HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. : 2218 of 2023

Date of Institution: 20.10.2023

Date of Decision: 10.02.2025

Ram Sharan s/o Sh. Manga Ram, r/o House no.268, Gali No. 4 Bagh Kare Khan, Kisan Ganj,Delhi-110007.

...COMPLAINANT

Versus

M/s TDI Infrastructure Ltd., office at 9,Kasturba Gandhi Marg, New Delhi-110001

....RESPONDENT

Hearing: 5th

Present: - Ms. Neelam Singh, Adv. for the complainant.
Sh. Shubhnit Hans, Adv. for the respondent.

ORDER:

This order of mine will dispose of a complaint filed by the complainant namely Ram Sharan against M/s TDI Infrastructure 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 after going through the advertisement purchased independent floor Unit No. T-47/SF having an area of 1164 Sq.ft. in TUSCAN FLOORS from the original allottee i.e. Sunil Kumar on the original terms and conditions vide endorsement dated 09.08.2011.

In April 2010, Sunil Kumar made an application for allotment of residential floor for total consideration of ₹27,18,629.61/- inclusive of taxes and development charges. On 04.12.2010, allotment of Floor Unit No. T-47/SF having an area of 1164 Sq.ft. in "TUSCAN FLOORS " was confirmed in favour of Sunil Kumar i.e. original allottee by the respondent. On 23.02.2011, independent floor buyer agreement was signed between Sunil Kumar i.e. original allottee and respondent. As per clause 30 of the Independent Floor Buyer Agreement the possession was to be handed within 30 months from date of signing of agreement which is August 2013. Subsequently, Sunil Kumar sold the unit to present complainant and name of complainant was updated in records of respondent. The endorsement was signed by Sh. Sunil Kumar (original allottee) and Sh. Ram Sharan (subsequent allottee) on 09.08.2011. It is also mentioned that complainant has opted for construction linked plan, respondent demanded payments despite the fact that no construction was going on the site.

The complainant has paid amount of ₹24,73,469/- toward the allotted unit i.e. 91% of total consideration inclusive of government levies and taxes. It has also been mentioned that project is incomplete and Occupation & Completion Certificate has not been obtained till date. In complaint no. 2841 of 2022 Authority has allowed refund on 09.08.2023.

It is also mentioned that due to deficiency of service on part of respondent the complainant have been denied of the opportunity to utilize their funds for the past 13 years and complainant has been denied the opportunity of purchasing another residential unit for his family. The complainant has suffered monetary loss on the account of depreciation in money values and escalation in cost of construction. The complainant also filed multiple complaints before Authority i.e. seeking refund with interest; execution of order passed by Authority and seeking compensation before Adjudicating Officer. Finally, the complainant prays compensation of ₹10,00,000/- towards financial loss, mental agony due to non-completion of the project in terms of builder buyer agreement; ₹2,00,000/- for litigation expenses and any other relief which this Forum deem appropriate. With the complaint, some annexures have also been attached i.e., Independent Floor Buyer Agreement, customer ledger, 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 being not in consonance with

provisions of Section 72 of the Act, 2016, as there is no proof led by the complainant as to how they could prove the factors required to be proved within the Section 72 of the Act, 2016; It has been mentioned that the complainant had opted for joining the project only after having come to know the entire details about the project. It has also mentioned that respondent has commenced the project before existence of RERA Act,2016 therefore RERA Act cannot be applied retrospectively and the complaint is not maintainable and falls outside purview of provisions of RERA. Complainant is investor and inverted in project for sole reason of investing; earning profits and speculative gains. It has been mentioned that in Sections 18 and 19(4) of RERA Act,2016 it has nowhere mentioned that compensation will be given along with delay possession charges. Further, it has been mentioned that complainant has been granted refund alongwith interest from Authority which is more than sufficient and is in consonance with the principles of natural justice. Regarding handing over of possession, it has been mentioned that handing over of possession as per Clause 30 is tentative and subject to force majeure.The construction of unit is complete and respondent has applied for Occupation Certificate.That, complainant is a subsequent buyer who purchased the plot in question in the year 2011 from original allottee having been aware of the fact that the respondent had failed to deliver the possession in stipulated time; Finally, prayer is made to dismiss the complaint being not maintainable.

4. This Forum has heard Ms. Neelam Singh, Advocate, for the complainant and Sh. Shubhnit Hans, Advocate, for the respondent and has also gone through the record carefully.

5. 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 13 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. She 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. She has further argued that after having purchased the unit 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. She has also argued that it is the second allottee who has made the maximum payment and has also suffered mental and physical agony because of delay in possession, thus, in view of Clause 30 of the Floor Buyer Agreement, the complainant is entitled for compensation. Finally, she has prayed to grant the compensation in the manner prayed in the complaint.

