 29 of Rules, 2017 are independent to each other and are to be granted by two different Authorities.

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

(12c) 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.

23/1/2025

(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."

23/11/2025

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."

12(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.

(12e) 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	2014
(ii)	Proposed Handing over of possession	2015 (respondent to pay assured return ₹71.50/- per sq. ft. per month from the date of builder buyer agreement i.e. 08.02.2014 till completion of construction and ₹65/- per sq. ft. up to three years from date of completion till the unit is put on lease, whichever is earlier.)
(iii)	Basic sale price	₹22,50,000/-

23/1/2025

(iv)	Total amount paid	₹23,33,430/-
(v)	Period of payment	06.02.2014 (by cheque dated 30.01.2014)
(vi)	Occupancy certificate Whether received till Filing of complaint	NO
(vii)	Date of filing of complaint under Section 31 before Hon'ble Authority	20.12.2021
(viii)	Date of order of Authority	31.01.2023
(ix)	Date of filing of complaint filed under Section 12, 18 & 19 of RERA Act, 2016	17.03.2023
(x)	Date when assured return made	September 2018

23/1/2023

It is a matter of record that the project advertised in the year 2014, did not get completion certificate till filing of the complaint on dated 17.03.2023 and also that the complainants on its part had performed their part of duty by paying more than the basic price of the unit. Admittedly, the basic price of the plot was ₹22,50,000/- whereas the complainant paid ₹23,33,430/- till 06.02.2014.

It is also admitted on record that the complainants 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 the possession within stipulated time nor paid assured return as promised in the builder agreement, 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

23/1/2025

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 ₹23,33,430/-. However, it is not in dispute that the promoter neither completed the project, nor handed over possession along with payment of assured return till allottee having been forced to approach Hon'ble HRERA Authority, Panchkula, to get possession along with assured return 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.

23/1/2025

In view of the above, since, the promoters had been using the amount of ₹23,33,430/-, for the last more than 11 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 complainants after taking into consideration, the default of respondent for the period starting from 2014 till date and also misutilization of the amount paid by the complainants to the respondent. In fact, the facts and circumstances of this case itself are proof of agony undergone by the complainants 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 payment of assured return and also that if the unit provided in time, there was no reason for the complainants to file the complaint/execution petition by engaging counsel(s) at different stages, and also that because of escalation of prices of unit in last 11 years, the complainants may not be in a position to purchase the same unit now, which amounts to loss of opportunity to the allottee. These factors also enable an allottee to get compensation.

23/11/2021

In view of the forgoing discussions, the complainants are held entitled for compensation.

13. Once, the complainants have 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 Rule 15 and 16 of HRERA, Rules, 2017 and Section 18 of the RERA Act, 2016 and also definition of 'interest' given in Section 2(za) of the RERA Act, 2016;

23/1/2025

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;

23/1/2025

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.

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.

23/1/2025

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

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 is tabulated below:

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹23,33,430/-	06.02.2014 to 23.01.2025	11.10%	₹28,42,022/-

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

The total compensation comes to ₹28,42,022/- + ₹30,000 = ₹28,72,022/- (Rupees Twenty Eight Lakhs Seventy-Two Thousand and Twenty-Two).

15. In these terms, the present complaint is partly allowed. The respondent is directed to pay an amount of ₹28,42,022/- + ₹30,000 = ₹28,72,022/- (Rupees Twenty Eight Lakhs Seventy-Two Thousand and Twenty-Two) within 90 days to the complainants. 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 substantive amount.

23/1/2024

16. The present complaint stands **disposed of.** File be consigned to record room after uploading of this order on the website of the Authority.

MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
23.01.2025

Note: This judgement contains 35 pages and all the pages have been checked and signed by me.

MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
23.01.2025