HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER, HRERA, PANCHKULA.

Complaint No. : 18 of 2024
Date of Institution: 11.01.2024
Date of Decision: 19.08.2025

Mrs. Vandana Chawla w/o Sh. Manoj Chawla, R/o Topaz-122,GF,Emerald Hills, Sector-65,Golf Course Extn. Road, Gurugram-122018, Haryana.

...COMPLAINANT

Versus

Omaxe Limited, having its Registered office at Shop No.19-B, First Floor,Omaxe Celebration Mall,Sohna Road,Gurgaon-122001,Haryana.

....RESPONDENT

Hearing: **10th**
Present: - Mr. Manmeet Singh, Advocate, for the complainant through VC.
Mr. Manjinder Singh, Advocate, for the respondent through VC.

ORDER:

This order of mine will dispose of a complaint filed by the complainant namely ' Mrs. Vandana Chawla w/o Sh. Manoj Chawla against Omaxe Limited, seeking 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 & 72 of the RERA Act, 2016 (hereinafter to be referred as the Act, 2016).

Phalit
19/8/2025

2. Brief facts of the complaint are that complainant working in MNC bank got married with Mr. Manoj Chawla on 23.04.2003 and after marriage shifted to matrimonial house at Pitampura Delhi, alongwith her husband and widowed mother in law. That, in and around 2008 onwards the family started planning to extend their family and the complainant left her job and after considering various aspects, family started considering shifting to satellite towns of Delhi and started searching for a suitable house to shift. That, after extensive search complainant came across respondent company i.e. Omaxe Limited (hereinafter to be referred as the respondent) and booked a unit in the project- Omaxe Shubhagan, Bahadurgarh of the respondent. On dated 22.12.2022, complainant submitted an application form and made payment of ₹4,50,00/- wherein possession was assured to be given in 18 months from the date of agreement, which was to be executed shortly and it was informed that possession is expected to be given by 2014 to 2015. On dated 15.03.2013, complainant paid ₹2,21,631/- being the second instalment of 15% of BSP. On dated 11.06.2013, complainant paid ₹7,71,881/- being third instalment. On dated 29.11.2013, respondent issued provisional allotment letter. Thereafter, on dated 19.12.2013, allotment letter was issued in favour of complainant and unit no. RUBH/TOWER-9/EIGTH/801 having area 2215 sq ft was allotted. On dated 21.02.2014, complainant paid ₹7,44,307/- being the fourth instalment. Thereafter, complainant entered into builder buyer agreement with the respondent on dated 30.08.2014 after having paid substantial amount of

Phalit
19/08/2025

₹21,97,819.08/- wherein it was mentioned that possession will be handed over 18 months from date of signing of agreement and grace period of 6 months i.e. August 2016. On dated 16.12.2014, the complainant paid ₹7,14,884/- at the time of casting of second floor stilt roof construction. The complainant and her family from 2016 to 2018 visited the site and the head office to know the status of project but no satisfactory response was received from the respondent. In January 2018, complainant moved before Permanent Lok Adalat for redressal of her grievances but that remained unaddressed for one and half years.

That, complainant was in dire requirement to take house, so shifted to Gurgaon and in August 2018, the complainant alongwith her husband booked a ready to move in house at Gurgaon and took loan from Andhra Bank(now Union Bank of India) in joint name of the complainant and her husband for a sum of ₹75,00,000/- being partial payment for unit though a disbursal of ₹65,00,000/- was got done and complainant paid loan amount of ₹65,00,000/- alongwith interest of ₹13,98,274/-.That, on dated 30.03.2019, complainant with her family shifted at Gurugram on lease rent of ₹30,000/- per month. That, on dated 08.05.2019, complainant withdraw her Appeal no. 91 of 2018 from Permanent Lok Adalat, Gurgaon, with liberty to move before appropriate Forum/ RERA. That, in June 2019, due to illegal, unlawful and unfair acts and deeds done by respondent, the complainant lost her faith upon respondent and their project, so the complainant sought refund of the amount deposited with

Phalit
19/08/2025

interest.Therefore, complainant was left with no other option but to approach this Authority and filed complaint No. 1556 of 2022 before the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula, for refund along with interest which was allowed vide order dated 11.10.2022 and the respondent was directed to refund the amount paid by the complainant, i.e. ₹55,86,782.26/- along with interest calculated till the date of order which works out to ₹42,56,947/-; That, complainant further approached this Forum for the compensation for harassment caused in the hands of respondent. Hence, the present complaint has been filed. That, the complainant further submitted that the complainant suffered a lot due to non-delivery of the said unit. She has also claimed a compensation of ₹15,00,000/- on account of physical and mental harassment caused to the complainant, due to failure to meet promised obligations by respondent; ₹13,98,274/- as part of damages for having forced to take loan on which interest was paid for taking a new house; ₹2,50,000/- on account of litigation expenses and any other relief .Finally, prayer is made to grant compensation in the manner prayed for.

