



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER, HRERA, PANCHKULA

Complaint No. : 1615 of 2024

Date of Institution: 25.10.2024

Date of Decision: 21.08.2025

Mr. Ankur Dhull son of Mr. Satpal Dhull, R/o H. No.38, Sector-6, Karnal, Haryana-121006.

...COMPLAINANT

Versus

M/s TDI Infrastructure Ltd., office at UG Floor Vandana Building 11 Tolstoy Marg Connaught Place New Delhi 110001

....RESPONDENT

Hearing: 5th

Present: - Mr. Neeraj Gupta, Advocate, for the complainant through VC.

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

ORDER

This order of mine will dispose of a complaint filed by the complainant namely 'Mr. Ankur Dhull against M/s TDI Infrastructure Limited, seeking compensation and the interest from this Forum, in accordance with the

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provisions of Rule 29 of the HRERA Rules, 2017 (hereinafter to be referred as the Rules 2017), read with Sections 71 and 72 of the RERA Act, 2016 (hereinafter to be referred as the Act, 2016).

2. Brief facts of the complaint are that the complainant after going through the advertisement had purchased a shop in the project "Park Street", commercial complex, Kamaspur, Sonipat, Haryana from the original allottee i.e. Mr.Chander Anand, on the original terms and conditions.

On dated 17.05.2006, Mr. Chander Anand, booked Shop no. GF-166 by making payment of ₹4,50,000/- to respondent. Thereafter, Mr. Ankur Dhull purchased the unit from Mr. Chander Anand which was endorsed in favour of complainant Mr. Ankur Dhull, by the respondent on dated 07.07.2007. On dated 18.07.2007, complainant paid ₹1,47,951/- to respondent. On dated 01.09.2011, Builder buyer agreement for Shop No. GF-166 was signed between complainant and respondent and total price of shop was fixed to be ₹21,43,172/-. As per Article 4 clause 1 of the Builder Buyer Agreement, the possession was to be handed within 24 months from date of signing of agreement which is dated 01.09.2013. The complainant has paid amount of ₹21,94,538/- as per account statement dated 03.08.2015 issued by respondent. That, respondent kept on demanding amounts from complainant without taking interest in constructions. It has also been mentioned that project is incomplete and Occupation & Completion Certificate has not been obtained till date. In

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complaint no. 2606 of 2019, Authority has allowed refund to the complainant vide order dated 03.03.2022.

It is also mentioned that due to default of respondent the construction at site remained slow and respondent failed to deliver possession on time and due deficiency of service on part of respondent, the complainant have been denied of the opportunity to utilize their funds for the past 12 years .The complainant has suffered monetary loss on the account of depreciation in money values and escalation in cost of construction. The complainant also filed multiple complaints before Authority i.e. seeking refund with interest; execution of order passed by Authority and seeking compensation before Adjudicating Officer. Finally, complainant have prayed to be granted litigation charges of ₹2,10,000/- for filing three complaints before the Authority and Adjudicating officer, ₹15,00,000/- for mental agony, harassment, stress causing irreversible mental issues and health deterioration and anxiety for a period of more than 12 years, or in alternate, award 13.4% interest as compensation on deposited amount, ₹ 50,00,000/- for loss of opportunity to the complainant due to callous attitude of respondent as similar commercial properties in vicinity have grown multifold in rates and rates have inflated in property market, compensation of ₹1,00,000/- for repetitive nature of default and any other relief which this Forum deem appropriate. With the complaint, some annexures have also been attached i.e., Builder Buyer Agreement, customer ledger, receipts of legal

expenses of advocate, Special power of attorney and order of refund passed by the Authority.

3. On receipt of notice of the complaint, respondent filed reply, which in brief states that complaint is not maintainable being not in consonance with provisions of Section 72 of the Act, 2016, as there is no proof led by the complainant as to how they could prove the factors required to be proved within the Section 72 of the Act, 2016; That, 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 complainant had opted for joining the project only after having come to know the entire details about the project. It has also mentioned that respondent has commenced the project before existence of RERA Act, 2016 therefore RERA Act cannot be applied retrospectively and the complaint is not maintainable and falls outside purview of provisions of RERA. Complainant is an investor 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 complainant has 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 handing over of possession as per Article 4 Clause 1 is tentative and subject to force majeure. That, complainant is a subsequent buyer who purchased the plot in question in the year 2007 from original allottee having been aware of the fact that the respondent had failed to deliver the possession in stipulated time; It has also been mentioned that complainant has defaulted in making timely payments for which demand letter were issued. Finally, prayer is made to dismiss the complaint being not maintainable.

