



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

BEFORE THE ADJUDICATING OFFICER, HRERA, PANCHKULA.

Complaint No. : 989 of 2023

Date of Institution: 27.04.2023

Date of Decision: 05.08.2025

Ms. Nidhi Gupta W/o Shri Rakesh Kumar and Mr. Vijay Chaudhary son of Shri Jai Narian Chaudhary, R/o E-4/145 Sector-7 Rohini, Delhi 110085.

...COMPLAINANTS

Versus

M/s TDI Infrastructure Ltd., office at Mahindra Tower, 2A, Bhikaji Canan Place 2nd Floor, New Delhi-110066.

....RESPONDENT

Hearing: 11<sup>th</sup>

Present: - Mr.Karan Dang, Advocate, for the complainants through VC.

Mr.Hunarveer Sharma, Advocate, for the respondent through VC.

### ORDER

This order of mine will dispose of a complaint filed by the complainants namely 'Ms. Nidhi Gupta and Mr. Vijay Chaudhary against M/s TDI Infrastructure Ltd., seeking compensation and the interest from this Forum.

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in accordance with the provisions of Rule 29 of the HREERA 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 complainants after going through the advertisement had purchased a residential plot measuring 250 sq. yard bearing no. L-813 in the project 'TDI City, Kundli, Sonipat, Haryana' from the original allottees i.e. Mr. Prakash Ahuja, on the original terms and conditions.

On dated 23.03.2005, Mr. Prakash Ahuja, had registered a residential plot measuring 250 sq. yard in the future township of TDI City, Kundli, Sonipat, Haryana, for total sale consideration of ₹16,36,250/- including EDC. At the time of registration, Mr. Prakash Ahuja paid ₹3,70,000/- to the respondent. Thereafter, respondent issued an unilateral payment schedule to original allottee and forced him to pay amount as per payment schedule. On dated 12.01.2006, original allottee paid ₹1,78,125/-. On dated 29.04.2006, respondent issued fake offer of allotment to original allottee stating that plot will be ready for possession shortly and claimed the amount prior to obtaining of license. It has also been mentioned that respondent started taking the money from allottees prior to obtaining of licenses and approval of layout plans. Till, dated 24.02.2007, original allottee paid 50% of amount on basis of fake newsletters issued by respondent. Thereafter, till 29.01.2011, original allottee

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paid 90% of the cost of plot and 100% EDC. No BBA was executed between the parties.

Subsequently, Mr. Prakash Ahuja transferred all his rights in favour of Ms. Nidhi Gupta and Mr. Vijay Chaudhary on dated 20.09.2012 from retrospective date and respondent accepted and incorporated the same w.e.f. 22.03.2005. On dated 05.09.2012, complainants visited the office of respondent and obtained confirmation that original allottee had paid 90% of cost of plot and 100% EDC and IDC. That, respondent never gave status of project to DTCP and RTI's of complainants and on dated 29.09.2017, respondent obtained partial completion certificate

That, aggrieved by the conduct of the respondent and inordinate delay in completion of the project, the complainants had approached Hon'ble Authority by filing Complaint No. 1005 of 2021 on 21.09.2021. In complaint no. 1005 of 2021, Authority vide order dated 04.08.2022 allowed refund to complainants.

In support of his contentions, the complainants counsel has referred the following citations:

(a) In Ghaziabad Development Authority Vs. Balbir Singh SC Appeal(civil)7173 of 2022, 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 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."

(c) Hon'ble Apex Court in Civil Appeal No. 6239 of 2019 titled as Wg.Cdr. Arifur Rahman Khan and Aleva Sultana and Ors. V/s DLF Southern Homes Pvt.Ltd. (Now known as BEGUM OMR Homes Pvt.Ltd.) and Ors. has observed that "for default of the promoter, compensation @ 6% p.a. is to be paid to the allottee/home buyer".

(d) Hon'ble Apex Court in Pioneer Urban Land & Infrastructure Limited vs. Govindan Raghavan, CIVIL APPEAL NO. 12238 OF 2018, SC has held that "flat purchasers cannot be compelled to bind with the one sided agreement was after the grace period had expired. The compensation was awarded at 10% p.a".

(e) Hon'ble Apex Court in DLF homes Panchkula Pvt.Ltd. vs D A Dhanda which state CIVIL APPEAL NOS.4910-4941 2019; @ SLP(C)Nos. 3623-3654 OF 2019 has held that "parties have to give strong reasons to get compensated at more than agreed rate".