3. On receipt of notice of the complaint, respondent filed reply, which in brief states that that due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-Shubhagan,situated in Bahadurgarh, Haryana; That, the dispute ought to be referred to Arbitration under Section 8 of the Arbitration & Conciliation

Phalit
19/08/2025

Act,1996 [as amended vide the Arbitration & Conciliation(Amendment) Act,2015] in terms of clause 62 of the allotment letter/agreement.Hence, Authority has no jurisdiction to entertain present complaint.That, Authority also does not have territorial jurisdiction to entertain the matter as Clause 63 of Agreement clearly states that Courts at Bahadurgarh/ Delhi shall have jurisdiction in all matters in connection with the allotment.Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act. That, complainant is defaulter in making the payment as per construction link plan, hence is not entitled to compensation on account of delay in handing over possession. That, as per clauses of agreement in the event of failure of handing over possession the respondent is liable to make compensation of ₹ 5 Square feet per month for the entire delayed period. That, Authority has granted extension for completing the project therefore there is no delay in completing the project; In support of his contentions, that agreed clauses of agreement are binding on the parties and the Courts shall not interfere with the terms and conditions agreed between the parties, respondent has mentioned following citations:

(a) Secretary, Bhubaneswar Development Authority Vs. Susanta Kumar Mishra [V(2009) SLT,242], Hon'ble Supreme Court has held that the parties are bound by the unchallenged terms of the contract.

Phalit
19/08/2025

(b) PUDA (Chief Administrator) and Another Vs. Mrs. Shabnam Virk [II(2006)CPJ 1(SC)] Hon'ble Supreme Court has held that an allottee would be bound by the terms and conditions contained in the allotment letter agreed by him.

(c) Bharati Knitting Company Vs. DHL Worldwide Express Courier Division of Airfreight Ltd, [II (1996) CPJ 25(SC)] Hon'ble Supreme Court has held that parties are bound by the terms and conditions of a contract.

It is also mentioned that, relief has already been granted by Hon'ble Authority in Complaint no.1556 of 2019, decided on 11.10.2022 wherein refund along with interest has been granted to the complainant This interest includes the interest in the form of compensation which is over and above the compensation as claimed by the complainant in the present complaint, which is not justified. The complainant can not claim double benefit when relief has already been granted by the Authority in the form of interest. Further, it is contended that no documentary evidence has been placed on record by the complainant to support its averments to have suffered harassment,agony, loss etc. Thus provisions of Section 72 of the Act,2016 are not met. Finally, the respondent has prayed that the present complaint filed by the complainant may kindly be dismissed with heavy cost, in the interest of justice.

4. Complaint has also filed replication to reply of the respondent which in brief states that Complaint is maintainable under Section 71 and 72 of

RERA Act,2016 as per judgment of Hon.ble Apex Court in "M/s New Tech Promoters and Developers Pvt. Ltd. v/s State of U.P. & Ors." dated 11.11.2021 wherein it has been held that the Adjudicating Officer is empowered to decide compensation. It is also mentioned that as per law laid down by Hon'ble Apex Court in IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Others(Civil Appeal No. 5785 of 2019 dated 11.01.2021) and M/s EMAAR MGF Land Limited Vs. Aftab Singh (Civil Appeal No. 23512-23513 of 2017 dated 10.12.2018) 'merely having Arbitration clause does not oust the jurisdiction of special statutes'. It has also been replicated that Hon'ble Authority at Panchkula has jurisdiction to adjudicate on projects situated in Bahadurgarh, Haryana and Hon'ble Authority has already allowed the refund alongwith interest vide order dated 11.10.2022. It has also been mentioned that defence regarding territorial jurisdiction has already been taken by respondent in its reply dated 28.11.2019 before Hon'ble Authority in Complaint no. 1556 of 2019, which was not allowed in favour of respondent, hence respondent is estopped from raising this ground/defence at this stage and respondent has also not filed appeal against the order dated 11.10.2022. Finally, prayer is made to grant compensation in the manner prayed for.

5. This Forum has heard Mr. Manmeet Singh, Advocate, for the complainant and Mr. Manjinder Singh, Advocate, for the respondent and has also gone through the record carefully.

