



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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### BEFORE ADJUDICATING OFFICER, HRERA, PANCHKULA

**Complaint No. : 942 of 2023**

**Date of Institution: 18.04.2023**

**Date of Decision: 22.04.2025**

1. Smt. Meenakshi wife of Shri Rajesh Bhatia,

2. Shri Rajesh Bhatia son of Shri Banarasi Lal,

both resident of H. No. 7725/4 Nadi Mohalla, Ambala-134003, Haryana.

...COMPLAINANTS

Versus

Green space infraheights Pvt. Ltd. , having its Corporate office at 306, 3rd Floor, Indraprakash Building, 21- Barakhamba Road, New Delhi-110001.

....RESPONDENT

**Hearing: 8<sup>th</sup>**

**Present: -** Mr. Arjun Kundra, Adv. for the complainants through VC.

Mr. Dharamveer Singh, Adv., for the respondent through VC.

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**ORDER**

This order of mine will dispose of a complaint filed by the complainants namely Smt. Meenakshi and Shri Rajesh Bhatia against M/s Green space Infraheights Private Ltd., through its Managing Director, seeking compensation alongwith 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 Smt. Meenakshi and Shri Rajesh Bhatia, after having gone through the advertisement given by the respondent company i.e. M/s Green Space Infraheights Pvt. Ltd. (hereinafter to be referred as the respondent), as per which the promoter-respondent assured to have obtained all necessary approvals and licenses to develop the project and to handover the possession within 48 months, booked a flat No. 0006, Ground Floor, Tower-B, having an area of 780 sq. ft. in the project 'Shree Vardhman Green Space' located at Sector 14, Panchkula Extension II, Panchkula and paid 5% of the total sale price of the flat i.e. ₹20,94,000/- in the year 2016. As per advertisement, it was a subvention scheme of the Govt. of Haryana and only 5% of the amount is to be paid by the allottee at the time of booking and 20% at the time of allotment and the rest amount is financed by the channel partner

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banks such as HDFC, Indiabulls, DHFL and PNB Housing. Allotment letter was issued to the complainants on 29.02.2016 and Flat Builder Buyer's Agreement was executed between the parties on 14.03.2016. As per scheme, the complainants applied for housing loan for an amount of Rs. 15,00,000/- with HDFC bank and Tripartite Agreement was executed on 03.10.2016 and the bank ensured the payment in consonance with the stage of construction. On 03.04.2017, the agreement containing the terms of subvention scheme was executed between the complainants and the respondent. By abiding the terms and conditions, the complainants made all the payments to the respondent regularly but the respondent failed to deliver the possession of the flat within the assured time frame i.e. 09.12.2018 if the time of four years is to be taken when the building plans were approved by DTCP on 09.12.2014. Complainants have further submitted that on the one hand they were burdened with the EMI of the Bank and on the other hand, they were to support their specially-abled aged 26 years child. Complainant's other son was forced to stay in hostel for his studies due to non -possession of the unit to the complainants; That, the respondent failed to abide by their commitment and indulged in unfair trade practice. The complainants were forced to execute the one sided, arbitrary and unilateral terms of the agreement dated 14.03.2016 with the threat that if the complainants did not sign the agreement, the amount deposited by the complainants will be forfeited and the allotment will be cancelled. It is further submitted that such

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unilateral and one sided agreements have been set aside by the Hon'ble Apex Court in Civil Appeal No. 12238 of 2018 titled as "Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan"; Complainants have further stated that in spite of almost payment of the entire sale consideration, the respondents miserably failed to hand over the possession. The complainants vide letters dated 21.04.2022, 16.05.2022 and 23.05.2022 requested the respondents either to deliver the possession or refund their paid amount alongwith interest. When no refund was made by the respondent to the complainants, the complainants filed complaint bearing No. 1464 of 2022 before the Hon'ble Authority, Panchkula and the Hon'ble Authority was pleased to allow refund alongwith interest of an amount of Rs. 29,42,272/- till 28.09.2022 vide order dated 28.09.2022. Hon'ble Authority also held that the respondent had indulged in deficiency in service and unfair trade practice. Hon'ble Apex Court in its judgement titled as "M/s Newtech Promoters & Developers Pvt. Ltd. Vs. State of UP and others" held that allottee is entitled to approach the Ld. Adjudicating Officer for compensation and interest. Aggrieved with the unfair trade practices, deficiency in service, the complainants have preferred this complaint for compensation before this Id. Forum for awarding 18% interest p.a. on the amount deposited by the complainants on account of delay in completion of the project, deprivation of the unit, mental agony, harassment, rent, hostel fees and loss of interest paid to the bank, loss of enjoyment of property, ₹20,00,000/- on account of

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indulging in unfair trade practice, deficiency in service, reckless, deceitful means and misrepresentation, ₹1,50,000/- litigation charges for the complaints made before the Hon'ble Authority and then execution petition. Finally, prayer is made to grant compensation in the manner prayed for.

