HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. : 3269 of 2022
Date of Institution: 19.12.2022
Date of Decision: 28.01.2025

Chaman Lal Hans and Veena Rani, both R/o House No.8/4, NFL Township, Panipat, District-Panipat, Haryana-132103.

...COMPLAINANTS

Versus

Parsvnath Developers Limited, office at Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi - 110032.

....RESPONDENT

28/1/2025

Hearing: 13th

Present: - Sh. Sandeep Lather, Advocate, for the complainants.
Ms. Rupali S. Verma, Advocate, for the respondent through VC.

ORDER

This order of mine will dispose of a complaint filed by the complainants namely Chaman Lal Hans and Veena Rani against M/s Parsvnath Developers Ltd., 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 Chaman Lal Hans and Veena Rani, had booked a residential flat on the First Floor on Block-c, having an approximately 1220 sq. ft. area in Parsvnath Paliwal City, Panipat and paid total amount of ₹13,07,714/-, the description of which has not been given.

That, the respondent had executed a Flat Buyer Agreement on dated 07.09.2009 and as per clause 9(a) of the same the residential floor was to be offered within 24 months from the date of commencement of construction on the individual plot on which the flat is located within a grace period of six months; That, despite the complainants having spent their hard earned money to get the unit, they did not get any positive response from the respondent despite repeated queries and later on the complainants came to know that the respondent has played fraud of receiving money but not providing the units as promised with many allottees including complainants; That, complainants along with other allottees met the DGM of the respondent company who promised that units will be delivered but despite false promises from respondent side the complainants and other allottees did not get their units for more than thirteen years; That, legal notice was served upon and finally all such allottees filed Complaint no.RERA-PKL-1358-2020 by the complainants and other allottees

28/1/2025

also filed separately total 11 in number seeking refund and the said complaints have been allowed vide order dated 20.07.2022; That, the refund order has not been complied with till date in the executions so filed which is a cause of physical and mental harassment of the complainants. That, the intentions of the respondent was simply to grab the money from the allottees by making false promises despite the fact that allottees had invested their hard earned money and the said property now has very higher rates but Hon'ble Authority ordered for minimum interest on principal amount, which is the reason the complainants are forced to stay on rents to pay the same by borrowing; That, the 13 years delay is a torture for any home buyer which bring immense stress, mental pain, frustration, anger, harassment which is the reason the complainants are entitled to compensation as the respondent has enjoyed this money so long unauthorizedly. Finally, complainants have prayed to be granted litigation charges of ₹3,00,000/- for filing three complaints, ₹2,00,000/- for mental harassment for a period of 13 years, ₹2,00,000/- for loss of opportunity to the complainants who have to purchase other property, which payment could have been avoided if the allotted unit was handed over to the complainants in time, compensation of ₹20,000/- for visiting the office of respondent to seek delivery of possession and refund of principal amount, ₹50,000/- as compensation for repeated nature of default on part of the respondent who did not obey the Authority's order and any other relief which this Forum deem appropriate. With

28/1/2025

the complaint some annexures have also been attached i.e. Adhar Card (C-1), copies of applications (C2-C4).

3. On receipt of notice of the complaint, respondent filed reply, which in brief states that complaint is not maintainable being not in consonance with provisions of Section 72 of the Act, 2016, as there is no proof led by the complainants as to how they could prove the factors required to be proved within the Section 72 of the Act, 2016; That, the present complaint pertains to an unregistered project of the respondent, hence in view of the law laid down by Hon'ble Apex Court in New Tech Promoters and Developers Pvt. Ltd. v/s State of U.P. and others (2021 SCC 1044), the Adjudicating Officer has no jurisdiction to entertain the present complaint; That, the complaint is barred by limitation in view of the law laid by Hon'ble Apex Court in Surjeet Singh Sahni v/s State of U.P. and others (2022 SCC Online SC 249); That, the complainants have not disclosed the fact that they were defaulters in making payments of instalments despite notices from the respondent and the said non-payment of instalment by the complainants and other similarly situated allottees had adversely affected the progress of the project resulting into delay; That, the project also got delayed because of various administrative reasons beyond the control of the respondent. Finally, prayer is made to dismiss the complaint being not maintainable.

