



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. 216 of 2024

Kusum Sharma

....Complainant

VERSUS

1. Asian Developers Ltd.Respondent
2. Dinesh Kumar Sharma S/o Om Prakash SharmaRespondent
3. Deepak Gusain S/o Sh. Dinesh Singh GusainRespondent
4. Nitin Kumar S/o Sh. Ved PrakasshRespondent
5. Flex Pack Technologies Pvt. Ltd.Respondent

Date of Hearing: 21.04.2025

Hearing: 3rd

Present: Mr. Akshat Mittal, Adv., for the complainant through VC.
None for the respondents.

ORDER

Today, the case is fixed for the appearance of the respondents.

2. Before proceeding further this Forum poses a query to learned counsel for the complainant as to how the present complaint is maintainable?

In this regard, this Forum refer to relevant provisions of Sections 31, 35 and 71 of the RERA Act, 2016 (hereinafter referred as the Act, 2016) and the relevant provisions of Rule 28 and Rule 29 of HRERA, Rules, 2017


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(hereinafter to be referred as Rules, 2017), for ready reference and also Column 4 of the Format for complaint before Adjudicating Officer as prescribed in regulations;

Section 31: Filing of complaints with the Authority or the adjudicating officer:

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation.--For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed].

Provisions of Section 31 indicates that it speaks about filing of complaint before the Authority as well as before the Adjudicating Officer as per form prescribed which are prescribed under the headings as 'CRA' (Rule 28(1) and 'CAO' (Rule 29(1)). How, a complaint filed under Section 31 of the Act, 2016, is to be proceeded with is described in Rule 28 of the Rules, 2017 and while conducting enquiry what all powers Authority can exercise is mentioned in Section 35 of the Act, 2016. For ready reference, relevant portion of Rule 28(1) and 2(m) of Rules, 2017 as well as Section 35 of the Act, 2016, are reproduced below:

28. Filing of complaint with Authority (section 31), and inquiry into allegations of contravention (2) or violations (section 35) and disposal of complaint (section 36, section 37 and section 38). -

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(1) Any aggrieved person may file a complaint with the Authority for any violation or contravention of the provisions of the Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent as the case may be in Form 'CRA', or in the form specified in the regulations, which shall be accompanied by a fees as prescribed in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank or online payment in favour of "Haryana Real Estate Regulatory Authority".

- (a) xxx.
- (b) xxx.
- (c) xxx.
- (d) xxx.
- (e) xxx.
- (2) (a) xxx.
- (b) xxx.
- (c) xxx.
- (d) xxx.
- (e) xxx.
- (f) xxx.
- (g) xxx.
- (h) xxx.
- (i) xxx.
- (j) xxx.
- (k) xxx.
- (l) xxx.

(m) "If the complaint in form 'CAO' filed before the adjudicating officer for adjudging quantum of compensation, the complaint shall be admissible from the stage of concluding inquiry by the Authority that respondent being promoter has violated or contravened provisions of the Act or the rules or regulations made thereunder warranting liability of the promoter to pay compensation to the allottee under the provisions of the Act or the rules or regulations made thereunder. The Authority may refer the matter to the adjudicating officer for adjudging the quantum of compensation payable to the complainant allottee, and direct both the parties to appear before the adjudicating officer on the appointed day. The quantum of compensation payable to the complainant may be expressed by the adjudicating officer in the form of lump sum amount or in the form of percentage of interest on the amount paid by the complainant to the

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respondent promoter (compensation expressed in terms of interest i.e. compensatory interest).”

Section 35: Powers of Authority to call for information, conduct investigations.

(1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) issuing commissions for the examination of witnesses or documents;

(iv) any other matter which may be prescribed.

Perusal of Rule 28 of Rules, 2017, indicates that it lays down the procedure as to how the complaint be filed before the Hon'ble Authority under Section 31 of the Act, 2016 and enquiry thereon is to be conducted as per guidelines laid in Section 35 of the Act, 2016, and to pass orders as mentioned in Sections 36, 37, 38 of the Act, 2016. The sub Rule 28(2)(m) in particular makes it clear that the complaint for compensation is admissible from the stage of concluding enquiry by Hon'ble Authority

It means that it is mandatory for filing a complaint for compensation that such complaint shall only be admissible on the concluding enquiry of Authority, holding therein that promoter has violated or contravened the provisions of Act 2016. The word "shall" used in Rule 28(2)(m) has to be construed in its true sense to meet the real object of this special welfare oriented statute without giving it any other connotation to dilute its impact.

Now, this Forum would refer to relevant provisions of Section 71 and provisions of Rule 29 which deals with complaint before Adjudicating Officer and summary procedure to be adopted by the Adjudicating Officer, to grant compensation.

Section 71: Power to adjudicate.

(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

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(2) *The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:*

Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) *While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.*

Perusal of Section 71 indicates that an adjudicating officer is to be appointed by Hon'ble Authority to adjudge compensation under Section 12, 14, 18, and 19 of the Act, 2016, who is required to conduct enquiry in manner prescribed under Section 71 read with Section 72 of the Act, 2016. This Section does not mention what procedure is to be adopted to conduct enquiry in prescribed manner which is provided in Rule 29, relevant portion of which is described below;

“Rule 29(1)(a) *Any aggrieved person may file an application/ complaint with the Adjudicating Officer for adjudging quantum of compensation as provided under sections 12,14,18 and 19, where violation by the promoter has been established by the Authority in an enquiry under section 35, in Form ‘CAO’ or in such form as specified in the regulations, which shall be accompanied by a fee as mentioned in Schedule III in the form of demand draft or a bankers cheque drawn on a Scheduled bank, or online payment in favour of*

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“Haryana Real Estate Regulatory Authority” and payable at the branch of that bank at the station where the seat of the said Authority is situated.”