3. On receipt of notice of the complaint, respondent filed reply, which in brief states that present complaint is not maintainable since the complainants have already filed execution under Section 40 for execution of order dated 28.09.2022 passed by Hon'ble Authority in Complaint no.1464 of 2022. That, two parallel proceedings can not run i.e. one under Section 40 and other under Section 64 of the RERa Act, 2016. That, the respondent is not neglecting or refusing to comply with order/decreed because it is in process of making balance payment. That, the project under consideration was housing project under government scheme and a policy was formulated by state government to encourage planning and completion of group housing projects to make available apartments of predefined size at predefined rate and within targeted time frame to the beneficiaries. That, the project under the said policy can not be converted into a normal housing colony under any situation. That, due to force majeure conditions, the construction at site was delayed. That, the complainants were fully aware of the fact that project in question was an affordable group housing project under policy of 2013. That, when everything was regulated by the government, there is no question of

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unfair trade practice. That, the respondent has collected ₹1,04,700/- as booking amount. That, refund along with interest has already been granted to the complainants in Complaint no.1464 of 2022 on dated 28.09.2022. This interest includes the interest in the form of compensation which is over and above the compensation as claimed by the complainants in the present complaint, which is not justified. The complainants can not claim double benefit when relief has already been granted by the Authority in the form of interest. That, there are several executions pertaining to the same project as well as of different projects in which the respondent is making compliance on daily basis and delay is being occasioned in. Finally, he has prayed to dismiss the present complaint being devoid of merit and not maintainable before this Forum.

4. This Forum has heard Sh. Arjun Kundra, Advocate, for the complainants and Mr. Dharamveer Singh, Advocate, for the respondent, has also gone through the record carefully..

5. In support of its contentions, learned counsel for the complainants has argued that in the instant case, complainants are very much entitled to get compensation and the interest thereon, because despite having played its part of duty as an allottee, the complainants had met all the requirements including payment of entire sale consideration for the unit booked but it is the respondent who made to wait the complainants to get

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their unit well in time complete in all respect for more than 8 years, which forced the complainants to go for unwarranted litigation to get the amount refund by approaching Hon'ble Authority at Panchkula, which has finally granted on 28.09.2022. He has further argued that the respondent forced the complainants to visit time and again to its offices to get the possession of the unit or refund of amount paid, thus to spend unnecessary money on travelling and physical harassment. He has further argued that complainants have to pay EMI's on the loan taken and one of the son had to join hostel due to non-availability of the applied unit to reside, thus additional burden. 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. Finally, he has prayed to grant the compensation in the manner prayed in the comp laint.

6. On the contrary, Sh. Dharamveer Singh, Advocate, has argued that this complaint is not maintainable being barred by limitation and also because the refund and interest have already been granted and the said interest includes the interest in the form of compensation which is over and above the compensation as claimed by the complainants in the present complaint, which is not justified. He has further argued that the complainants

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can not claim double benefit when relief has already been granted by the Authority in the form of interest. He has argued that this forum has no power to grant the relief prayed, moreover when there is no evidence lead to get compensation by the decree holder, nor, in this Government monitored project, the promoter had any occasion to misuse the money received from the allottee. He has also argued that there is no provision under Section 71 of the Act, 2016, to the allottee if unfortunately one of his son is physically disabled or other had to stay in the hostel and also to grant punitive compensation as prayed. Finally, he has prayed to dismiss the complaint.

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 RERA, Act, 2016 and Rules, 2017 bars this Forum to grant compensation when relief of refund with interest has already been granted by Hon'ble Authority?
- (c) What are the factors to be taken note of to decide compensation?
- (d) Whether it is necessary for the complainants to give evidence of mental harassment, agony, grievance and frustration caused due to deficiency in service, unfair trade practice and miserable

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attitude of the promoter, in a case to get compensation or interest?