6. 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 her unit well in time complete in all respect for more than 13 years, which forced the complainant to go for unwarranted litigation to get the refund along with interest by approaching Hon'ble Authority at Panchkula, which has finally granted on dated 11.10.2022. 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 also argued that the allottee has paid more than basic sale price and also suffered mental and physical agony because of delay in possession, thus, in view of clause 40(a) of the Flat Buyer Agreement, the complainant is entitled to compensation. He has also argued that, at the time of filing IT returns in July 2023 complainant noticed from IT details that the respondent had booked an expenses in its books of account for Financial Year 2022-23 by 2023 and deposited TDS of ₹4,21,448/- on 01.06.2023. He has also argued that as per respondent's calculation sheet the respondent had to deposit ₹5,02,429.90/-, however TDS Certificate of ₹5,02,429.90/- has not been provided or deposited

Phalit
19/8/2025

till date, for which the complainant is to be compensated and also for having gone for the purchase of another unit by taking loan, when promised one was not allotted. Finally, he has prayed to grant the compensation in the manner prayed in the complaint.

7 On the other hand, learned counsel for the respondent had argued that the complainant can not claim compensation when relief of refund along with interest has already been granted by the Authority and even paid in execution with interest. He has further argued that there has not been any intentional delay on the part of the respondent to complete the project which got delayed because of the circumstances beyond the reach of the respondent. He has also argued that since the project was launched prior to inception of Act, 2016, provisions of Act, 2016 shall not apply in this case. He also argued that the complaint is barred by limitation, hence, it be dismissed. He has also argued that the complainant can't take benefit of clause 40(a) of Flat Buyer Agreement, as there has been no willful delay on the part of promoter to complete the project. He has also argued that the complainant is bound by the contents of clause 62 and 63 of the BBA, in view of the law laid down in Secretary, Bhubaneswar Development Authority Vs. Susanta Kumar Mishra [V(2009) SLT.242]; PUDA (Chief Administrator) and Another Vs. Mrs. Shabnam Virk [II(2006)CPJ 1(SC)]; Bharati Knitting Company Vs. DHL Worldwide Express Courier Division of Airfreight Ltd. [II (1996) CPJ 25(SC)], thus present

Phalit
19/8/2025

complaint as such is not maintainable. Learned counsel for respondent has argued that refund amount alongwith interest has been paid to complainant and TDS has been deducted by respondent as per procedure to claim which the complainant has a right to claim from the concerned department and further that since the matter regarding the amount fully paid or not is still pending adjudication in the execution complaint no. 291 of 2023, this Forum cannot decide on the same for granting compensation. He has also argued that the purchase of another unit or shifting to another city for children studies are not the grounds to be considered for compensation as the acts complaint did for its own benefits. Finally, he has prayed to dismiss the complaint.

8. With due regards to the rival contentions and facts on record, this Forum possess following questions to be answered to decide the lis ;

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

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

(c) Whether the RERA Act, 2016, is retrospective or retroactive in its operation?

Phalit
19/8/2025

(d) Whether "Arbitration Clause" in the Builder Buyer Agreement could debar the jurisdiction of a quasi-judicial Forum to entertain the issue covered under Section 31 of RE(RD) Act, 2016 and under Section 71 of the Act, 2016?

(e) Whether through Builder Buyer Agreement, the builder as well as the allottee could confer jurisdiction on a Court, which otherwise it does not have in case of immovable property?

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

(g) 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?

(h) Whether complainant is entitled to get compensation in the case in hand?

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

<u>9(a)</u> **<u>Whether the law of limitation is applicable in a case covered under RERA Act, 2016 and HRERA Rules 2017 made thereunder?</u>**

The answer to this question is in negative.

Phalit 19/8/2025

The plea for the respondent is that complaint is barred by limitation as project pertain to the year 2012, whereas complaint was filed in the year 2024.

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 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 for compensation out of the purview of Limitation Act, 1963 by making specific mention thereof.

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".

Notwithstanding anything stated above, academically, even if it is accepted that law of limitation applies on quasi-judicial proceedings, though not, still in the case in hand, it would not have an application in this case as the project has not been completed till

Pholit
19/8/2025

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.

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

The answer to this question is in affirmative.

This question has been answered by Hon'ble Apex Court in Civil Appeal no.(s) 6745-6749 of 2021 titled as "M/s New Tech Promoters and Developers Pvt. Ltd. v/s State of U.P. & Ors." on dated 11.11.2021, to the effect that relief of adjudging compensation and interest thereon under Section 12,14,18 and 19, the Adjudicating Officer exclusively has the power to determine, keeping in view the provisions of Section 71 read with Section 72 of the Act. The relevant Para of the judgment is reproduced below;

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the Regulatory Authority and Adjudicating Officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the Regulatory Authority which has the power to examine and determine the

Plaeit
19/8/2025

> *outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the Adjudicating Officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the Adjudicating Officer as prayed that, in our view, may intend to expand the ambit and scope of of the powers and functions of the Adjudicating Officer under Section 71 and that would be against the mandate of the Act 2016."*

Thus, in view of above law laid down by Hon'ble Apex Court, the reliefs provided under Section 31 and then Section 71 of the RERA Act, 2016 read with Rule 29 of Rules, 2017 are independent to each other to be granted by two different Authorities.