The above described provisions, if read collectively, it emerges that Section 31 indicates that it deals with the provisions for filing complaint with the Authority or Adjudicating Officer against the promoter, allottee, real estate agent as the case may be, if there are any violations or contraventions of provisions of this Act or Rules and Regulations made thereunder. This Section also mentions that the complaint has to be filed as per the form, manner and fees so prescribed. The required format is given in the Form ‘CRA’ and this form pertains to a complaint before the Authority to claim relief or directions or order and penalty proceedings under Section 31 read with Sections 35, 36, 37 and 38 of the Act, 2016. In nutshell, Section 31 does not relate to the procedure for filing the complaint for compensation but deals with provisioning of filing of complaint before Authority or Adjudicating Officer, as per its subject and Section 35 speaks about how enquiry to be conducted by Authority where complaint under Section 31 is received. How a complaint is to be filed with the Authority has been described in Rule 28 Sub rule 2(m) which mandates that conclusion of enquiry by Authority under Section 35 of the Act, 2016, is must before filing of complaint for compensation.

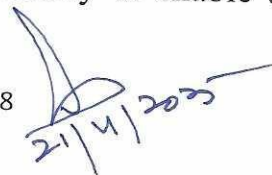
Further, perusal of Rule 29 makes it clear that there is no provision in Rule 29 of Rules, 2017, which enables an allottee to apply for compensation under Section 71 of Act, 2016, read with Rule 29 of the Rules, 2017, directly by

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approaching Adjudicating Officer to get relief without approaching Hon'ble Authority for conducting enquiry under Section 35 of the Act, 2016 read with Rule 28 of the Rules, 2017. It is worth to mention here that Rule 29 nowhere prescribes and even also Section 71, that to decide compensation, Adjudicating officer is also authorised to decide the violations on the part of the promoter. Had it been the intent of the Legislature, it would not have had made amendment in Rule 29 vide Notification no. Misc-862/1/83/2019/1TCP dated 12.09.2019 to bring unamended Rule 29 in consonance with the requirement of filing a complaint for compensation as mandated in Rule 28(2)(m) as explained above. Further, by using the word in Rule 28 as, "complaint shall be admissible", legislature has made its intent clear that complaint for compensation is only admissible when Hon'ble Authority has concluded the enquiry and has arrived at conclusion that there has been violations by the promoter of any of the provisions mentioned in Sections 12, 14, 18 and 19 of the Act, 2016. It is the reason that the form 'CAO' at Column 4 "facts of the case", requires such information. For ready reference, column 4 is reproduced below;

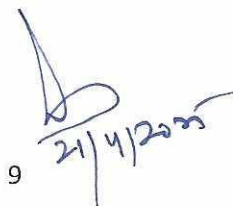
*"4. **Facts of the case:**[give a concise statement of facts and grounds of claim for compensation against the promoter and the contravention or violation of provisions of the Act or the Rules or regulations made thereunder as established by an enquiry under section 35 by the Authority being ground for claim of the compensation, if yes, copy be enclosed];"*

In view of the above observations, it is concluded that violations are required to be established by Hon'ble Authority to enable the complainant to

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seek compensation. Undoubtedly, the Hon'ble Authority as well as the Adjudicating Officer have different powers to exercise and their judicial powers do not interfere in each other's domain. But at the same time, condition of Hon'ble Authority deciding violations first and then Adjudicating Officer deciding whether or not the complainant deserves compensation, by no stretch of imagination could be construed as intruding in each other's affair. Rather, such two legal actions are supplementary to each other, which want harmonious interpretation. Moreover, the work to decide violation has been assigned to Hon'ble Authority and not to the Adjudicating Officer and the Adjudicating Officer is assigned the job to decide compensation and not the violations. Had it been the intent of the legislature to allow the Adjudicating Officer to decide compensation after deciding violations by it and not by Authority, it would have found such mention in Rule 29 or even Rule 28(2)(m) which is not the case. Hence, in all probabilities only conclusion to be arrived at is that the complainant to get compensation must have an order of the Authority passed after enquiry concluded as per procedure laid in Section 35 read with Rule 28 of the Rules 2017.

With above observations, counsel for complainant is posed a question as to how, the present complaint is maintainable under Section 71 of the Act, 2016, when at the time of filing of complaint no enquiry under Section 35 of the Act,

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2016 had been conducted by the Hon'ble Authority while exercising its powers under Section 31 of the Act, 2016 ?

3. Learned counsel for complainant has agreed to the above raised query and requested to withdraw the present complaint being not-maintainable as per the procedure laid under Rules 28(2)(m) and Rule 29 of Rules, 2017, with permission to file afresh in accordance with law.

Heard. Request allowed.

In view of the foregoing discussion and request of counsel for complainant, the present complaint for compensation is dismissed being not filed as per the procedure laid under Rules 28(2)(m) and Rule 29 of Rules, 2017, with liberty to the complainant to file afresh in accordance with law.

Let, file be consigned to record room after uploading order on the website of the Authority.


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MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
21.04.2025

Sourabh
Law Associate