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

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

**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 complaint is barred by limitation as project pertain to the year 2016, whereas complaint was filed in the year 2023.

On the other hand, the plea for the complainants 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 that 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,

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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

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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 a 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 complainants is in continuation, if finally held entitled to get compensation.

**8(b) Whether the RERA, Act, 2016 and Rules, 2017 bars this Forum to grant compensation when relief of refund with interest has already been granted by Hon’ble Authority?**

The answer to this question is in affirmative.

This question has been answered by Hon’ble Apex Court in Civil Appeal no.(s) 6745-6749 of 2021 titled as “M/s New Tech Promoters and Developers Pvt. Ltd. v/s State of U.P. & Ors.” on dated 11.11.2021, to the effect that relief of adjudging

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compensation and interest thereon under Section 12,14,18 and 19, the Adjudicating Officer exclusively has the power to determine, keeping in view the provisions of Section 71 read with Section 72 of the Act. The relevant Para of the judgment is reproduced below;

*“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the Regulatory Authority and Adjudicating Officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Regulatory Authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the Adjudicating Officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the Adjudicating Officer as prayed that, in our view, may intend to expand the ambit and scope of of the powers and functions of the Adjudicating Officer under Section 71 and that would be against the mandate of the Act 2016.”*

Thus, in view of above law laid down by Hon'ble Apex Court, the reliefs provided under Section 31 and then Section 71 of the RERA Act, 2016 read with Rule 29 of Rules, 2017 are



independent to each other to be granted by two different Authorities.

**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;

**(i) Section 18 - Return of amount and compensation**

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

*(a) in accordance with the terms of the agreement for sale or; as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

*(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall*

*not be barred by limitation provided under any law for the time being in force.*

**(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.**

(ii) How an Adjudicating Officer is to exercise its powers to adjudicate, has been mentioned in a case titled as **Mrs. Suman Lata Pandey & Anr v/s Ansal Properties & Infrastructure Ltd. Appeal no. 56/2020, by Hon'ble Uttar Pradesh Real Estate Appellate Tribunal at Lucknow dated 29.09.2022** in the following manner;

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

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

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



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

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

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

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

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

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

*(c) the repetitive nature of the default;*

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

(iv) For determination of the entitlement of complainants 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.”

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

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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?**

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

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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.

**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	2016
(ii)	Proposed Handing over of possession	4 years with grace period of six months as per builder buyer agreement dated 14.03.2016
(iii)	Basic sale price	₹20,94,000/-
(iv)	Total amount paid	₹19,09,335/-
(v)	Period of payment	18.02.2016- 21.09.2018
(vi)	Occupancy certificate Whether received till Filing of complaint	NO



(vii)	Date of filing of complaint under Section 31 before Hon'ble Authority	20.06.2022
(viii)	Date of order of Authority	28.09.2022
(ix)	Date of filing of complaint filed under Section 12, 18 & 19 of RERA Act, 2016	18.04.2023
(x)	Date when total refund made by the respondent	No payment made till date

It is a matter of record that the project advertised in the year 2016, did not get completion certificate till filing of the complaint on dated 18.04.2023 and also that the complainants on its part had performed their part of duty by paying just short of basic price of the unit. Admittedly, the basic price of the apartment was ₹20,94,000/- whereas the complainants paid ₹19,09,335/- till 21.09.2018.

It is also admitted on record that the complainants did not get possession of the apartment allotted. There can also be no denial that allottees of the unit generally spend their lifetime earning and they are not at equal footings with that of the promoter, who is in a dominating position. The position of the allottees becomes more pitiable and sympathetic when he

or she has to wait for years together to get the possession of a unit allotted despite having played its bid. But, on the contrary, it is the promoter who enjoys the amount paid by allottees during this period and keep on going to delay the completion of the project by not meeting legal requirements on its part to get the final completion from competent Authority about fulfilling which such promoter knew since the time of advertisement of the launch of the project. Further, the conduct of the promoter to enjoy the amount of allottees paid is nothing but misappropriation of the amount legally paid as the promoter did not hand over possession, which the promoter was legally bound to do. It is not out of place to mention here that if the promoter/respondent had a right to receive the money from the allottee to hand over the possession in time, it is bound to face the consequences for not handing over the possession in time. Here, it is worth to quote a Latin maxim "ubi jus ibi remedium," which means "where law has established a right, there should be a corresponding remedy for its breach." If this be the legal and factual position, the promoter is not only bound to refund the amount but also to compensate the allottee for disappropriate gain or unfair advantage on the part of the promoter within the



