



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. : 997 of 2023

Date of Institution: 27.04.2023

Date of Decision: 30.01.2025

Baldev Raj Kamboj s/o Sh. Sadhu Ram Kamboj, r/o Villa no.A-20, Ansal Town, Jagadhri, Yamuna Nagar, Haryana.

...COMPLAINANT

Versus

8/1/2025
M/s Ansal Housing and Construction Ltd., office at 606, 6th Floor, Indra Prakash, 21, Barakhamba Road, New Delhi-110001

....RESPONDENT

Hearing: 10th

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 Baldev Raj Kamboj against M/s Ansal Housing & Construction 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 complainant purchased two adjacent shops etc. Shop no. 63, Ground Floor and Shop no.64, Ground Floor in "Espania Floors" Yamuna Nagar in resale. Shop no.63 was purchased from Sh. Balvinder Singh, the original allottee and Shop no.64 was purchased from Smt. Baljit Kaur w/o Balvinder Singh, the original allottee and both shops were transferred to the complainant on the original terms and conditions vide endorsement dated 14.08.2012. The booking of the shop was done on 09.03.2011 and allotment letters were signed between the original parties in April 2012. It is also mentioned that respondent demanded an 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 complainant had paid total amount of ₹18,44,709/- till date towards the sale price of Shop no.63 and ₹20,11,088/- till date towards the sale price of Shop no.64. As per clause 28 of agreement, the offer of

possession was agreed within a period of 42 months i.e. upto 23.10.2015 for Shop no.63 and 25.10.2015 for Shop no.64. That, the shops were 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 Carpet Area of the Shops was approximately 170 sq. ft. Finally, a request was made that since complainant 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, ₹40,00,000/- 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,

37/1/2025

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. 345 of 2019. It is also mentioned that complaint is barred under Code of Civil Procedure Order II 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. 345 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. On 27.1.2025, complainant has placed on record receipts issued by respondent.

30/1/2025
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 further argued that after having purchased the shops from first allottee, the complainant has stepped into shoes of the first allottee, in view of the law laid down by Hon'ble Apex Court in M/s Laureate Buildwell Pvt. Ltd. vs Charanjeet Singh, Civil Appeal no.7042 of 2019, decided on 22.07.2021, thus subsequent allottee is entitled to all reliefs under RERA Act, 2016 and HRERA Rules, 2017, which an original allottee is entitled to. Finally, he has prayed to grant the compensation in the manner prayed in the complaint.

37/12/25

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 2012, whereas present complaint to seek compensation was filed on dated 27.04.2023 much after the period of limitation. He has further argued that in the case in hand, the Bulider Buyer Agreement was executed in the year 2015 i.e. more than 1 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. He

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. He has 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. He has also argued that in the instant case, since the complainant had purchased shops knowing fully well the delay on the part of promoter in completion of project from the original allottee, it can't claim any harassment etc., so, subsequent allottee is not entitled for any compensation. Finally, he has prayed to dismiss the complaint being not maintainable in view of provisions of Caveat Emptor.

357/1/2025

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

(d) Whether a subsequent purchaser/allottee is entitled to get compensation, as per the facts and circumstances of the present case?

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.

(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, 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) 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 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 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(c)

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.

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


30/1/2025

in the form of oral as well as documentary, as otherwise projected by learned counsel for the respondent.

(8d) Whether complainant is entitled to get compensation in the case in hand?

After having discussed law to be taken note of to decide compensation by the Adjudicating Officer, now it is to be seen whether, in the present case, wherein the complainant, is second allottee as had got transferred the shops from from original allottees namely Sh. Balvinder Singh and St. Baljit Kaur, is entitled to get compensation in the manner prayed in its complaint?