28/1/2023

4. The complainants have filed the rejoinder reiterating the contents of the complaint and controverting the claim of the respondent made in its reply.

5. This Forum has heard Sh. Sandeep Lathar, Advocate, for the complainants and Ms. Rupali S Verma, Advocate, for the respondent and has also gone through the record carefully.

6. 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 maximum amount 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 13 years, which forced the complainants to go for unwarranted litigation to get the refund by approaching Hon'ble Authority at Panchkula, which has finally granted the refund but with less interest thereon. 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 to suffer 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. He has further argued that

some of the complainant's harassment, who are party in this common order under execution, at the hand of the respondent increased further when the cheque paid to refund the amount got bounced. 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 in view of the law laid down by Hon'ble Apex Court in Surjeet Singh Sahni vs State of U.P. and others 2022 SCC Online SC 249 as the project pertains to the year 2009, whereas present complaint to seek compensation was filed on dated 19.12.2022 much after the period of limitation. She has further argued that in the case in hand, the Flat Buyer Agreement was executed in the year 2009 i.e. more than 8 years before the RERA Act, 2016 coming into force, so provisions of RERA Act are not applicable in the present case, meaning thereby the Adjudicating Officer has no authority to entertain such complaint what to talk of grant of compensation. She has further argued that there has not been any intentional delay on the part of the respondent to complete the project which factually got delayed because of the circumstances beyond the reach of the respondent and even the complainants are also responsible for the delay as did not pay the regular instalment despite having been asked. She has further argued that to get a relief under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, the complainants are required to prove the ingredients of Section 72 of the Act, 2016, which in the case in hand do not stand proved as no cogent evidence to meet requirements of

Section 72 of the Act, has been led. She has further argued that it is the requirement of Sections 71 and 72 of the Act, 2016 read with Rule 29 of the Rules, 2017, the Adjudicating Officer to adjudge compensation by conducting an enquiry in the manner laid and for conducting the enquiry there should be sufficient evidence led by the complainants with facts and figures to prove as to how it is entitled to get compensation within the meaning of Section 72 of the Act, 2016. She further argued that in the instant case, the complainants has not led any evidence as to how it has spent the amount in the manner claimed to seek compensation under different heads, so it being the case of no evidence in support of the claim of the complainants, the complaint is to be dismissed being devoid of merit. Finally, she has prayed to dismiss the complaint.

28/1/2025

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 present complaint under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, pertaining to a project of the year 2009 is maintainable under the RERA Act, 2016 read with Rules 2017, if filed on dated 19.12.2022?

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

(d) Whether it is necessary for the complainants 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?

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

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

The answer to this question is in negative.

The plea for the respondent is that the complaint is barred by limitation as project pertain to the year 2009, whereas the complaint was filed in the year 2022.

On the other hand, the plea for the complainants are that the provisions of Limitation Act are not applicable in this complaint filed under RERA Act, 2016, hence, plea of limitation so raised be rejected.

With due regards to the rival contentions and facts on record, this Forum is of the view the law of limitation does not apply in respect of a complaint filed under the provisions of the RERA Act,

2016. Rather, Section 29 of the Limitation Act, 1963, specifically provides that Limitation Act, 1963, does not apply to a special enactment wherein no period of limitation is provided like RERA Act, 2016. For ready reference, Section 29 of the Limitation Act, 1963, is reproduced below;

Section 29 - Limitation Act, 1963

29. Savings.--

(1)Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2)Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3)Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4)Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.

28/1/2025

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, cause of action for the complainant is in continuation, if finally held entitled to get compensation.

28/1/2025

In nutshell, plea of bar of limitation is devoid of merit.

8(b) **Whether the present complaint under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, pertaining to a project of the year 2009 is maintainable under the RERA Act, 2016 read with Rules 2017, if filed on dated 19.12.2022?**

The answer to this question is also in negative.