In nutshell, the plea of bar of granting compensation or interest is devoid of merit.

(9c) **Whether the RERA Act, 2016 is retrospective or retroactive in its operation?**

This forum observed that the operation of the Act is retroactive in nature. Reference can be made to the case titled "M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc." 2022(1) R.C.R. (Civil) 357, wherein the Hon Apex Court has held as under:-

> *"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result*

Plalit
19/8/2025

is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case."

45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest."

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their

Phalit
19/8/2025

responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

Further, the same legal position was laid down by the Hon"ble Bombay High Court in "Neel Kamal Realtors Suburban Pvt. Ltd. & Anr. Vs. Union of India and others" 2018(1) RCR (Civil) 298 (DB), wherein it was laid down as under: -

"122. We have already discussed that the above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports. As regards Article 19(1)(g) it is settled principles that the right conferred by sub-clause (g) of Article 19 is expressed

> *in general language and if there had been no qualifying provisions like clause (6) the right so con*ferred would have been an absolute one."

Thus, it is clear from the above said law that the provisions of the Act is retroactive in nature and are applicable to an act or transaction in the process of completion. Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the amendment/contract/agreement might have taken place before the Act and the Rules became applicable.

9(d) **Whether "Arbitration Clause" in the Builder Buyer Agreement could debar the jurisdiction of a quasi-judicial Forum to entertain the issue covered under Section 31 of RE(RD) Act, 2016 and under Section 71 of the Act, 2016?**

Learned counsel for the respondent while referring to Clause 62 of the Builder Buyer Agreement, has taken a plea that there being an Arbitration Clause, the complainant has no right to file complaint for compensation as it was required to first go for Arbitration at Delhi, as mutually agreed.

On the other hand, learned counsel for the complainant while referring to Section 89 of the Act, 2016, has claimed that the Act, 2016 has overriding effect, hence, Arbitration Clause is not binding upon the allottee/complainant.

Before commenting on the rival contentions, it is appropriate to reproduce relevant clause '62' of the Builder Buyer Agreement, which read as under:

> *"62. All or any disputes arising out of or touching upon or in relation to the terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996 and/or any statutory amendments/modifications thereof for the time being in force. The arbitration proceedings shall be held at an appropriate location in Delhi/New Delhi."*

Having the contents of the clause 62 in mind, prima facie it appears that the complainant has agreed to go for arbitration at Delhi, in case of any dispute or issue with respondent. But, legal position in such like cases is different and reasoning for the same is provided in Section 79, 88 and 89 of the Act, 2016, which for ready reference are reproduced below;

> ***Section 79. Bar of Jurisdiction -*** *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*
>
> ***Section 88. Application of other laws not barred -*** *The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.*
>
> ***Section89. Act to have overriding effect -*** *The provisions of this Act shall have effect, notwithstanding anything*

> *inconsistent therewith contained in any other law for the time being in force.*

The co-joint reading of Section 79, 88 and 89 of the Act, 2016, leaves no manner of doubt that despite there being "arbitration clause", the remedy available to the complainant under the Act, 2016, still sub-consist as it is in addition to the remedy available before in any other Forums.

In nutshell, there being an "arbitration clause" in Builder Buyer Agreement, would ipso facto not debar the complainant to claim relief under Sections 31 and 71 of the Act, 2016, as it is an additional remedy available.

In nutshell, the answer to the above question is in negative.

9(e) **Whether through Builder Buyer Agreement, the builder as well as the allottee could confer jurisdiction on a Court, which otherwise it does not have in case of immovable property?**

In the case in hand, the respondent while relying upon the contents of clause 63 of the Builder Buyer Agreement, reproduced below, has taken the plea that as per the agreement signed by both the parties, it is only the Courts at Bahadurgarh or at Delhi having jurisdiction to entertain any dispute between the parties, thus barring the jurisdiction of HRERA at Panchkula to entertain this matter of compensation.