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It is also mentioned that due to deficiency of service on part of respondent, the complainants have been denied the opportunity to utilize its funds for the past 18 years and the complainants had been denied the opportunity of purchasing another residential plot for their family. The complainants have suffered monetary loss on the account of depreciation in money values and escalation in cost of construction. The complainants 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 complainants prayed that the respondent be directed to compensate @ 20% per annum on the amount deposited i.e. ₹50,58,497/- till 30.04.2023; ₹20,000/- on account of litigation expenses and other relief this Forum may grant. With the complaint, some annexures have also been attached i.e., Receipts of payments; RTI's, advertisements and order of refund passed by the Authority etc.

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, the present complaint pertains to an unregistered project of the respondent, hence in view of the law laid down by Hon'ble Apex Court in New Tech Promoters and Developers Pvt. Ltd. v/s State

of U.P. and others (2021 SCC 1044), the Adjudicating Officer has no jurisdiction to entertain the present complaint : It has been mentioned that the complainants had opted for joining the project only after having come to know the entire details about the project. That, the respondent company has already received part Completion Certificate with respect to 927 acres. It has also mentioned that respondent had commenced the project before existence of RERA Act, 2016, so RERA Act will not apply retrospectively and the complaint is not maintainable as falls outside purview of provisions of RERA. That, the complainants are investors and invested in project for the sole reason of investing: earning profits and speculative gains. It has been mentioned that in Sections 18 and 19(4) of RERA Act, 2016, it has nowhere mentioned that compensation will be given along with delay possession charges. Further, it has been mentioned that complainants have been granted refund alongwith interest from Authority which is more than sufficient and is in consonance with the principles of natural justice. Regarding handing over of possession, it has been mentioned that respondent company with their own will had offered alternate plot ready for possession in another block of same township which was not taken by complainants. That, complainants are subsequent buyers who purchased the plot in question in the year 2012 from original allottee having been aware of the fact that the respondent had failed to deliver the possession in

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stipulated time; Finally, prayer is made to dismiss the complaint being not maintainable.

4. This Forum has heard Mr. Karan Dang, Advocate, for the complainants and Mr. Hunarveer Sharma, Advocate, for the respondent and 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 entitled to get compensation and the interest thereon, because despite having played its part of duty as an allottees, the complainants had met all the requirements including payment of amount for the unit booked but it is the respondent who made to wait the complainants to get their unit well in time complete in all respect for more than 18 years, which forced the complainants to go for unwarranted litigation to get the refund by approaching Hon'ble Authority at Panchkula, which has finally granted the refund with interest thereon. He has further argued that complainants had paid more than basic sale consideration, thus, not the case of distress sale as there was no intention to purchase the plot at low price from the original allottee. He has further argued that the complainants have 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 complainants money on the part of respondent. He has further argued that after having purchased the unit



from first allottee, the complainants have stepped into shoes of the first allottee, in view of the law laid down by Hon'ble Apex Court in M/s Laureate Buildwell Pvt. Ltd. vs Charanjeet Singh, Civil Appeal no.7042 of 2019, decided on 22.07.2021, thus subsequent allottees are entitled to all reliefs under RERA Act, 2016 and RERA Rules, 2017, which an original allottee is entitled to. He has also argued second allottees have also suffered mental and physical agony because of delay in possession, thus, the complainants are entitled for 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 2005, whereas present complaint to seek compensation was filed on dated 27.04.2023 much after the period of limitation. He has further argued that in the case in hand, the allotment letter was issued on dated 29.04.2006 i.e. more than 10 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

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respondent to complete the project which factually got delayed because of the circumstances beyond the reach of the respondent. He has further argued that to get a relief under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, the complainants are required to prove the ingredients of Section 72 of the Act, 2016, which in the case in hand do not stand proved as no cogent evidence to meet requirements of Section 72 of the Act, has been led. He has also argued that in the instant case, since the complainants had purchased the unit knowing fully well the delay on the part of promoter in completion of project from the original allottee, it can't claim any harassment etc., so, subsequent allottees are not entitled for any compensation. Learned counsel for respondent has further argued that it is a case of subsequent allottees for compensation and it is also a case of the subsequent allottees 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 Parsvnath Developers Ltd." in Complaint No. 918 of 2018, and "Mr. Vinod Kumar versus M/s BPTP Limited" in Complaint no.1066 of 2023 wherein request for compensation of subsequent allottee has been declined by this Forum.