4. This Forum has heard Mr. Neeraj Gupta, Advocate, for the complainant 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 complainant has argued that in the instant case, complainant is entitled to get compensation and the interest thereon, because despite having played its part of duty as an allottees, the complainant had met all the requirements including payment of amount for the unit booked but it is the respondent who made to wait the complainant to get his unit well in time complete in all respect for more than 12 years, which forced the complainant 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 complainant had paid more than basic sale consideration, thus, not the case of distress sale as

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there was no intention to purchase the plot at low price from the original allottee. He has argued that original allottee has only paid one instalment of ₹4,50,000/- on dated 17.05.2006 to respondent and the BBA was executed with complainant on 01.09.2011, so the complainant is the main allottee entitled for compensation. He has further argued that the complainant has been played fraud upon by the respondent as it despite having used money deposited by the allottee, did not complete the project and enjoyed the said amount for its own cause which amounts to misappropriation of complainant's money on the part of respondent. He has further argued that after having purchased the unit from first allottee, the complainant has 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 allottee is entitled to all reliefs under RERA Act, 2016 and HRERA Rules, 2017, which an original allottee is entitled to. He has also argued second allottee has also suffered mental and physical agony because of delay in possession, which was never delivered as project finally failed, thus, the complainant is 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

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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 2006, whereas present complaint to seek compensation was filed on dated 25.10.2024 much after the period of limitation. He has further argued that in the case in hand, the allotment letter was issued on dated 01.09.2011 i.e. more than 4 years before the RERA Act, 2016 coming into force, so provisions of RERA Act are not applicable in the present case, meaning thereby the Adjudicating Officer has no authority to entertain such complaint what to talk of grant of compensation. He has further argued that there has not been any intentional delay on the part of the respondent to complete the project which factually got delayed because of the circumstances beyond the reach of the respondent as project was scrapped due to statutory issues. He has further argued that to get a relief under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, the complainant is required to prove the ingredients of Section 72 of the Act, 2016, which in the case in hand do not stand proved as no cogent evidence to meet requirements of Section 72 of the Act, has been led. He has also argued that in the instant case, since the complainant 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 is not entitled for any compensation. Learned counsel for respondent has further argued that it is a case of subsequent allottee for compensation and it is also a case of the subsequent allottee taking benefit of distress sale of the unit by original allottee, because if everything was

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okay to the satisfaction of the original allottee, there was no occasion for the original allottee to have left the project in between. In support of this argument, he has referred to the order of this Forum passed in "Kanta Malhotra versus Parsynath Developers Ltd." in Complaint No. 918 of 2018 decided on 13.01.2025; "Mr. Vinod Kumar versus M/s BPTP Limited" in Complaint no.1066 of 2023 decided on 12.05.2025 and "Ms. Nidhi Gupta versus TDI Infrastructure Ltd." in Complaint no. 989 of 2023 decided on 05.08.2025 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.

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 HRERA Rules 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 2006 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 HRERA Rules 2017 made thereunder?

The answer to this question is in negative.

The plea for the respondent is that complaint is barred by limitation as project pertain to the year 2006, 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 RE(RD) Act, 2016, brings the complaint for compensation out of the purview of Limitation Act, 1963 by making specific mention thereof. Similarly, Section 18(3)

of the Act, 2016 does not provide limit to apply for compensation. It means, there is no limitation provided to apply for compensation.

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 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 2006

is not maintainable under the RERA Act, 2016 read with Rules 2017, if filed on dated 25.10.2024?

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 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 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;

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

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

(iii) What is to be considered by the Adjudicating Officer, while deciding the quantum of compensation, as the term "compensation" has not been defined under RERA Act, 2016, is answered in Section 71 of the Act, 2016, as per which " he may direct to pay such compensation of interest, as the case may any be, as he thinks fit in accordance with the provisions of any of those sections,"

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

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

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

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

- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

(iv) For determination of the entitlement of complainant for compensation due to default of the builder/developer Hon'ble Apex Court in M/s Fortune Infrastructure (now known as M/s. Hicon Infrastructure) & Anr. Vs. Trevor D'Lima and Others, Civil Appeal No.(s) 3533-3534 of 2017 decided on 12.03.2018, has held as under:-

"Thus, the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss.

Loss could be determined on the basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises, then on the basis of rent actually paid by him. Along with recompensing

the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical.”

In the aforesaid case, Hon'ble Apex Court laid down the principle for entitlement of the compensation due to loss or injury and its scope in cases where the promoter of real estate failed to complete the project and defaulted in handing over its possession. Similarly, Hon'ble Three Judge Bench of the Hon'ble Apex Court in **Charan Singh Vs. Healing Touch Hospital & Ors. (2000) 7 SCC 668**, had earlier held regarding assessment of damages in a case under Consumer Protection Act, in the following manner;

“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.”