> *"63. Subject to the Arbitration as referred above, the Courts at Bahadurgarh and Delhi shall have jurisdiction in all the matters arising out of/or touching upon and/or in connection with this Agreement."*

This Forum find no merit in the arguments so advanced for respondent because as per settled proposition of law, for a suit related to immovable property, the jurisdiction of the Court would be at the place where the property or the part of it is situated. Otherwise in other cases, as per Section 20 of the CPC, the suit may be instituted where the defendant resides or cause of action arose subject to the provisions of the Sections 15 to 19 of CPC. To hold so, this forum has taken strength from the law laid by the Hon'ble apex Court in Harshad Chiman Lal Modi v/s DLF Universal Ltd. & Anr. (2005) 7 SCC 791. In this quoted case, Hon'ble apex Court while interpreting the issue of competence and jurisdiction of the Civil Court, has observed as thus;

> *"15. Now, Sections 15 to 20 of the Code contain detailed provisions relating to jurisdiction of courts. They regulate forum for institution of suits. They deal with the matters of domestic concern and provide for the multitude of suits which can be brought in different courts. Section 15 requires the suitor to institute a suit in the court of the lowest grade competent to try it. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. The proviso to Section 16 declares that where the relief sought can be obtained through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the*

jurisdiction of different courts. Section 18 applies where local limits of jurisdiction of different courts are uncertain. Section 19 is a special provision and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19.

16. Section 16 thus recognizes a well-established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. The proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on a well-known maxim "equity acts in personam", recognised by the Chancery Courts in England. The Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that the courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam i.e. by arrest of the defendant or by attachment of his property.

17. In Ewing v. Ewing [(1883) 9 AC 34 : 53 LJ Ch 435 (HL)] Lord Selborne observed: "The Courts of Equity in England are, and always have been, courts of conscience operating in personam and not in rem; and in the exercise of this personal jurisdiction they have always been accustomed to compel the performance of contracts in trusts as to subjects which were not either locally or ratione domicilli within their jurisdiction. They have done so, as to lands, in Scotland, in Ireland, in the colonies, in foreign countries."

18. The proviso is thus an exception to the main part of the section which in our considered opinion, cannot be interpreted or construed to enlarge the scope of the principal provision. It

Pralit
19/8/2025

> *would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant."*

The above mentioned finding have further been followed recently in case titled as Alpha Residents Welfare Association v/s Alpha Corporation Development Pvt. Limited & Ors., Civil Appeal no. ---- of 2024, arising out of SLP (C) no. 10246 of 2019, dated 12.12.2024 by Hon'ble apex Court.

Reverting back to the facts and circumstances of the case in hand and having the above law discussed in mind on the subject, it is safe to conclude that though through Clause 63 of the agreement, executed and signed by the parties with their consent, the jurisdiction is conferred on the Court at Delhi and Bahadurgarh but this clause would be overriding jurisdiction conferred statutorily to the HRERA, at Panchkula vide notification No.1/92/2017-1TCP dated 25.01.2018, who may try and pass an order with respect to the property in question situated at Bahadurgarh. Otherwise also, the present issue of compensation is duly covered under the RERA Act, 2016,thus it cannot be entertained and disposed of by a Civil Court as jurisdiction of Civil Court is barred under Section 79 of the Act, 2016. On the contrary, since the property is part of a project at Bahadurgarh which is part of territorial jurisdiction of HRERA at Panchkula as per notification No.1/92/2017-1TCP dated 25.01.2018, the HRERA Authority at Panchkula or the Adjudicating Officer there, as the case may be, only have exclusive jurisdiction to deal with the dispute under

consideration without getting adversely affected from the contents of the clauses 62 and 63 of the Builder Buyer Agreement relied for the respondent to challenge the jurisdiction.

In nutshell, the answer to the above question is in negative.

9(f) 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

Prabhit 19/8/2025

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:-

"*Thus, the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public*

Plalit 19/8/2025

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;

"*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*

Phalit 19/8/2025

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."

9(g) **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, the Forum can adopt any procedure suitable in a particular case to decide the availability of factors on record entitling or disentitling an allottee to get

compensation which is the reason even under Rule 29 of the Rules 2017, it is not compulsory to lead evidence.

9(h) **Whether complainant is entitled to get compensation in the case in hand?**

Before deliberating on this aspect, it is necessary to deliberate upon admitted facts to be considered to decide the lis;