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 o Possession	42 months i.e. for shop no 63- 23.10.2015 and for Shop no. 64- 25.10.2015
iii)	Basic sale price -	Shop No. 63- ₹17,22,500/- Shop no. 64- ₹18,78,500/-
iv)	BBA executed with first allottees Sh. Balvinder Singh and Smt. Baljit Kaur	Shop no.63 dated 24.02.2012 Shop no.64 dated 26.04.2012

v)	BBA endorsed in the name of the complainant, the Second allottee	14.08.2012																																													
vi)	Total amount paid	Shop No. 63- ₹18,44,709/- Shop no. 64- ₹20,11,088/-																																													
vii)	Period of payment	<table> <tr> <th>S.N o.</th><th>Date of payment in Shop no. 63</th><th>Amount in (₹)</th></tr> <tr><td>1.</td><td>01.03.2012</td><td>₹5,33,740/-</td></tr> <tr><td>2.</td><td>12.11.2012</td><td>₹3,09,720/-</td></tr> <tr><td>3.</td><td>18.02.2013</td><td>₹1,33,180/-</td></tr> <tr><td>4.</td><td>08.03.2013</td><td>₹2,65,470/-</td></tr> <tr><td>5.</td><td>17.08.2013</td><td>₹1,33,980/-</td></tr> <tr><td>6.</td><td>19.04.2014</td><td>₹1,34,050/-</td></tr> <tr><td>7.</td><td>08.12.2014</td><td>₹89,320/-</td></tr> <tr><td>8.</td><td>09.02.2015</td><td>₹38,843/-</td></tr> <tr><td>9.</td><td>24.04.2015</td><td>₹38,841/-</td></tr> <tr><td>10.</td><td>30.07.2015</td><td>₹38,842/-</td></tr> <tr><td>11.</td><td>23.10.2015</td><td>₹38,842/-</td></tr> <tr><td>12.</td><td>12.05.2016</td><td>₹89,870/-</td></tr> <tr><td>13.</td><td>12.05.2016</td><td>₹35,011/-</td></tr> <tr> <td colspan="2">Total</td><td>₹18,09,698/-</td></tr> </table>	S.N o.	Date of payment in Shop no. 63	Amount in (₹)	1.	01.03.2012	₹5,33,740/-	2.	12.11.2012	₹3,09,720/-	3.	18.02.2013	₹1,33,180/-	4.	08.03.2013	₹2,65,470/-	5.	17.08.2013	₹1,33,980/-	6.	19.04.2014	₹1,34,050/-	7.	08.12.2014	₹89,320/-	8.	09.02.2015	₹38,843/-	9.	24.04.2015	₹38,841/-	10.	30.07.2015	₹38,842/-	11.	23.10.2015	₹38,842/-	12.	12.05.2016	₹89,870/-	13.	12.05.2016	₹35,011/-	Total		₹18,09,698/-
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38/1/2025

		S.N o.	Date of payment in Shop no. 64	Amount in (₹)
		1.	01.03.2012	₹5,83,305/-
		2.	12.11.2012	₹3,40,280/-
		3.	18.02.2013	₹1,45,204/-
		4.	08.03.2013	₹2,88,665/-
		5.	17.08.2013	₹1,49,182/-
		6.	19.04.2014	₹1,46,910/-
		7.	08.12.2014	₹97,680/-
		8.	09.02.2015	₹40,157/-
		9.	24.04.2015	₹40,333/-
		10.	30.07.2015	₹40,598/-
		11.	23.10.2015	₹40,333/-
		12.	12.05.2016	₹98,441/-
			Total	₹20,11,088/-
viii)	Occupancy Certificate whether received till filing of complaint	NO		
ix)	Date of filing of complaint under Section 31 before Hon'ble Authority	30.01.2019		
x)	Date of order of Hon'ble Authority	18.01.2023		
xi)	Date of filing complaint under Sections 12,18 & 19 of RERA Act, 2019	27.04.2023		

xii)	Date when total refund made	No amount refunded till date
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It is pertinent to mention here that the complainant has placed on record receipt of ₹18,09,698/- for Shop no. 63 paid to the respondent. However, Hon'ble Authority, while granting refund, has mentioned that complainant has paid amount of ₹18,44,709/- for Shop no.63 as per ledger shown at that time. Hence, amount of ₹18,44,709/- is taken as the amount paid in case of Shop no.63.

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 shops was ₹17,22,500/- and ₹18,78,500/- whereas the complainant paid ₹18,44,709/- for Shop No. 63 and ₹20,11,088/- Shop no. 64.

The above facts, make it clear that when the present complainant purchased or got transferred the shops to his name after executing Builder Buyer Agreement on dated 14.08.2012, after making required payments to the first allottees or the promoter, the project was incomplete, which is the reason the

Hon'ble Authority has ordered for refund with interest in favour of the complainant vide order dated 18.01.2023, wherein decretal amount has not been paid till date.