This question has been answered by Hon'ble Apex Court in M/s New Tech Promoters and Developers Pvt. Ltd. v/s State of U.P. & Ors., to the effect that "projects already completed or to which the Completion Certificate has been granted are not under the fold of RERA Act. Since, in the instant case, the project in

question was neither completed when the RERA Act came into existence on May 2016, nor, any Completion Certificate was issued to it prior thereto, it is a case which is duly covered by the provisions of the Act, 2016 and Rules, 2017. It is not out of place to mention here that in the case in hand, the project was not completed even when the complaint before Authority was filed to seek refund and even now also probably it is not completed.

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

On this point, relevant provisions of RERA Act, 2016 and also law on the subject for grant of compensation, are as under;

28/1/2025

(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 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;

28/1/2025

12.8- The word "fail to comply with the provisions of any of the sections as specified in sub section (1)" used in Sub-Section (3) of Section 71, means failure of the promoter to comply with the requirements mentioned in Section 12, 14, 18 and 19. The Adjudicating Officer after holding enquiry while adjudging the quantum of compensation or interest as the case may be, shall have due regard to the factors mentioned in Section 72. The compensation may be adjudged either as a quantitative or as compensatory interest.

12.9 – The Adjudicating Officer, thus, has been conferred with power to directed for making payment of compensation or interest, as the case may be, "as he thinks fit" in accordance with the provisions of Section 12, 14, 18 and 19 of the Act after taking into consideration the factors enumerated in Section 72 of Act.

(iii) What is to be considered by the Adjudicating Officer, while deciding the quantum of compensation, as the term

"compensation" has not been defined under RERA Act, 2016, is answered in Section 71 of the Act, 2016, as per which " he may direct to pay such compensation of interest, as the case may any be, as he thinks fit in accordance with the provisions of any of those sections,"

Section 72, further elaborate the factors to be taken note of, which read as under;

Section 72: Factors to be taken into account by the adjudicating officer.

72. *While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:*

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

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

(c) the repetitive nature of the default;

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

(iv) For determination of the entitlement of complainant for compensation due to default of the builder/developer Hon'ble Apex Court in **M/s Fortune Infrastructure (now known as M/s. Hicon Infrastructure) & Anr. Vs. Trevor D'Lima and Others, Civil Appeal No.(s) 3533-3534 of 2017 decided on 12.03.2018 , has** held as under:-

"*Thus, the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss.* Loss could be determined on the basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises, then on the basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical."

28/1/2025

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.*"

8(d) **Whether it is necessary for the complainants 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?**

28/1/2025

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.

Undoubtedly, in Rule 29 of the Rules, 2017, there is mention of Adjudicating Officer to follow summary procedure for enquiry but in this rule there is no requirement for Adjudicating Officer to compulsorily ask for evidence from the complainant, to adjudge quantum of compensation. Rather, if reference is made to Rule 29(2)(d), it clearly establishes that the power to summon or seek attendance of a person or the document, as the case may be, is to be exercised by the Adjudicating Officer only when in its opinion it is necessary to adjudge the quantum of compensation. In other words, if the facts on record itself are sufficient to meet the requirements of Section 73 of the Act, 2016, the Adjudicating Officer is not required to resort to provisions of Rule 29(2)(d) of the Rules, 2017. Hence, it cannot be said that to conduct enquiry under Rule 29(2) of the Rules, 2017, the Adjudicating Officer is to ask for evidence in the form of oral as well as documentary, as otherwise projected by learned counsel for the respondent.