meaning of Section 72(a) of the Act 2016, of the amount paid. It is not out of place to mention here that as per record, the allottees had paid ₹19,09,335/-. However, it is not in dispute that the respondent neither completed the project, nor handed over possession till allottee having been forced to approach Hon'ble HRERA Authority, Panchkula, to get refund along with interest after having indulged in unwarranted forced litigation by the promoter at the cost of allottees personal expenses, which it has not got till date. During this period, obviously, the allottee had to suffer inconvenience, harassment, mental pain and agony during the said period bringing its case within the ambit of Section 72(d) of the Act, 2016 as such feelings are to be felt/sensed by this Forum without seeking any proof thereof.

In view of the above, since, the promoters had been using the amount of ₹19,09,335/-, for the last more than 9 years, for the sake of repetition it is held that it can definitely be termed as disproportionate gain or unfair advantage, as enumerated in Section 72(a) of the Act. In other words, it had been loss to allottees as a result of default on the part of the promoter which continues till date. Thus, it would be in the

interest of justice, if the compensation is ordered to be paid to the complainants after taking into consideration, the default of respondent for the period starting from 2016 till date and also misutilization of the amount paid by the complainants to the respondent. In fact, the facts and circumstances of this case itself are proof of agony undergone by the complainants for so long, hence, there is no need to look for formal proof of the same. Further, there can't be denial to the effect that the allottees must have had to run around to ask the promoter to hand over the possession and also that if the unit provided in time, there was no reason for the complainants to file the complaints/execution petition by engaging counsel(s) at different stages, and also that because of escalation of prices of unit in last 9 years, the complainants may not be in a position to purchase the same unit now, which amounts to loss of opportunity to the allottees. These factors also enable an allottee to get compensation.

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?

Before answering this question, this Forum would like to reproduce the provisions of Section 18 of the Act, 2016, Rules 15 and 16 of HRERA, Rules, 2017 and also definition of 'interest' given in Section 2(z) of the RERA Act, 2016;

***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.

**Rule 15 - Prescribed Rate of Interest - [Proviso to section 12, section 18 and sub section (4) and sub-section (7) of section 19]**

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.]

**Rule 16- Timelines for refund of money and interest at such rate as may be prescribed, payment of interest at such rate as may be prescribed:- [Section 18 and Section 19].-**

(1). Any refund of money along with the interest at such rate as may be prescribed payable by the promoter in terms of the Act, or rules and regulations made there under shall be payable by the promoter to the allottee within a period of ninety days from the date on which such refund alongwith interest such rate as may be prescribed has been ordered by the Authority.

(2) Where an allottee does not intend to withdraw from the project and interest for every month of delay till handing over of the possession at such rate as may be prescribed ordered by the Authority to be paid by the promoter to the allottee, the arrears of such interest accrued on the date of the order by the Authority shall be payable by the promoter to the allottee within a period of ninety days from the date of the order of the Authority and interest for every month of delay shall be payable by the promoter to the allottee before 10th day of the subsequent month.

**Section 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;*

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.

Rule 15 of the Rules 2017, defines the “rate” as “State Bank of India highest marginal cost of lending rate+2% with proviso”.

Further, Rule 16 provides for the time limit to refund money and interest thereon and interest is to be as per the rate prescribed in

Rule 15 in case of matters covered under Proviso to section 12, Section 18 and Section 19 (4) and 19(7) of the Act, 2016. It further deals with two situations, one, where the allottee has opted for a refund rather than a unit in a project and second case where he has gone for the project but there is delay in delivery. Hence, it cannot be said that the Rule 16 deals with only one situation out of two mentioned therein as sub rule (1) and sub rule (2) respectively. It is not out of place to mention here that this Rule deals with cases related to Section 18 & 19 of the Act, 2016.

