



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)  
BEFORE ADJUDICATING OFFICER, HRERA, PANCHKULA

**Complaint No. : 1066 of 2023**  
**Date of Institution: 23.05.2023**  
**Date of Decision: 12.05.2025**

Mr. Vinod Kumar son of Mr. Sundar Dass, R/o H. No.1448, Sector-9,  
Faridabad, Haryana-121006.

...COMPLAINANT

Versus

M/s BPTP Limited, through its Managing Director having its registered office at  
28, ECE House, 1st Floor, KG Marg, New Delhi, 110001.

M/s Countrywide Promoters Pvt. Ltd., through its Managing Director having its  
registered office at M-11, Middle Circle Connaught Circus, New Delhi-110001.

....RESPONDENTS

**Hearing: 11<sup>th</sup>**

**Present: -** Mr. Arjun Kundra, Advocate, for the complainant through VC.  
Mr. Hemant Saini, Advocate, with Ms. Neha, Advocate, for the  
respondent through VC.

### ORDER

This order of mine will dispose of a complaint filed by the  
complainant namely 'Mr. Vinod Kumar against M/s BPTP Limited, seeking

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compensation and the interest from this Forum, in accordance with the provisions of Rule 29 of the HRERA Rules, 2017 (hereinafter to be referred as the Rules 2017), read with Sections 71 and 72 of the RERA Act, 2016 (hereinafter to be referred as the Act, 2016).

2. Brief facts of the complaint are that the complainant Mr. Vinod Kumar is second allottee of a residential floor measuring 1585 sq. ft. bearing no. P4-09-SF in the project 'Park Elite Floors, Parklands, Faridabad'. The complainant has further stated that BBA of the unit no. P4-09-SF was executed on 01.04.2010 between the respondent and the original allottees Sh. Navneet Seth. The complainant is the second allottee and derives his right of floor from Sh. Navneet Seth and the BBA was endorsed in the name of the complainant, Mr. Vinod Kumar, on 14.06.2012. Original buyer entered the project by remitting the amount of ₹3,00,000/- on 27.05.2009. As per clause 4.1 of the Floor Buyer Agreement, the possession was to be handed within 24 months from date of signing of agreement which is 01.10.2012. 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 an amount of ₹28,05,961.6/- towards the allotted floor i.e. basic cost along with EDC/IDC taxes. That, as per clause 6.1 of the Agreement, respondent had right to terminate the agreement and forfeit the earnest money in case of delay in payment of instalments and had the right to accept the delayed

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instalment with interest @18/% whereas as per clause 4.3 in case of delay in completion of the project, the complainant will entitled to get a compensation @ ₹5/- per sq. ft every month of delay beyond 30 months. The complainant further stated that respondent has issued an offer of possession dated 13.08.2021 and also issued the termination of the unit vide letter dated 03.12.2021 and also via email dated 10.01.2022. That, aggrieved by the conduct of the respondent and inordinate delay in completion of the project, the complainant had approached Hon'ble Authority by filing Complaint No. 126 of 2022 on 01.02.2022. In complaint no. 126 of 2022, Authority has allowed relief to the complainant and quashed the termination letter dated 03.12.2021 and further directed the respondent to handover valid possession along with payment of upfront delay interest of ₹22,13,967/- and further monthly interest of ₹18,961/- vide order dated 04.05.2022. In support of his contentions, the complainant has produced the following citations:

- (a) In Ghaziabad Development Authority Vs. Balbir Singh, Hon'ble Supreme Court has held that the interest award as to commensurate the loss and injury in case and that no straight jacket formula could be applied in each case. Various factors become contributing factors such as loss of rental, rise in the prices of the apartments/real estate, extent of delay in the constructions;
- (b) Hon'ble National Consumer Disputes Redressal Commission, in a case bearing no. 2035 of 2018 titled as Parklands Pride Buyer's Association Vs.

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BPTP, has directed the opposite party developer to pay delay compensation in the form of simple interest @ 9% on the amount deposited by the complainant;

(c) Hon'ble National Consumer Disputes Redressal commission in case of Deepika Chaudhary Chandra and Anr. Vs. EMaar MGF Land Limited CC/1337/2018, directed the developer to deliver the possession along with 8% interest as compensation per annum and cost of ₹25,000/-;

(d) Hon'ble Supreme Court in Lucknow Development Authority Vs. M.K. Gupta (1994 AIR 787, 1994 SCC (1) 243, has held that inordinate delay in handing over the possession of the flat clearly amounts to deficiency in service.