8/1/2025

8(e) 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	2009
(ii)	Proposed Handing over of possession	24 months with grace period of six months as per builder buyer agreement dated 07.09.2009
(iii)	Basic sale price	₹13,60,910/-
(iv)	Total amount paid	₹13,07,710/-
(v)	Period of payment	(Details not given despite directions passed)
(vi)	Occupancy certificate Whether received till Filing of complaint	NO
(vii)	Date of filing of complaint under Section 31 before Hon'ble Authority	03.12.2020
(viii)	Date of order of Authority	20.07.2022
(ix)	Date of filing of complaint under Section 12, 18 & 19 of RERA Act, 2016	19.12.2022
(x)	Date when total refund made	No payment made till date

28/1/2023

It is matter of record that the project advertised in the year 2009, did not get completion certificate till filing of the complaint on dated 19.12.2022 and also that the complainant on its part had performed their part of duty by paying the maximum amount for the unit. The payment of ₹13,07,710/- by the decree holders to the judgement debtor has also been accepted by Hon'ble Authority in its order dated 20.07.2022. It is also admitted on record that the complainants did not get possession of plot allotted. There can also be no denial that allottees of the

apartments generally spend their lifetime earnings or even obtain loans for purchasing the apartment 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 plot allotted despite having played its bid but on the contrary it is the promoter who enjoys the amount paid by allottee 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 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 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

28/11/2025

this be the legal and factual position, the promoter is not only bound to refund the amount but also to compensate the allottee for misappropriate 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 provenly the promoter had received from the allottee total ₹13,07,710/- (the date wise details of instalments paid not provided despite directions passed), but the promoter neither completed the project nor refunded the amount received till allottee having been forced to approach Hon'ble HRERA Authority to get the refund after having indulged in unwarranted forced litigation by the promoter at the costs of personal expenses, which they finally got on date 20.07.2022. There can also be no factual denial that the allottee must have run around to get the delivery of possession of unit in time after having paid the maximum amount which obviously costed it much. Similarly, if the completion of project got delayed because of repeated administrative and technical defaults of the promoter, the allottee cannot be blamed. Further, had the unit been delivered as promised by Promoter/respondent, there was no reason for the allottee to get into unwarranted litigation at the costs of its own pocket. In the given circumstances, it is safe to conclude that

28/1/2025

undoubtedly, 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 sensed and felt without looking for proof thereof.

In view of the above, since, the promoter had been using the amount of ₹13,07,710/-, for the last more than 15 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 allottee as a result of default on the part of promoter which continuous till the refund is made starting from the first date of instalment paid on dated 07.03.2009. 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 judgment debtor for the period in question 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 complainant so long, hence, there is no need to look for formal proof of the same

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

9. 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?

As far as the question about amount of compensation payable, this Forum holds that it is a case wherein lump sum amount of compensation in payable as the complainants have not explained the period of instalments paid date wise despite directions, which otherwise could have helped this Forum to access the compensation having in mind as to from which date to which date the respondent enjoyed amount of instalments paid in part.

28/1/2025

In the given circumstances, wherein the complaints had paid ₹13,07,710/- as per Hon'ble Authority's order which the promoter enjoyed for almost thirteen years, this Forum hold the complainants entitled to get ₹5,00,000/- in lump 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 fail 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.

28/1/2025

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.

28/1/2021

***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 Sections 18 & 19 of the Act, 2016.

How long the interest would remain payable on the refund or compensation, as the case may be, is provided in Section 2(za) of the Act, 2016, which says that cycle of interest would continue till the entire amount is refunded by the promoter. In other words, if the provisions of Section 18 read

with Rule 15 read with Rule 16 and Section 2 (za) are interpreted co-jointly, then it would mean that in case of refund or compensation, as the case may be, the promoter will be liable to pay the interest from the date the promoter received the amount or any part thereof till the date the amount of refund or compensation, as the case may be, or part thereof along with up to date interest is refunded/paid, even if not specified in the order under execution. However, the situation is different in case of an allottee's default in payments to the promoter till the date it is paid. With this legal position, it is safe to conclude in the case in hand, still in view of Explanation (ii) to Section 2(za) the allottee will be entitled to get the interest up to date of the final payment at the rate prescribed in Rule 15.

28/1/2025

RELIEF

10. Having the above discussed legal position in mind, it is concluded that if the respondent do not pay sum of ₹5,00,000/- in lump 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, complainants have been forced to file the complaint to get their legal right of compensation, complainants are 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
28.01.2025

Note: This judgement 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
28.01.2025