Now, only thing to be decided is whether or not in the given circumstances, a second allottee of the same unit who is seeking compensation, could legally be held entitled to get the compensation having the factors mentioned in Section 72 of RERA Act, 2016, in mind?

To answer the question, this Forum hold that despite being an "allottee" within the meaning of Section 2(d) of the RERA Act, 2016, the complainant may be entitled to get the relief of refund and interest thereon from Hon'ble Authority under Section 31 of the Act, 2016, which he has got but not for compensation because it is the original allottee who actually suffered mental and physical agony due to default of builder but not the subsequent allottee i.e. complainant, who knowing fully well of the consequences of default on the part of the builder in delaying completion of project, still elected to join in by purchasing it, as it may probably be a distress sale on the part of first allottee because of delay in completion of project. Meaning thereby, the complainant accepted to undergo sufferings of kind, if any, due to ongoing default on the part of builder, thus he can't

37/12/25

expect to be compensated for such delay. It is not out of place to mention here that had it been a case of request for refund with interest due to delay in delivery of possession or delayed possession charges, the Hon'ble Authority dealing with, was bound to give benefit thereof in view of recent law laid down by Hon'ble Apex Court in M/s Laureate Buildwell Pvt. Ltd. vs Charanjeet Singh, Civil Appeal no.7042 of 2019, decided on 22.07.2021 and also relied for the complainant in this case. Admittedly, such relief has already been provided. But, benefit of law laid down in M/s Laureate's case (supra), having due regards to the same, can't be given in case of request for compensation, raised under RERA Act, 2016 and not under Consumer Protection Act, by a subsequent allottee, as the said issue was not discussed in this quoted case which exclusively pertains to an issue arisen under Consumer Protection Act, and not under RERA Act, 2016. In fact if in such like cases, compensation is granted, it would amount to rewarding a person for intentionally wrong done. Otherwise also, till Builder Buyer Agreement was executed with second allottee i.e. complainant, there was no occasion for the present complainant to have suffered any agony w.e.f. the year 2009 onwards and thereafter also no chance to claim harassment on his part as knew the consequences of joining a project which


28/1/2025

was already under turmoil and ineffective. Rather, the Principle "Buyer be Aware" would also act against the subsequent allottee in this case. It is also not out of place to mention here that right to get refund with interest and the right to get compensation under RERA Act, 2016, are two different remedies available with an allottee unlike under Consumer Protection Act and both these remedies need specific factors to be considered by the concerned Forum to grant the relief. In other words, these remedies being independent to each other, would not give right to an allottee to claim both as of right e.g. an original allottee can be held entitled to both reliefs but not a subsequent transferee who may get refund but not compensation despite falling within the meaning of definition of "allottee" given under Section 2(d) of the Act, 2016, as had not been victim of sufferings which original allottee initially faced believing builder's false promises. It would be justified to observe here that feelings of sufferings or agony or harassment or pains etc. are subjective, means restricted to individual only, which cannot be transferred from original allottee to subsequent to enable later to claim compensation. Infact, such feeling of sufferings cannot be equated with transfer of money from one to another, which is the reason subsequent allottee may


30/11/2023

be held entitled to get refund with interest but certainly not compensation within the meaning of section 72 of the Act, 2016.

Thus, in totality it is concluded that in this case, the subsequent allottee may be entitled for the relief of refund with interest as has already been granted by Hon'ble Authority but he certainly is not entitled to get compensation for the wrong knowingly done. Otherwise also, no question arises to compensate him since the time of inception of project in the year 2012.

Ld. counsel for the complainant has not been able to show any law laid down by any Hon'ble Judicial Forum, wherein, in the given circumstances of the present case filed under Section 71 of the Act, 2016, read with Rule 29 of HRERA Rules, 2017, compensation has been granted to a subsequent allottee.

9. In view of the foregoing discussions, the present complaint of the complainant is **dismissed** being devoid of merit. File be consigned to record room after uploading the order on the website of the Authority.


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MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
30.01.2025

Note: This judgement contains 25 pages and all the pages have been checked and signed by me.


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MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
30.01.2025