<table>
<tr><td>(i)</td><td>Project pertains to the year</td><td>2012</td></tr>
<tr><td>(ii)</td><td>Proposed Handing over of possession</td><td>As per clause 40(a) of flat buyer agreement dated 30.08.2014, 18 months plus 6 months grace period from the date of FBA (September 2016)</td></tr>
<tr><td>(iii)</td><td>Basic sale price</td><td>₹46,40,000/-</td></tr>
<tr><td>(iv)</td><td>Total amount paid</td><td>₹55,86,782.26/-</td></tr>
<tr><td>(v)</td><td>Period of payments</td><td>
<table>
<tr><td>S. No</td><td>Date of payment</td><td>Amount in (₹)</td></tr>
<tr><td>1.</td><td>22.12.2012</td><td>₹4,50,000/-</td></tr>
<tr><td>2.</td><td>15.03.2013</td><td>₹2,31,631.08/-</td></tr>
<tr><td>3.</td><td>11.06.2013</td><td>₹7,71,881/-</td></tr>
<tr><td>4.</td><td>21.02.2014</td><td>₹7,44,307/-</td></tr>
<tr><td>5.</td><td>16.12.2014</td><td>₹7,14,884/-</td></tr>
<tr><td>6.</td><td>07.01.2015</td><td>₹1,013/-</td></tr>
<tr><td>7.</td><td>04.02.2015</td><td>₹28,409/-</td></tr>
</table>
</td></tr>
</table>

		8.	20.10.2015	₹5,68,556/-
		9.	19.10.2015	₹5,462/-
		10.	05.03.2016	₹5,74,965.42/-
		11.	02.03.2016	₹5,510/-
		12.	15.04.2016	₹4,10,613/-
		13.	15.09.2016	₹2,56,661/-
		14.	12.12.2016	₹6,522/-
		15.	27.01.2017	₹2,56,660.33/-
		16.	21.06.2017	₹2,59,228.43/-
		17.	19.06.2017	₹2,618/-
		18.	25.09.2017	₹2,979/-
		19.	28.09.2017	₹2,94,882/-
			Total	₹55,86,782.26/-
(vi)	Occupancy certificate Whether received till Filing of complaint	NO		
(vii)	Date of filing of complaint under Section 31 before Hon'ble Authority	02.07.2019		
(viii)	Date of order of Authority	11.10.2022		
(ix)	Date of filing of complaint under	11.01.2024		

<table>
<tr><td></td><td>Section 12, 18 & 19 of RERA Act, 2016</td><td></td></tr>
<tr><td>(x)</td><td>Date when total refund made, if made</td><td>Payment made in the following manner
<table>
<tr><th>Sr. No.</th><th>Date</th><th>Amount</th></tr>
<tr><td>1.</td><td>30.03.2024</td><td>₹93,28,313/-</td></tr>
<tr><td>2.</td><td>02.04.2024</td><td>₹7,31,570/-</td></tr>
</table>
</td></tr>
</table>

It is a matter of record that the project advertised in the year 2012, did not get completion certificate till filing of the present complaint on dated 11.01.2024. Admittedly, the basic price of the plot was ₹46,40,000/- whereas the complainant paid ₹55,86,782.26/- till 25.09.2017.

It is also admitted on record that the complainant did not get possession of the unit allotted. There can also be no denial that allottees of the unit generally spend their lifetime earning and they are not at equal footings with that of the promoter, who is in a dominating position. The position of the allottees becomes more pitiable and sympathetic when he or she has to wait for years together to get the possession of a unit allotted despite having played its bid. But, on the contrary, it is the promoter who enjoys

the amount paid by allottees during this period and keep on going to delay the completion of the project by not meeting legal requirements on its part to get the final completion from competent Authority about fulfilling which such promoter knew since the time of advertisement of the launch of the project. Further, the conduct of the promoter to enjoy the amount of allottees paid is nothing but misappropriation of the amount legally paid as the promoter did not hand over possession, which the promoter was legally bound to do. It is not out of place to mention here that if the promoter/respondent had a right to receive the money from the allottee to hand over the possession in time, it is bound to face the consequences for not handing over the possession in time. Here, it is worth to quote a Latin maxim "ubi jus ibi remedium," which means "where law has established a right, there should be a corresponding remedy for its breach." If this be the legal and factual position, the promoter is not only bound to refund the amount but also to compensate the allottee for disappropriate gain or unfair advantage on the part of the promoter within the meaning of Section 72(a) of the Act 2016, of the amount paid. It is not out of place to mention here that as per record, the allottee had paid ₹55,86,782.26/-. However, it is not in dispute that the respondent neither completed the project, nor

Phalit
19/8/2025

handed over possession till allottee having been forced to approach Hon'ble HRERA Authority, Panchkula, to get refund along with interest after having indulged in unwarranted forced litigation by the promoter at the cost of allottees personal expenses, which it has not got till date. During this period, obviously, the allottee had to suffer inconvenience, harassment, mental pain and agony during the said period bringing its case within the ambit of Section 72(d) of the Act, 2016 as such feelings are to be felt/sensed by this Forum without seeking any proof thereof.

