



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

COMPLAINT NO.692 OF 2024

Brigadier Retd. Vinod Kumar Vadhera and Anr.

....Complainants

VERSUS

GLM Infratech Pvt. Ltd.

....Respondent

Date of Hearing: 10.11.2025

Hearing: 10th

Present: Mr. Akshat Mittal, Adv., for the complainant.
None for the respondent, hence proceeded ex-parte.

ORDER

Today, the case is fixed for compliance of order dated 11.09.2025 passed by this Forum vide which it was made clear that either final settlement is arrived as proposed by respondent, or otherwise arguments on merit to be heard at any costs and such order was passed to curb tendency of respondent to seek adjournments time and again on one excuse or the other.

Case called several times but none has appeared on behalf of the respondent. No further wait is justified more so when vide last order dated 11.09.2025, it was made clear that without entertaining

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any request for adjournment, the arguments on merit shall be heard and such order was passed to curb the tendency of respondent to seek adjournments on one count or the other. Resultantly, the respondent is proceeded ex-parte.

2. Arguments on merits are heard from learned counsel for complainants and in the interest of justice, grounds taken by the respondent in its reply against the claim of compensation of the complainants are also taken note of.

3. Vide order of even date, the complaint of the complainants is allowed in the manner ordered, vide separate detailed order of even date.

4. File be consigned to record room after uploading the order on the website of the Authority.

Indu Yadav
Law Associate


.....
MAJOR PHALIT SHARMA
ADSJ (Retd.)
ADJUDICATING OFFICER
10.11.2025



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. : 692 of 2024
Date of Institution: 15.05.2024
Date of Decision: 10.11.2025

Brigadier (Retd.) Vinod Kumar Vadhera and Anr., resident of House No. 19, Brahmaputra Apartment, Sector-29, Noida, Gautam Budh Nagar (Uttar Pradesh).

...COMPLAINANTS

Versus

Global Land Masters Infratech Private Limited Erstwhile Bhoomi Infrastructure, having its office at House no. 1411, Sector-21, Panchkula-134112.

....RESPONDENT

Hearing: 10th

Present: - Mr. Akshat Mittal, Adv., for the complainant.
None for the respondent, hence proceeded ex parte.

ORDER:

This order of mine will dispose of a complaint filed by the complainants namely 'Brigadier (Retd.) Vinod Kumar Vadhera and another' against Global Land Masters Infratech Private Limited Erstwhile Bhoomi Infrastructure, seeking compensation and the interest from this Forum, in accordance with the provisions of Rule 29 of the HREIRA, Rules, 2017

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(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).

2. Brief facts of the complaint are that complainants were approached by the Director of the respondent company, Lt. Col. (Retd.) Surender Singh Deswal and portrayed to the complainants that project was launched in 2009 through his firm M/s Bhoomi Infrastructure Company in Sector-30, Panchkula and it will be lucrative investment with high returns and the possession will be offered within 3 years. The complainants fell prey to inducement of Lt. Col.(Retd.) Surender Singh Deswal and booked a residential flat in the project- "Amazon- The Defence County", District Panchkula, of the respondent by making payment of ₹4,24,800/- on date 12.03.2010. After that, an allotment letter dated 12.03.2010 was issued in favour of complainants and unit no. C-1/504, 5th floor, Type-C having area 1100 sq. ft. was allotted to the complainants. It is submitted by the complainants that respondent has not completed the construction of the project in question including the flat booked till date even after payment of more the 70% amount of the total cost, i.e., ₹15,66,762/- which has been paid against total sale price of ₹27,99,000/- by the complainants on different dates shown in receipts issued by the respondent. That, builder buyer agreement was executed between both the parties on dated 07.07.2011 and possession was to be handed over within a period of 3 years from the date of booking i.e. 11.03.2013. That,