6. 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 2005, whereas present complaint to seek compensation was filed on dated 20.10.2023 much after the period of limitation.He has further argued that in the case in hand, the independent floor buyer agreement was executed in the year 2011 i.e. more than 4 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 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 further argued that to

get a relief under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, the complainant is 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. He has also argued that in the instant case, since the complainant had purchased unit 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. He has also argued that the complainant can not take benefit of Clause 30 of Flat Buyer Agreement, as there had been no wilful delay on the part of promoter to complete the project. Finally, he has prayed to dismiss the complaint being not maintainable in view of provisions of Caveat Emptor.

7. 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 2005 is maintainable under the RERA Act, 2016 read with Rules 2017, if filed on dated 20.10.2023?

(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 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;

(7a) **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 project pertain to the year 2005, whereas complaint was filed in the year 2023.

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;

10/24/2023

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.

10/2/2025

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.

7(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 2005 is maintainable under the RERA Act, 2016 read with Rules 2017, if filed on dated 20.10.2023?**

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 complete.

10/2/2025

(7c) **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:*

10/21/2025

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.

10/2/2025

(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 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."

7(d) **Whether it is necessary for the complainant to give evidence of mental harassment, agony, grievance and frustration caused due to deficiency in service, unfair trade practice and miserable attitude of the promoter, in a case to get compensation or interest?**

The answer to this question is that no hard and fast rule could be laid to seek proof of such feelings from an allottee. He/she may have documentary proof to show the deficiency in service on the part of the builder and even this Forum could itself take judicial notice of the mental and physical agony suffered by an original allottee due to non-performance of duties on the part of the promoter, in respect of the promises made to lure an allottee to invest its hard earned money to own its dream house without realising the hidden agendas or unfair practices of the builder in that project.

In nutshell, to award a compensation, the Forum can adopt any procedure suitable in a particular case to decide the availability of factors on record entitling or disentitling an allottee to get compensation which is the reason even under Rule 29 of the Rules 2017, it is not compulsory to lead evidence.

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.

10/2/2025

(7e) **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 unit from from original allottees namely Sh.Sunil Kumar, 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	2005
ii)	Proposed Handing over of Possession	30 months i.e.August 2013
iii)	Basic sale price -	₹27,18,629.61/-
iv)	BBA executed with first allottee Sh. Sunil Kumar	23.02.2011
v)	BBA endorsed in the name of the complainant, the Second allottee	09.08.2011
vi)	Total amount paid	₹24,73,469/-
vii)	Period of payment	S.No. | Date of payment | Amount in (₹) 1. | 24.04.2010 | ₹3,00,000/-

2.	25.08.2010	₹4,06,845/-
3.	25.08.2010	₹9,077/-
4.	26.04.2011	₹2,33,155/-
5.	26.04.2011	₹2,86,926/-
6.	26.04.2011	₹6,051/-
7.	12.07.2011	₹2,688/-
8.	08.08.2011	₹2,00,000/-
9.	08.08.2011	₹36,217/-
10.	08.08.2011	₹6,051/-
11.	14.10.2014	₹2,42,262/-
12.	18.02.2015	₹135/-
13.	18.03.2015	₹2,42,262/-
14.	23.09.2015	₹2,43,225/-
15.	21.10.2015	₹1,00,000/-
16.	21.10.2015	₹1,43,225/-

		17. | 26.04.2017 | ₹15,350/- Total | ₹24,73,469/-
viii)	Occupancy Certificate whether received till filing of complaint	NO
ix)	Date of filing of complaint under Section 31 before Hon'ble Authority	15.11.2022
x)	Date of order of Hon'ble Authority	09.08.2023
xi)	Date of filing complaint under Sections 12,18 & 19 of RERA Act, 2019	20.10.2023
xii)	Date when total refund made, if made	Sr. No. | Date | Amount in (₹) 1. | 05.11.2024 | ₹5,00,000/- 2. | 20.01.2025 | ₹5,00,000/- Total | ₹10,00,000/- In Execution no. 2516 of 2023)

It is matter of record that the project advertised in the year 2005, did not get completion certificate till filing of the complaint on dated 20.10.2023 and also that the complainant on its part had performed his part of duty by paying approximately 91% of the basic price of the unit. Admittedly, basic price of the unit was ₹27,18,629.61/- whereas the complainant paid ₹24,73,469/-.

The above facts, make it clear that when the present complainant purchased or got transferred the unit to his name after executing independent floor buyer Agreement on dated 09.08.2011, after making required payments to the first allottee 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 09.08.2023, wherein learned counsel for complainant has informed that in execution complaint no. 2516 of 2023 amount of ₹10,00,000/- has been received till date by the complainant .

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 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.

10/2/2025

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 independent floor 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 2011 onwards and thereafter also no chance to claim harassment on his part as knew the consequences of joining a project which 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

10/2/2025

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 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 2005.

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.

8. 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.

Phalit Sharma

MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
10.02.2025

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

Phalit Sharma

MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
10.02.2025