It is apt to note here that if proviso to Section 18(1) is read with Section 72 of the Act, 2016, then it becomes clear that the intention of the legislature was to provide Compensation only to those Allottees who exit the

project and also regarding defective title and breach of agreement to sale and obligations imposed on, by the Act and Rules, but not to those who wishes to stay in the project, for them beside the other provision of compensation in term of defective title and breach of agreement to sale as well as obligations imposed on by the Act and Rules is applicable, but in case of delay in handing over of possession ,the Allottee is entitled for only INTEREST at a prescribed rate and not "compensation" as the Suffix "including compensation" has not been provided by the Act. In nutshell, the Adjudicating officer, while deciding the petition for compensation, is required to keep in mind that, right to get the compensation has been restricted to only in respect of the allottee who withdraws from the project, if he meets requirement of Sections 71 and 72 of Act,2016 because provision of Section 18(1)(b) of the Act 2016, specifically bars the right of an allottee to get compensation who does not withdraw from the project as this provision does not have mention of the word "Compensation" as is otherwise mentioned above in respect of the allottee who withdraws from the project.

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?

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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 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(e)

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

After having discussed law to be taken note of to decide compensation by the Adjudicating Officer, now it is to be seen whether, in the present case, wherein the complainant, is second allottee as had got transferred the plot from the original purchaser namely Sh.Chander Anand, is entitled to get compensation in the manner prayed in its complaint?

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

i)	Project pertains to the year	2006												
ii)	Date of joining of project by original allottee i.e. Mr. Chander Anand	17.05.2006												
ii)	Proposed date for handing over of Possession	24 months from the date of execution of BBA i.e. 01.09.2013												
iii)	Basic sale price	₹21,43,172/-												
iv)	Endorsement by original allottee i.e. Mr. Chander Anand in the name of the complainant i.e Mr. Ankur Dhull, second allottee	07.07.2007												
v)	BBA executed with complainant	01.09.2011												
vi)	Total amount paid	₹21,94,538/-												
vii)	Dates and amount of payment made by original allottee i.e. Mr. Chander Anand	<table> <tr> <th>S.N o.</th><th>Date of payment</th><th>Amount in (₹)</th></tr> <tr> <td>1.</td><td>17.05.2006</td><td>₹4,50,000/-</td></tr> <tr> <td></td><td>Total</td><td>₹4,50,000/-</td></tr> </table>	S.N o.	Date of payment	Amount in (₹)	1.	17.05.2006	₹4,50,000/-		Total	₹4,50,000/-			
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viii)	Dates and amount of payment made by complainant subsequent allottee.	<table> <tr> <th>S.N o.</th><th>Date of payment</th><th>Amount in (₹)</th></tr> <tr> <td>1.</td><td>06.04.2007</td><td>₹2,25,000/-</td></tr> <tr> <td>2.</td><td>18.07.2007</td><td>₹1,47,951/-</td></tr> <tr> <td>3.</td><td>06.09.2011</td><td>₹5,48,635/-</td></tr> </table>	S.N o.	Date of payment	Amount in (₹)	1.	06.04.2007	₹2,25,000/-	2.	18.07.2007	₹1,47,951/-	3.	06.09.2011	₹5,48,635/-
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		<table> <tr> <td>4</td><td>06.05.2014</td><td>₹2,82,793/-</td></tr> <tr> <td>5.</td><td>24.07.2014</td><td>₹2,82,793/-</td></tr> <tr> <td>6.</td><td>15.01.2015</td><td>₹2,57,366/-</td></tr> <tr> <td></td><td>Total</td><td>₹17,44,538/-</td></tr> </table>	4	06.05.2014	₹2,82,793/-	5.	24.07.2014	₹2,82,793/-	6.	15.01.2015	₹2,57,366/-		Total	₹17,44,538/-						
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6.	15.01.2015	₹2,57,366/-																		
	Total	₹17,44,538/-																		
ix)	Occupancy Certificate whether received till filing of complaint	NO																		
x)	Date of filing of complaint under Section 31 before Hon'ble Authority	15.10.2019																		
xi)	Date of order of Hon'ble Authority	03.03.2022																		
xii)	Date of filing complaint under Sections 12,18 & 19 of RERA Act, 2019	25.10.2024																		
xiii)	Date when total refund made	<table> <tr> <th>Sr. No.</th><th>Date</th><th>Amount in (₹)</th></tr> <tr> <td>1.</td><td>23.05.2024</td><td>₹5,00,000/-</td></tr> <tr> <td>2.</td><td>10.09.2024</td><td>₹5,00,000/-</td></tr> <tr> <td>3.</td><td>14.11.2024</td><td>₹5,00,000/-</td></tr> <tr> <td>4.</td><td>06.02.2025</td><td>₹5,00,000/-</td></tr> <tr> <td></td><td>Total</td><td>₹20,00,000/-</td></tr> </table>	Sr. No.	Date	Amount in (₹)	1.	23.05.2024	₹5,00,000/-	2.	10.09.2024	₹5,00,000/-	3.	14.11.2024	₹5,00,000/-	4.	06.02.2025	₹5,00,000/-		Total	₹20,00,000/-
Sr. No.	Date	Amount in (₹)																		
1.	23.05.2024	₹5,00,000/-																		
2.	10.09.2024	₹5,00,000/-																		
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4.	06.02.2025	₹5,00,000/-																		
	Total	₹20,00,000/-																		