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the respondent has unilaterally changed the due date from the date of agreement, that becomes 06.07.2014 and if grace period added, which could only be due to force majeure, the due date of possession becomes 06.07.2015, which too has long been lapsed and possession has not been handed over. That, respondent has unilaterally increased the size of the unit from 1100 sq. ft. to 1175 sq. ft., which is more than 6.5%, thus increasing the cost of the unit. That, entire construction activity at the project site was stopped in 2014 and having lost all hope for timely completion of project, complainants requested for refund and then , the respondent informed the complainants that unit in question will be transferred to another customer and the paid amount will be refunded along with compensatory interest of ₹3,25,000/-, but it has not been confirmed by the respondent despite reminders through email dated 07.01.2015, 03.02.2015, 16.09.2015, 08.10.2015. That, the unit of the complainants unilaterally and utmost arbitrarily was further allotted to Sh. Rahul Gupta by the respondent on dated 14.01.2015, because of which the complainants suffered a lot of humiliation, felt frustrated due to all these illegal activities of the respondent, hence requested the respondent to return the entire amount paid by the complainants along with interest but in vain. Further, complainants have stated that despite a lapse of more than 14 years, respondent has not received completion certificate/occupation certificate. That, Lt. Col. (Retd.) Surender Singh Deswal issued a document titled 'revised statement of accounts' dated 25.11.2022 to the GLM Buyers Welfare Association, wherein

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the unit of complainants i.e. Unit no. C-1/504 was not mentioned. That, the complainant no.1 is retired Brigadier from the Indian Army who has been serving the nation with dedication and integrity and made the booking of flat in question with hope to stay at peaceful dream home post his retirement, as being portrayed by the respondent, but was wilfully and illegally trapped by respondent into losing his savings of a life time. That, delay in development of the project by the respondent has shattered the faith of the complainants and such inordinate delay has frustrated the purpose of purchasing the unit. There is no basic development carried out at site of the project by the respondent and further there is no scope of completion of project even in near future. That, the complainants were left with no other option but to approach Authority and filed complaint No. 857 of 2023 before the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula, for refund along with interest which was allowed vide order dated 08.11.2023 and the respondent was directed to refund the amount paid by the complainant, i.e., ₹15,66,762/- along with interest calculated till the date of order which works out to ₹20,03,052/-; That, the complainants have now approached this Forum for the compensation for harassment caused in the hands of respondent. Hence, the present complaint has been filed. The complainants further submitted that the complainants suffered a lot due to non-delivery of the said unit. That, respondent's act and omission amounts to breach of trust and the respondent has touched ingredients of Section 406, 420 and 120B of IPC, 1860. That, complainants also suffered

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extreme pecuniary loss qua cost escalation for similar property during 14 years. The complainants have claimed to have suffered financial loss, lots of expenses incurred in visiting office and project site, engaging the lawyer and prayed that the respondent be directed to pay a compensatory interest @24% per annum compounded monthly on paid amount; ₹25,00,000/- on account of mental harassment, agony, grievance and frustration caused to the complainants, by deficiency in service, unfair trade practices and miserable attitude of respondent alongwith interest and ₹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 the complainants had voluntarily invested in the project of the respondent company namely- "Amazon- The Defence County", District Panchkula. That, the complainants themselves visited the company's office on recommendations of a member of the marketing team, I.A. Col S.K. Chhabra who had served with Brig. Vadhera in the same unit. The complainants visited the site office in person and requested for a discount for allotment of unit. That, total sale price was ₹30,57,500/- and complainants were offered discount of ₹2,58,500/- thus reducing the total amount. That, respondent has never demanded any advance payment or application fee, amounting to more than 10% of the cost of unit. The complaints with their own

will deposited the amount. That, the unit in question was booked by the complainants in the year 2010 after making due diligence upon payment of a booking amount of ₹4,24,800/-. On dated 12.03.2010, respondent duly allotted a unit bearing no.C-1/504, 5th Floor, Type C, having an area of 1100 sq. ft to the complainants. That, a builder buyer agreement dated 07.07.2011 was executed between both the parties. As per clause 26 of the agreement, possession of the unit was to be delivered within a period of thirty six (36) months from the date of execution of the agreement with an extension of additional twelve months (on a no claims basis) subject to timely payment by the allottee of the basic sale price and all other charges as may be payable under the payment plan and/or under the agreement and/or otherwise demanded by the developer. Thus, the deemed date of possession to deliver the unit with extension of 12 months worked out to 06.07.2015. That, the respondent was bound to offer possession in aforesaid period only upon timely payment by the allottees of the basic sale price and all other charges payable as per payment plan. At the time of booking, complainants had opted for construction linked payment. That, the respondent had constructed the tower C-1 in the project in question up to the 21st floor, the payment of which was duly received by the respondent from most of the allottees as and when demanded. The complainants made a payment of ₹15,66,762/- up to July 2014. Punjab and Sind Bank sanctioned a term loan to the company in August 2014 and major construction work of this Tower was carried out after August 2014.