Finally, he has prayed to dismiss the complaint being devoid of merit.

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7. With due regards to the rival contentions and facts on record, this Forum possess following questions to be answered:

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

(b) Whether the present complaint under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, pertaining to a project of the year 2005 is not maintainable under the RERA Act, 2016 read with Rules 2017, if filed on dated 27.04.2023?

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

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

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

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 the complaint is barred by limitation as the project pertains to the year 2005, whereas the 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 the law of limitation does not apply in respect of a complaint filed for compensation under Section 71 of the RERA Act, 2016 read with Rule 29 of the RERA Rules, 2017. 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***

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*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.*

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".

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Notwithstanding anything stated above, even, section 18(2) of RERA Act, 2016, specifically keeps the complaint for compensation out of the purview of Limitation Act, 1963 further, 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.

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 2005 is not maintainable under the RERA Act, 2016 read with Rules 2017, if filed on dated 27.04.2023?**

The answer to this question is 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., (2021 SCC 1044) 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

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project in question was neither completed when the RERA Act came into existence on May 2016, nor any Completion Certificate was issued to it prior thereto, it is a case which is duly covered by the provisions of the Act, 2016 and Rules, 2017. It is not out of place to mention here that in the case in hand the project was not completed even when the complaint before Authority was filed to seek refund and even now also probably it is not complete.

**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*

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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.

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(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,

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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

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SCC 668, had earlier held regarding assessment of damages in a case under Consumer Protection Act. in the following manner;

*"While quantifying damages, Consumer Forums are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application. While awarding compensation, a consumer forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, and moderation. It is for the consumer forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant is liable to establish his charge."*

8(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 made to lure an allottee to invest its hard earned money to own its dream shop 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

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ask for evidence in the form of oral as well as documentary in all the cases, 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 complainants, are second allottees as had got transferred the plot from the original purchaser namely Sh. Prakash Ahuja, are 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 list:

i)	Project pertains to the year	2005
ii)	Date of joining of project by original allottee i.e. Mr. Prakash Ahuja	23.03.2005
ii)	Proposed date for handing over of Possession	24.02.2010
iii)	Basic sale price	₹14,38,750/-

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iv)	Endorsement by original allottee i.e. Mr. Prakash Ahuja in the name of the complainants i.e Ms. Nidhi Gupta & Mr. Vijay Chaudhary, second allottees	20.09.2012																											
v)	BBA executed with complainants	No BBA executed with complainants/original allottee by respondent.																											
vi)	Total amount paid	₹17,13,097/- paid by original allottee																											
vii)	Dates and amount of payment made by original allottee(The dates given in the account statement relied by the complainants are shown here as the one given in complaint are different but the amount is same in both)	<table> <tr> <th>S.N o.</th><th>Date of payment</th><th>Amount in (₹)</th></tr> <tr> <td>1.</td><td>23.03.2005</td><td>₹3,70,000/-</td></tr> <tr> <td>2.</td><td>12.01.2006</td><td>₹1,78,125/-</td></tr> <tr> <td>3.</td><td>22.08.2006</td><td>₹1,00,000/-</td></tr> <tr> <td>4.</td><td>24.02.2007</td><td>₹2,00,000/-</td></tr> <tr> <td>5.</td><td>29.01.2011</td><td>₹4,46,875/-</td></tr> <tr> <td>6.</td><td>29.01.2011</td><td>₹4,15,632/-</td></tr> <tr> <td>7.</td><td>20.09.2012</td><td>₹2,472/-</td></tr> <tr> <td></td><td>Total</td><td>₹17,13,097/-</td></tr> </table>	S.N o.	Date of payment	Amount in (₹)	1.	23.03.2005	₹3,70,000/-	2.	12.01.2006	₹1,78,125/-	3.	22.08.2006	₹1,00,000/-	4.	24.02.2007	₹2,00,000/-	5.	29.01.2011	₹4,46,875/-	6.	29.01.2011	₹4,15,632/-	7.	20.09.2012	₹2,472/-		Total	₹17,13,097/-
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	Total	₹17,13,097/-																											
viii)	Occupancy Certificate whether received till filing of complaint	YES																											
ix)	Date of filing of complaint under Section 31 before Hon'ble Authority	21.09.2021																											
x)	Date of order of Hon'ble Authority	04.08.2022																											