In view of the above, since, the promoters had been using the amount of ₹55,86,782.26/-, for the last more than 12 years, for the sake of repetition it is held that it can definitely be termed as "disappropriate gain" or "unfair advantage", as enumerated in Section 72(a) of the Act. In other words, it had been loss to allottees as a result of default on the part of the promoter which continues till date. Thus, it would be in the interest of justice, if the compensation is ordered to be paid to the complainant after taking into consideration, the default of respondent for the period starting from 2012 till date and also misutilization of the amount paid to the respondent by the

complainant. In fact, the facts and circumstances of this case itself are proof of agony undergone by the complainant for so long, hence, there is no need to look for formal proof of the same. Further, there can't be denial to the effect that the allottees must have run around to ask the promoter to hand over the possession and also that if the unit provided in time, there was no reason for the complainant to file the complaints/execution petition by engaging counsel(s) at different stages, and also that because of escalation of prices of unit in last 13 years, the complainant may not be in a position to purchase the same unit now, which amounts to loss of opportunity to the allottee. These factors also enable an allottee to get compensation.

However, the claim of the complainant that purchasing of new unit against loan and shifting to a better city for children's studies be considered to decide compensation, do not appear to be justified because the complainant did it for its own betterment and not because of the violations on the part of respondent. Similarly, the issue of TDS already being under adjudication before Executing forum, the same can not be taken note of here for compensation.

In view of the forgoing discussions, the complainant is held entitled for compensation.

10. Once, the complainant has been held entitled to get compensation, now it is to be decided how much compensation is to be granted, on which amount, what would be rate of interest and how long the promoter would be liable to pay the interest?

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

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

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

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

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

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

Phalit
19/8/2025

such refund alongwith interest such rate as may be prescribed has been ordered by the Authority.

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

Section 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

Phalit
19/8/2025

for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

Section 2(za) - *"interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
Explanation.—For the purpose of this clause—
(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Perusal of provisions of Section 18(1)(b) make it clear that in case of refund or compensation, the grant of interest may be at such rate as prescribed in this behalf in the Act, 2016. It is not out of place to mention here that Section 18(1)(b), not only deals with cases of refund where allottee withdraws from project but also the cases of compensation as is evident from the heading given to this section as well as the fact that it has mention of refund and rate of interest thereon including cases of compensation. Further, perusal of provisions of Section 18(1)(b) of the Act, 2016, indicate that the allottee shall be entitled to get refund or compensation, as the case may be, with interest at the rate prescribed in the Act, 2016.

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

 Phalit 19/8/2025

Further, Rule 16 of the Rules, 2017, provides for the time limit to refund money and interest thereon and that interest is to be as per the rate prescribed in Rule 15 in the matters covered under Proviso to section 12, Section 18 and Section 19 (4) and 19(7) of the Act, 2016. It further deals with two situations, one, where the allottee has opted for a refund rather than a unit in a project and second case where he has gone for the project but there is delay in delivery. Hence, it cannot be said that the Rule 16 deals with only one situation out of two mentioned in sub rule (1) and sub rule (2) respectively. It is not out of place to mention here that this Rule 16 deals with cases related to Sections 18 & 19 of the Act, 2016.

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

Phalit
19/8/2025

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

RELIEF

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

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

Amount Paid by complainant (in ₹) and date	Amount paid by respondent(in ₹) and date	Time period	Rate	Compensation Amount (in ₹)
₹4,50,000/- paid on 22.12.2012	₹93,28,313/- paid on 30.03.2024	22.12.2012-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹4,50,000/-	10.85 %	₹ 5,50,719/-
₹2,31,631.08 /- paid on 15.03.2013		15.03.2013-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹2,31,631.08/-	10.85 %	₹ 2,77,760/-
₹7,71,881/-		11.06.2013-30.03.2024 (₹93,28,313/- paid on	10.85 %	₹ 9,05,408/-

paid on 11.06.2013	30.03.2024) on ₹7,71,881/-		
₹7,44,307/- paid on 21.02.2014	21.02.2014-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹7,44,307/-	10.85 %	₹ 8,16,624/-
₹7,14,884/- paid on 16.12.2014	16.12.2014-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹7,14,884/-	10.85 %	₹ 7,21,035/-
₹1,013/- paid on 07.01.2015	07.01.2015-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹1,013/-	10.85 %	₹ 1,015/-
₹28,409/- paid on 04.02.2015	04.02.15-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹28,409/-	10.85 %	₹ 28,231/-
₹5,68,556/- paid on 20.10.2015	20.10.2015-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹5,68,556/-	10.85 %	₹ 5,21,393/-
₹5,462/- paid on 19.10.2015	19.10.2015-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹5,462/-	10.85 %	₹ 5,011/-
₹5,74,965.42 /- paid on 05.03.2016	05.03.2016-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹5,74,965.42/-	10.85 %	₹ 5,03,856/-
₹5,510/- paid on 02.03.2016	02.03.2016-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹5,510/-	10.85 %	₹ 4,833/-
₹4,10,613/- paid on 15.04.2016	15.04.2016-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹4,10,613/-	10.85 %	₹ 3,54,825/-
₹2,56,661/- paid on 15.09.2016	15.09.2016-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹2,56,661/-	10.85 %	₹ 2,10,117/-