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It is matter of record that the project advertised in the year 2006, did not get completion certificate till filing of the complaint on dated 25.10.2024 and also that the complainant on its part had performed his part of duty by paying more than basic price of the unit. Admittedly, basic price of the unit was ₹21,43,172/- whereas the complainant paid ₹21,94,538/ which includes the payment made by the original allottee.

The above facts, make it clear that when the present complainant purchased or got transferred the unit to his name after endorsing unit on dated 07.07.2007, after making required payments to the original allottee or the promoter, the project was incomplete, which is the reason the Hon'ble Authority has ordered for refund with interest in favour of the complainant vide order dated 03.03.2022, wherein learned counsel for complainant has informed that in execution complaint no. 134 of 2023 amount of ₹20,00,000/- has been received till date by the complainant .

Now, the only thing to be decided is whether or not in the given circumstances, second allottee of the unit who is seeking compensation, could legally be held entitled to get the compensation having the factors mentioned in Section 72 of RERA Act, 2016, in mind?

To answer the question, this Forum hold that despite being an "allottee" within the meaning of Section 2(d) of the RERA Act, 2016, the complainant may be entitled to get the relief of refund or possession along with interest thereon from Hon'ble Authority under Section 31 of the Act, 2016, which he had got, may be with some differences about amount paid alive, but not for compensation because it is the original allottee who actually suffered mental and physical agony due to default of builder but not the subsequent allottee i.e. complainant, who knowing fully well of the consequences of default on the part of the builder in delaying completion of project, still elected to join in by purchasing it, as it may probably be a distress sale on the part of previous allottee because of delay in completion of project. Meaning thereby, the complainant accepted to undergo sufferings of kind, if any, due to ongoing default on the part of builder, thus 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 complainant in this case. Admittedly, such relief has already been provided. But, benefit of law laid down in **M/s Laureate's case** (supra), having due regards to the same, can't be given in case of request for compensation, raised under RERA Act, 2016 and not under Consumer Protection Act, by 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 allottee i.e. complainant, there was no occasion for the present complainant to have suffered any agony w.e.f. the year 2006 onwards and thereafter also no chance to claim harassment on his part as he knew the consequences of joining a project which was already under turmoil and ineffective. Rather, the Principle "Buyer be Aware" would also act against the subsequent allottee in this case. It is also not out of place to mention here that right to get refund or possession with interest and the right to get compensation under RERA Act, 2016, are two different remedies available with an allottee unlike under Consumer Protection Act and both these remedies need specific factors to be considered by the 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 allottee to enable later to claim compensation. Infact, such feeling of suffering cannot be equated with transfer of money from one to another, which is the reason subsequent allottee 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.(a) 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 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;

P. Lalit
21/8/2025

"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".

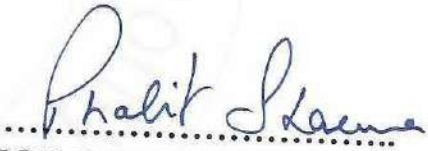
9(b). The other plea of learned counsel for the complainant that the complainant become allottee only on entering into BBA in the year 2011, thus an original allottee. But, this plea has no base because what definition of allottee given in Section 2(d) of the Act, 2016, speaks about is initial allotment or subsequent allotment but not that the person becomes allottee only when BBA is executed. In other words, in this case, original allottee was Sh. Chander Ananad, he would remain the same and the present complainant is to be treated as subsequent allottee within the meaning of Section 2(d) of the Act, 2016. Consequently, not entitled for compensation.

10. Learned counsel for the complainant has not been able to show any law laid down by any Hon'ble Higher Judicial Forum, wherein, in the given


circumstances of the present case filed under Section 71 of the Act, 2016, read with Rule 29 of HRERA Rules, 2017, compensation has been granted to a subsequent allottee.

11. In totality, it is concluded that in this case, the subsequent allottee 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, no question arises to compensate them since the time of the inception of the project in the year 2006.

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
21.08.2025

Note: This order contains 28 pages and all the pages have been checked and signed by me.


MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
21.08.2025

Indu Yadav
(Law Associate)