



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

COMPLAINT NO. 386 of 2024

Indu

.....COMPLAINANT

Versus

Rose Building Solutions Pvt Ltd.

.....RESPONDENT

Date of hearing: 26.05.2025

Hearing: - 5th

Present: - Mr. Harsh Sharma, Advocate, for the complainant through VC.
Mr. Suvir Kumar, Advocate, for the respondent through VC.

ORDER

Today, the case is fixed for answering the following query raised on the last date of hearing i.e. 18.03.2025 by this Forum, to the learned counsel for the complainant. For ready reference, the said order is reproduced below;

".....Today, the case is fixed for filing reply and power of attorney by the respondent.

2. *Learned counsel for respondent has stated that reply has been filed with the office, copy of which is supplied to learned opposite counsel.*

3. *Perusal of complaint file indicates that prima facie it emerges that though as per contents of Builder Buyer Agreement dated 25.02.2022 and Conveyance Deed executed on dated 06.04.2022, which is executed within stipulated time*

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agreed to execute the same, the carpet area, i.e. 584.48 sq. ft. of the unit sold is the same in both documents which are duly signed by both parties. But, through the present complaint, the complainant has sought compensation against respondent for not handing over the exact area of the unit as otherwise agreed upon. In other words, as per complainant, total area of 943.92 sq. ft. was agreed to be handed over; whereas possession of only 938.549 sq. ft. area is delivered and also there is no provision of electricity meter in accordance with law and mainly these are the ground to seek compensation.

This Forum observes that the main grievance of the complainant to seek compensation is that the respondent being promoter has not adhered to sanctioned plan and project specifications, the question of violation of which could only legally be adjudicated upon by Hon'ble Authority under section 31 of the Act, 2016 as it is prima facie violation of provisions of Section 14 read with section 2(zq) of the Act, 2016, on the part of the promoter the term defined in Section 2(zk) of the Act, 2016. Even, it is the Hon'ble Authority which has jurisdiction to decide violation on the part of the promoter; if later, has sold a unit without there being any official arrangement to install an electricity meter as per procedure laid at the unit site sold.

With above observations, learned counsel for complainant is posed a query as to how, the present complaint is maintainable under Section 71 of the Act, 2016, when so far no violation has been established by Hon'ble Authority under Section 14 read with Section 35 of the Act, 2016, while exercising its powers under Section 31 of the Act, 2016 as Rule 28(m) and Rule 29 of HRERA, Rules, 2017, and the format to file complaint before Adjudicating Officer, sets up such condition as precedent?

On request, now, case is adjourned to 26.05.2025 for arguments on the point of maintainability of the present complaint in view of the observations made above."

2. In response to the query so raised, learned counsel for the complainant has drawn attention of this Forum towards order dated 05.03.2024 passed in Complaint no.176 of 2024 titled as "Indu versus Rose Building Solutions Pvt Ltd.", to claim that Hon'ble Authority had permitted the

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complainant to seek compensation on account of mental harassment, agony etc. for deficiency in service by the respondent. Hence, the complainant is entitled for compensation as she has been provided with lesser area of the unit without there being proper electricity facility.

3. On the other hand, learned counsel for respondent has submitted that the complainant once had signed conveyance deed on being satisfied with the nature of unit and facilities provided therein without raising any objection at that time of getting the conveyance deed executed, now, she can not seek compensation in the manner prayed. He has further argued that vide order dated 05.03.2024, Hon'ble Authority had allowed complainant's request to seek compensation on account of mental harassment, agony etc. for deficiency in service by the respondent but that would not absolve the complainant from establishing the prima facie ingredients of Sections 71 and 72 of the RERA Act, 2016 read with Rules 28(2)(m) and Rule 29 of the HRERA Rules, 2017. Finally, he has prayed for dismissal of the complaint being not maintainable.

4. With due regards to the rival contentions and facts on record, this Forum is of the view that once contents of conveyance deed dated 06.04.2022 indicates that the complainant had got the conveyance deed executed in respect of the unit purchased after satisfying itself about its area and facilities provided therein, she cannot be permitted to claim compensation for harassment or agony simply by raising oral allegation that lesser area than the area agreed upon of the unit was transferred that too without proper electricity facility. Moreover, old

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Section 92 of Indian Evidence Act, speaks about of exclusion of evidence of oral agreement. To hold so, this Forum has taken strength from the law laid down by Hon'ble Apex Court in "Smt. Gangabi w/o Rambilas Gilda v. Smt. Chhabubai w/o Pukharajji Gandhi (1982) 1 SCC 4" and "Roop Kumar v. Mohan Thedani (2003) 6 SCC 595", wherein it held in the following manner;

"11. ...It is clear to us that the bar imposed by sub-section (1) of Section 92 applies only when a party seeks to rely upon the document embodying the terms of the transaction. In that event, the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms. The sub-section is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatsoever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether; not recorded in the document, was entered into between the parties...."
(Emphasis Supplied)"

In other words, by virtue of provisions of Sections 91 and 92 of Indian Evidence Act (Section 94 of Bharatiya Sakshya Adhiniyam, 2023), it has to be held by this Forum that legally the complainant has no right to claim any relief against the respondent particularly when in the conveyance deed there is clear cut mention of delivery of the correct area and also about satisfaction of complainant about the facilities provided including electricity. Moreover, it is

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not the claim of the complainant that the conveyance deed was not acted upon at all, it being a sham transaction. Rather, she can't claim it to be a sham transaction as by virtue of it, possession and title was conferred upon her.

Notwithstanding anything stated above, even the Principle of Estoppel would also act against the complainant because if she has admitted in writing to have got the unit with all facilities, from the respondent to get the conveyance deed executed, she cannot be permitted to take a contrary stand of non-providing facilities by the respondent. Not only this, even if, it is for the sake of arguments accepted that the complainant got the lesser area than promised or that electricity facility is not there, in that case also, the remedy with complainant was to approach the Hon'ble Authority at Panchkula, to get the violations on the part of respondent/builder established, to enable itself to get compensation within the meaning of Rule 28(2)(m) and Rule 29 of the HRERA Rules, 2017, instead of approaching this Forum expecting it to first decide the violation and then the amount of compensation as such expectations are contrary to the spirit of law.

Undoubtedly, learned counsel for the complainant has referred to order dated 05.03.2024 of the Hon'ble Authority at Panchkula, to prove the maintainability of the present complaint but such reference is not of any help to the complainant because of two reasons. Firstly, in the order dated 05.03.2024, there are no findings on merit of the case of Hon'ble Authority, to enable the complainant to get compensation on the grounds pleaded in the complaint for

compensation; secondly, even if there is recommendations for the complainant to apply for compensation with this Forum, that would not ipso facto enable the complainant to get compensation as of right because to grant compensation, the Adjudicating Officer has independent jurisdiction and to do that it is bound to follow the standard procedures laid in Sections 71 & 72 of the RERA Act, 2016 read with relevant provisions of Rule 28(2)(m) and Rule 29 of HRERA Rules, 2017, which as held above are not found legally applicable in the instant case.

5. In view of the foregoing discussion, the present complaint for compensation is dismissed being not filed as per the procedure laid in Sections 71 & 72 of the RERA Act, 2016 read with relevant provisions of Rule 28(2)(m) and Rule 29 of HRERA Rules, 2017. However, the complainant would not be at liberty to file afresh, if so permissible, in accordance with law.

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



MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
26.05.2025

Narinder Kaur
(Law Associate)