₹6,522/- paid on 12.12.2016		12.12.2016-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹6,522/-	10.85 %	₹ 5,169/-
₹2,56,660.33 /- paid on 27.01.2017		27.01.2017-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹2,56,660.33/-	10.85 %	₹ 1,99,893/-
₹2,59,228.43 /- paid on 21.06.2017		21.06.2017-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹2,59,228.43/-	10.85 %	₹ 1,90,719/-
₹2,618/- paid on 19.06.2017		19.06.2017-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹2,6187/-	10.85 %	₹ 1,928/-
₹2,979/- paid on 25.09.2017		25.09.2017-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹2,979/-	10.85 %	₹ 2,107/-
₹2,94,882/- paid on 28.09.2017		28.09.2017-30.03.2024 (₹93,28,313/- paid on 30.03.2024) on ₹2,94,882/-	10.85 %	₹ 2,08,272/-
Total- ₹55,86,782.26/-		Total- ₹55,86,782.26/-		₹ 55,08,935/-

12. Since, the complainant has been forced to file the complaint to get his legal right of compensation, the complainant is granted ₹30,000/- as litigation charges.

The total compensation comes to ₹ 55,08,935/- + ₹30,000/- = ₹55,38,935 /- (Rupees Fifty Five lakhs thirty eight thousand nine hundred and thirty five only). Undoubtedly, the amount of compensation, if calculated with the relief granted by the Hon'ble Authority, it appears that the allottee has got

much more than she spent but it is justified because the property which she had applied in the year 2012, may be costing now much more than the amount which the allottee is ordered to get under the Act, 2016.

13. In these terms, the present complaint is allowed in the manner discussed above. The respondent is directed to pay an amount of ₹ 55,08,935/- + ₹30,000/- = ₹55,38,935 /- (Rupees Fifty Five lakhs thirty eight thousand nine hundred and thirty five only) within 90 days to the complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within the next 45 days.

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

14. It is also directed that the amount so ordered to be paid with interest till realisation of total amount, since is in the form of compensation, the respondent will have no authority to deduct Tax at source (TDS) in view of the law laid down in All India Reporter Ltd vs. Kanchan P Dhuri, 8/1422-WPL4804-2020, All India Reporter Ltd. And Anr. vs Ramchandra Dhondo Datar (AIR 1961 BOM 292), M/s. Beacon Projects Pvt. Ltd versus The Commissioner of Income Tax (ITA No. 258 of 2014) decided by Hon'ble Kerala High Court on 23.06.2015, Parsvnath Developers Ltd. vs. Rajesh Kumar

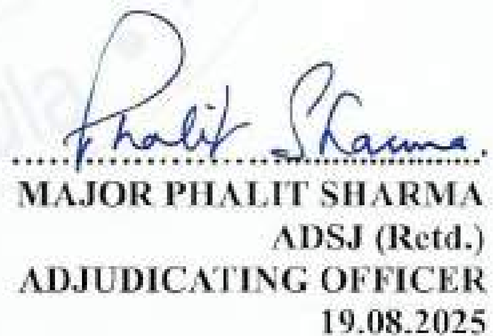
 Phalit 19/8/2025

Aggarwal (Civil Appeal Nos. 11248-11249 of 2016, decided on 11.09.2017, Sainath Rajkumar Sarode and 8 Ors. vs. State of Maharastra and 6 Ors (Writ petition (L) No. 4804 of 2020 decided on 18.08.2021, Madhav Joshi vs Vatika Limited by NCDRC in execution application no. 159 of 2022 in CC/277/2019 decided on 26.04.2024 and Civil Appeal nos. 822-823 of 2024 titled as M/S BPTP LIMITED & ORS. vs. Terra Flat Buyers Association decided by Hon'ble Apex Court on 28.11.2024.

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

MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
19.08.2025

Note: This judgement contains 43 pages and all the pages have been checked and signed by me.



Indu Yadav
Law Associate

MAJOR PHALIT SHARMA
ADSJ (Retd.)
ADJUDICATING OFFICER
19.08.2025