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xi)	Date of filing complaint under Sections 12, 18 & 19 of RERA Act, 2019	27.04.2023		
xii)	Date when total refund made	Sr. No.	Date	Amount in (₹)
		1.	18.07.2023	₹5,00,000/-
		2.	28.03.2023	₹5,00,000/-
		3.	17.09.2024	₹5,11,398/-
		4.	17.10.2024	₹5,11,398/-
		5.	17.11.2024	₹5,11,398/-
		6.	17.12.2024	₹5,11,398/-
		7.	17.01.2025	₹5,11,398/-
		8.	17.02.2025	₹5,11,395/-
			Total	₹40,68,385/-
In Execution no.3260 of 2022				

It is matter of record that the project was advertised in the year 2005, and also that the original allottee on its part had performed its part of duty by paying more than basic price of the unit. Admittedly, basic price of the unit was ₹14,38,750/- whereas the original allottee paid ₹17,13,097/-.

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The above facts, make it clear that when the present complainants purchased or got transferred the unit to their names on dated 20.09.2012, after making required payments to the original allottee or to the promoter (not clear on record), the project was incomplete, which is the reason the Hon'ble Authority has ordered for refund with interest in favour of the complainants i.e. subsequent allottees vide order dated 04.08.2022, learned counsel for complainants has informed that in execution complaint no. 3260 of 2022 amount of ₹40,68,385 - has been received till date by the complainants .

Now, the only thing to be decided is whether or not in the given circumstances, second allottees of the unit who are 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 complainants 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 they have got, may be with some differences about amount paid alive.

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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 allottees i.e. complainants, 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 allottee because of delay in completion of project. Meaning thereby, the complainants accepted to undergo sufferings of kind, if any, due to ongoing default on the part of builder, thus they can't expect to be compensated for such delay. It is not out of place to mention here that had it been a case of request for refund with interest due to delay in delivery of possession or delayed possession charges, the Hon'ble Authority dealing with, was bound to give benefit thereof in view of recent law laid down by Hon'ble Apex Court in M/s Laureate Buildwell Pvt. Ltd. vs Charanjeet Singh, Civil Appeal no. 7042 of 2019, decided on 22.07.2021 and also relied for the complainants 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

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Act, by subsequent allottees, 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, allotment was endorsed with second allottees i.e. complainants, there was no occasion for the present complainants to have suffered any agony w.e.f. the year 2005 onwards and thereafter also no chance to claim harassment on their part as they 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 allottees 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 respective Forums 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 allottees 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.

9. 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, though in present case left much thereafter, 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

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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 complainants, who filed complaint under Section 31 of the Act, 2016, against the builder for violation as was not handed over possession, means the subsequent allottees had knowing fully well taken a boat to cross the canal, which they 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. Here, it is apt to quote the Latin Maxim, relied by this Forum to decline relief to subsequent allottee, which says "commodum ex injuria sua nemo habere debet" (No party can take undue advantage of his own wrong). Broom's Legal Maximum [10th Edn.] at page 191, also speaks in the following manner on such issue;

"It is a maxim of law, recognized and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully

recognized in Courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”

Even, Hon’ble Apex Court in Union Of India & Ors vs Major General Madan Lal Yadav [Retd.] (1996)4SCC127 and Kusheshwar Prasad Singh vs State Of Bihar & Ors, 2007 AIR SCW 1911, on this subject, has summed up by holding that “a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law.” To put it differently, “a wrong doer ought not to be permitted to make a profit out of his own wrong”.

10. Learned counsel for the complainants 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.

11. In totality, it is concluded that in this case, the subsequent allottees may be entitled for the relief of refund or possession, as the case may be with interest, as has already been granted by Hon’ble Authority but they certainly are not entitled to get compensation for the wrong knowingly done. Otherwise also,

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no question arises to compensate them since the time of the inception of the project in the year 2005.

12. In view of the foregoing discussions, the present complaint of the complainants is **dismissed** being devoid of merit, it being a case of subsequent allottees. File be consigned to record room after uploading the order on the website of the Authority.



MAJOR PHALIT SHARMA  
ADSJ(Retd.)  
ADJUDICATING OFFICER  
05.08.2025

Note: This order contains 29 pages and all the pages have been checked and signed by me:



MAJOR PHALIT SHARMA  
ADSJ(Retd.)  
ADJUDICATING OFFICER  
05.08.2025

Indu Yadav  
(Law Associate)