It is also mentioned that due to deficiency of service on part of respondent, the complainant has been denied the opportunity to utilize its funds for the past 12 years and the complainant has been denied the opportunity of purchasing another residential floor 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 possession with delay interest; execution of order passed by Authority and seeking compensation before Adjudicating Officer. Finally, the complainant prayed that the respondent be directed to pay a lump sump compensation of ₹20,00,000/- for mental torture, agony and harassment by not delivering possession in a time bound manner; ₹20,00,000/- for indulging in unfair trade practices and deficiency in service; ₹1,50,000/- on account of

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litigation expenses and other relief this Forum may grant. With the complaint, some annexures have also been attached i.e., Floor Buyer Agreement, customer ledger, and order of possession 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; That, Mr. Navneet Seth is the original allottee and booked a unit in 'Park Elite Floor Parklands', Faridabad, on 23.05.2009 and not the complainant. That, as per payment plan opted by the original allottee, the respondent has raised the demand and the original allottee was allotted the unit no. P4-09-SF tentatively measuring 1418 sq. ft. That, on 01.04.2010, the original allottee entered into the Floor Buyer Agreement with the respondent. That, on the request of the original allottee, the unit was endorsed in favour of the complainant via endorsement form dated 14.06.2012. That, the respondent had issued offer of possession to the complainant on 13.08.2021 but the complainant had failed to pay the demand qua offer of possession and the respondent was constrained to terminate the offer of possession vide letter dated 13.08.2021. That, after receiving the occupation certificate on 02.03.2023, a revised offer of possession was made to the complainant on 25.07.2023. That, in execution proceedings of Execution Petition No.2594 of 2022, the respondent

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has already paid ₹13,54,700/- to the complainant as delayed possession interest post setting the demands. That, the rights of complainant can not be noted under a straight-jacket applicability of provision that would be available to the original allottee in view of law laid down by Hon'ble apex court in 'Laureate Buildwell Pvt Ltd. vs Charanjeet Singh 2021 SCC Online SC 479'; that the complaint is barred by limitation in view of the law laid by Hon'ble Apex Court in Surjeet Singh Sahni v/s State of U.P. and others (2022 SCC Online SC 249); That, the complainant has not disclosed the fact that he is defaulter in making payments of instalments despite notices and reminders from the respondent and the said non-payment of instalment by the complainant and other similarly situated allottees had adversely affected the progress of the project resulting into delay. Further, it has been mentioned that complainant has been granted relief of possession alongwith delay interest from Authority which is more than sufficient and is in consonance with the principles of natural justice; That, complainant is a subsequent buyer who purchased the unit in question in the year 2012 from the previous owner having been aware of the fact that the respondent had failed to deliver the possession in stipulated time; That, the project also got delayed because of various administrative reasons beyond the control of the respondent. Finally, prayer is made to dismiss the complaint being not maintainable.

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4. This Forum has heard Mr. Arjun Kundra, Advocate, for the complainant and Mr. Hemant Saini, 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 very much entitled to get compensation and the interest thereon, because despite having played its part of duty as allottee, the complainant had met all the requirements including payment of sale consideration for the unit booked but it is the respondent which made to wait the complainant to get its plot well in time complete in all respect for more than 12 years, which forced the complainant to go for unwarranted litigation to get the relief of possession along with delay interest by approaching Hon'ble Authority at Panchkula, which has finally granted vide order dated 04.05.2022 and neither possession has been handed over, nor, upfront delay interest has been paid to the complainant till date despite having directions of the Hon'ble Authority. 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 it is a case different from the category of the cases pertaining to a subsequent allottee who had purchased the property

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from the original allottee after expiry of the period of handing over possession of the unit by the builder. Rather it is a case wherein the property was purchased by the complainant from the original allottee before expiry of the period of handing over of possession by the builder to the original allottee, hence it cannot be termed as a case of distress sale and purchase, as this Forum has opined in earlier cases, while rejecting the claim of subsequent allottee for compensation. He has further argued that after having purchased the unit from the previous owner, the complainant has stepped into the shoes of the original allottees, 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. He has also argued that the complainant/allottee has suffered mental and physical agony because of delay in possession, thus, the complainant is entitled to compensation.

Finally, he 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 2009, whereas present

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complaint to seek compensation was filed on dated 23.05.2023 much after the period of limitation. He has further argued that in the case in hand, the Floor Buyer Agreement was executed in the year 2010 i.e. more than 5 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 and even the complainant is also responsible for the delay as did not pay the regular instalment despite having been asked. 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 further argued that it is the requirement of Sections 71 and 72 of the Act, 2016 read with Rule 29 of the Rules, 2017, the Adjudicating Officer to adjudge compensation by conducting an enquiry in the manner laid and for conducting the enquiry there should be sufficient evidence led by the complainant with facts and figures to prove as to how it is entitled to get compensation within the meaning of Section 72 of the Act, 2016. He further argued that in the instant case, the complainant has not led any evidence as to how it has spent the amount in the manner claimed to seek compensation under

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different heads, so it being the case of no evidence in support of the claim of the complainant, the complaint is to be dismissed being devoid of merit.