How long the interest would remain payable on the refund or compensation, as the case may be, is provided in Section 2(za) of the Act, 2016, which says that cycle of interest would continue till the entire amount is refunded by the promoter. In other words, if the provisions of Section 18 read with Rule 15 read with Rule 16 and Section 2(za) are interpreted co-jointly, then it would mean that in case of refund or compensation, as the case may be, the promoter will be liable to pay the interest from the date the promoter received the amount or any part thereof till the date the amount of refund or compensation, as the case may be, or part thereof along with up to date interest is refunded/paid, even if not specified in the order under execution. However, the situation is different in case of an allottee's



default in payments to the promoter till the date it is paid. With this legal position, it is safe to conclude in the case in hand, still in view of Explanation (ii) to Section 2(za) the allottee will be entitled to get the interest up to date of the final payment at the rate prescribed in Rule 15.

### RELIEF

10. Reverting back to the facts of the case under consideration, having the above discussed legal position in mind, it is directed to respondent to make payment of compensation as calculated below in relief; having in mind the provisions of Rule 15;

The calculation of compensation as verified by the Account Branch of Hon'ble Authority is tabulated below:

Amount Paid (in ₹)	Date	Rate	Compensation Amount (in ₹)
₹1,08,495/-	18.02.2016-22.04.2025 (Date of order)	11.10%	₹1,10,597/-
₹4,18,800/-	28.03.2016-22.04.2025 (Date of order)	11.10%	₹4,21,947/-
₹2,61,750/-	07.11.2016-22.04.2025 (Date of order)	11.10%	₹2,45,887/-
₹2,61,750/-	20.03.2017-22.04.2025 (Date of order)	11.10%	₹2,35,300/-
₹2,93,160/-	18.09.2017-22.04.2025 (Date of order)	11.10%	₹2,47,310/-
₹2,82,690/-	20.03.2018-22.04.2025 (Date of order)	11.10%	₹2,22,745/-

₹2,82,690/-	21.09.2018-22.04.2025 (Date of order)	11.10%	₹2,06,841/-
₹19,09,335/-		11.10%	₹16,90,627/-

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

The total compensation comes to ₹16,90,627/- + ₹30,000/- = ₹17,20,627/- (Rupees Seventeen Lakhs Twenty Thousand Six Hundred and Twenty Seven only).

12. In these terms, the present complaint is partly allowed. The respondent is directed to pay an amount of ₹16,90,627/- + ₹30,000/- = ₹17,20,627/- (Rupees Seventeen Lakhs Twenty Thousand Six Hundred and Twenty Seven only) within 90 days to the complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within the next 45 days.


It is further directed that if the payment is not made in the manner directed within stipulated time, in view of the provisions of Section 2(z) of the Act, 2016, the respondent shall be liable to pay interest on delayed payment as per the provisions of Rule 15 of the Rules, 2017, till realization of the amount.

*Phalvik*  
22/9/2023-




13. It is also directed that the amount so ordered to be paid with interest till realisation of total amount, since is in the form of compensation, the respondent will have no authority to deduct Tax at source (TDS) in view of the law laid down in All India Reporter Ltd vs. Kanchan P Dhuri, 8/1422-WPL4804-2020, All India Reporter Ltd. And Anr. vs Ramchandra Dhondo Datar (AIR 1961 BOM 292), M/s. Beacon Projects Pvt. Ltd versus The Commissioner of Income Tax (ITA No. 258 of 2014) decided by Hon'ble Kerala High Court on 23.06.2015, Parsvnath Developers Ltd. vs. Rajesh Kumar Aggarwal (Civil Appeal Nos. 11248-11249 of 2016, decided on 11.09.2017, Sainath Rajkumar Sarode and 8 Ors. vs. State of Maharastra and 6 Ors (Writ petition (L) No. 4804 of 2020 decided on 18.08.2021, Madhav Joshi vs Vatika Limited by NCDRC in execution application no. 159 of 2022 in CC/277/2019 decided on 26.04.2024 and Civil Appeal nos. 822-823 of 2024 titled as M/S BPTP LIMITED & ORS. vs. Terra Flat Buyers Association decided by Hon'ble Apex Court on 28.11.2024.

14. The present complaint stands **disposed of** in view of the above observations. File be consigned to record room after uploading of this order on the website of the Authority.

  
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MAJOR PHALIT SHARMA  
ADSJ(Retd.)  
ADJUDICATING OFFICER  
22.04.2025

**Note:** This judgement contains 30 pages and all the pages have been checked and signed by me.

**Sourabh**  
**Law Associate**

  
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**MAJOR PHALIT SHARMA**  
**ADSJ (Retd.)**  
**ADJUDICATING OFFICER**  
**22.04.2025**