He has also argued that in the instant case, since the complainant had purchased the unit knowing fully well the likely delay on the part of the promoter in completion of project from the original allottee, just three months prior to stipulated time to deliver possession, it can't claim any harassment etc., so, the subsequent allottees are not entitled for any compensation. Learned counsel for respondent has further argued that it is a case of subsequent allottee for compensation and it is also a case of the subsequent allottee taking benefit of distress sale of the unit by original allottee, because if everything was okay to the satisfaction of the original allottee, there was no occasion for the original allottee to have left the project in between. In support of this argument, he has referred to the order of this Forum passed in "Kanta Malhotra versus Parsynath Developers Ltd." in Complaint No. 918 of 2018, wherein request for compensation of subsequent allottee has been declined.

He has also referred to the law laid down by Hon'ble apex Court in "Experion Developers Pvt. Ltd. versus Sushma Ashok Shiroor" in Civil Appeal No.7149 of 2019 decided on 07.04.2022, to say once in the case in hand, that possession and delay interest has been awarded in favour of the allottee by HRERA Authority u/s 31 of the Act, 2016, he or she is not entitled to any amount of compensation separately because interest payable on the refund is

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restitutionary and also compensatory payable from the dates of deposits and the term "Restitutionary" means Compensation for loss. In other words, once the allottee has been paid compensation for the loss caused in the form of interest granted by Authority, the allottee can't claim the same compensation on the same grounds u/s 71 of the Act, 2016.

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 2009 is maintainable under the RERA Act, 2016 read with Rules 2017, if filed on dated 23.05.2023?
- (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

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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?

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

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

The answer to this question is in negative.

The plea for the respondent is that the complaint is barred by limitation as the project pertains to the year 2009, whereas the 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

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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.

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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 a case titled as "M.P. Steel Corporation v/s Commissioner of Central Excise 2015(7)SSC58".

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

**8(b) Whether the present complaint under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, pertaining to a project of the year 2009 is maintainable under the RERA Act, 2016 read with Rules 2017, if filed on dated 23.05.2023?**

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 in 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 the 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 possession.

**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 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:-

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*“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 assessment of damages in a case under Consumer Protection Act, in the following manner;

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*“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.”*

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

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

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

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

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 floor from the original purchaser namely Sh. Navneet Seth, 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	2009
ii)	Proposed Handing over of Possession	24 months from the date of execution of BBA i.e. 01.10.2012
iii)	Basic sale price	₹24,53,762/-
iv)	Endorsement by Original Allottee in the name of complainant	14.06.2012
v)	Total amount paid	₹28,05,961.6/-
vi)	Occupancy Certificate	YES (on 02.03.2023) i.e. after

	whether received till filing of complaint	filing of Complaint u/s 31 of the Act, 2016.
vii)	Date of filing of complaint under Section 31 before Hon'ble Authority	01.02.2022
viii)	Date of order of Hon'ble Authority	04.05.2022
ix)	Date of filing complaint under Sections 12, 18 & 19 of RERA Act, 2019	23.05.2023
x)	Date when part payment of upfront interest made, if made	₹13,54,700/-

The above facts, make it clear that when the present complainant purchased or got transferred the unit to his name after endorsing floor buyer Agreement on dated 14.06.2012, after making required payments to the original allottee or the promoter, the project was incomplete, which is the reason the Hon'ble Authority has ordered respondent to handover possession with interest vide order dated 04.05.2022, wherein learned counsel for complainant has informed that in execution petition no.2594 of 2022, possession has not been taken due to non-settlement of accounts.

Now, the only thing to be decided is whether or not in the given circumstances, a second allottee of the unit who is

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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 or possession along with 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 previous allottees 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 possession 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 floor buyer Agreement was endorsed with fourth 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 he 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 or possession 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 or possession 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 suffering or agony or harassment or pains etc. are subjective, means restricted to individuals only, which cannot be transferred from original allottee to subsequent allottee to enable later to claim compensation. Infact, such feeling of suffering cannot be equated with transfer of money from one to another, which is the reason subsequent allottees may be held entitled to get refund or possession with interest but certainly not compensation within the meaning of section 72 of the Act, 2016.

Though, learned counsel for the complainant has argued that it is not a case of distress sale, but this Forum is not in

agreement with this argument because if the original allottee had left the project even just prior to the date of proposed handing over of possession of the unit in question, it would amount to withdrawal from the project on the part of original allottee because of dissatisfaction on its part from the progress and management of the project and if subsequent purchaser bought such property from original allottee during that period, it would amount to taking a chance on the part of former to purchase a property, owner of which selling the same in distress. Otherwise also, the project was a failure from the very beginning or otherwise not to the satisfaction of original allottee stands proved from the act of the present complainant, who filed complaint under Section 31 of the Act, 2016, against the builder for violation as was not handed over possession, means the subsequent allottee had knowing fully well taken a boat to cross the canal, which he knew had a hole, thus bound to sink sooner or later. Consequently, it is held that subsequent allottee who purchase the unit even before or after the expiry of proposed period of handing over of possession by the builder, the situation would remain the same, leading to conclusion that it was a distress sale on the part of the original allottee to the subsequent allottee disentitling the subsequent allottee to get compensation

because he had purchased the unit, knowing fully well, the defects in progress of the project and for such act of his, he cannot be compensated.

Learned counsel for the complainant has not been able to show any law laid down by any Hon'ble Higher 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. Though, he has referred to certain golden principles of law laid down in the cases mentioned at Para no.2 of this order, but having due regards to the same, none of these empower a subsequent allottee to get compensation under RERA Act, 2016, thus, not applicable.

In totality, it is concluded that in this case, the subsequent allottee may be entitled for the relief of refund or possession, 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 the inception of the project in the year 2009.

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Phalok  
12/17/2025

9. For academic sake, it is observed here that learned counsel for respondent has referred to law laid down in "Experion Developers Pvt Ltd. versus Sushma Ashok Shiroor's case", to say where refund or possession and interest thereon is awarded, the allottee is not entitled to get compensation separately.

Having due regards to the law laid down in Experion's case (supra), the observation made in the quoted judgment can't be used for subsequent allottee seeking compensation under RERA Act, 2016, and HRERA Rules, 2017, because the provisions of RERA Act, 2016, are independent that of Consumer Protection Act, 1986, in respect of which quoted judgment has been passed. Infact, Sections 71 and 72 of the RERA Act, 2016 read with Rule 29 of HRERA Rules, 2017, deals with grant of relief of "compensation" by an Adjudicating Officer, and the said relief is different from the relief of possession with delayed interest or refund and interest thereon, to be granted by separate forum i.e. Authority. On the other hand, Section 14 of the Consumer Protection Act, 1986, deals with grant of relief of refund or compensation or both by the Commission i.e. the same forum. Thus, situation is different under RERA Act, 2016, where both different authorities have criterias to give relief on their respective subject. Since, Hon'ble apex Court in Experion's case (supra), had made observations in respect of provisions of Consumer Protection Act, 1986 and not the RERA Act, 2016, these are distinguishable on facts and law in the case in hand. There is no dispute regarding the dictionary meaning of the term

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Phalib  
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“Restitutionary” used in Para no.22 of the Experion’s case (supra) but that meaning itself would not bar an allottee to seek compensation separately under RERA Act, 2016, once such special statute provides for the same unlike PC Act. In addition thereto, the quoted judgment did not say that no compensation would be granted where relief of refund or possession with interest has been awarded, as otherwise projected by learned counsel for respondent.


Otherwise also, both are independent Acts, i.e. PC Act and the Act, 2016, thus, have to be interpreted differently to achieve its object. Infact, in the quoted case, Hon’ble apex Court itself has held that “Consumer Protection Act and the RERA Act, neither exclude nor contradict each other. They are concurrent remedies operating independently and without primary”. It further held that “while interpreting statutes provisioning plurality of remedies, it is necessary for Courts to harmonize the provisions in a constructive manner”.

In view of the forgoing discussion, it is concluded that Hon’ble apex Court in Experion’s case (supra), had made observations in respect of provisions of Consumer Protection Act, 1986 and not the RERA Act, 2016, thus, distinguishable on facts and law in the case in hand, resultantly not applicable. Even, otherwise also, this quoted judgment does not bar grant of compensation.

10. In view of the foregoing discussions, the present complaint of the complainant is **dismissed** being devoid of merit, it being a case of subsequent

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Phalit  
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allottee. 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**  
**12.05.2025**

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

  
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**MAJOR PHALIT SHARMA**  
**ADSJ(Retd.)**  
**ADJUDICATING OFFICER**  
**12.05.2025**

Narinder Kaur  
(Law Associate)