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However, the complainants did not adhere to the payment schedule and though the construction of this tower was nearly complete, they failed to make any payment. The complainants delayed on payments made to the respondent till date, and since they did not pay the remaining amount, they have certainly defaulted on the same. Owing to this wilful non-payment on behalf of the complainants, the respondent was not able to complete construction of the project which was later handed over to the association of allottees by the Hon'ble Authority in proceedings of Complaint no. 559 of 2018. That, the reason for non-payment was wilful on the part of the complainants. When the complainants were asked to make payment based on construction linked payment plan, complainants found it difficult to make payment based on construction linked payment plan. Further, complainants were informed vide email dated 28.12.2014 that the unit initially allotted to them has been allotted to another applicant. However, upon visiting the office of the respondent, complainants upon seeing the progress in construction work decided to retain their unit. Since the booked unit had already been allotted to somebody else, complainants agreed to re-allotment of another unit subject to payment of balance amount. However, complainants were not able to make requisite payments and again submitted a surrender request vide letter dated 14.07.2018. At this point of time, the financial position of the respondent company was not in good condition and complainants were accordingly informed that refund will be granted once the situation improves. On dated 18.05.2022, the project

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was handed over to the association by Hon'ble Authority and it continues to be in custody of the association till date. Hence, the responsibility of handing over possession w.e.f. 18.05.2022 lies with the association. That, as per Clause 10 of Apartment Buyers Agreement dated 07.07.2011, the size of unit was increased from 1100 sq. ft. to 1175 sq. ft. and change was intimated to allottees in writing and the deficit amount in Basic Sale Price and Sale consideration of unit is not paid by complainants till date. That, change of name was also intimated to allottees and that no affects relationships between respondent and allottees. That, allotment was cancelled on request of complainants and re-allotment was not considered because complainants failed to make due payments as per the construction linked payment plans. That, respondent has not committed any criminal offence and complainants are defaulter right from beginning and needs no relief. That, relief has already been granted by Hon'ble Authority in Complaint no.857 of 2023, decided on 08.11.2023 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 complainants in the present complaint, which is not justified and payment of refund at this stage will be prejudicial to the attempts of the developer and the association of allottees to complete the project. Finally, the respondent has prayed that the present complaint filed by the complainants may kindly be dismissed with heavy cost, in the interest of justice.

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4. No rejoinder was filed. Nor, any party opted for compliance of Rule 29(2)(d) of the Rules, 2017.

5. This Forum has heard Mr. Akshat Mittal, Advocate, for the complainants.

Today, none appeared for the respondent despite self-speaking last order dated 11.09.2025 of this Forum, wherein, to curb the tendency of respondent to seek repeated adjournments, it was made clear that even if there is absence of any party today, matter would be decided on merits. Consequently, the respondent is proceeded against ex-parte. However, in the interest of justice, while deciding the matter on merit respondent's contentions against the complainants' claim shall be reproduced, to decide the lis in a judicious manner.

6. In support of its contentions, learned counsel for the complainants has argued that in the instant case, complainants are very much entitled to get compensation and the interest thereon, because despite having played its part of duty as allottees, the complainants had met all the requirements including payment of sale consideration for the unit booked but it is the respondent which made to wait the complainants to get their unit well in time complete in all respect for more than 15 years, which forced the complainants 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

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08.11.2023. He has further argued that the complainants have been played fraud upon by the respondent as it despite having used money deposited by the allottees did not complete the project and enjoyed the said amount for its own cause which amounts to misappropriation of complainants money on the part of respondent. He has also argued that the allottees have made payment of more than 60% of the total sale consideration and also suffered mental and physical agony because of delay in completion of project in time, thus, the complainants are entitled to compensation. He has further argued that in the instant case, the Hon'ble Authority under Section 31 read with Section 35 of the Act, 2016, has granted the relief of refund with interest and the said remedy is independent as that of complainants right to claim compensation from this Forum as the respondent has misappropriated the amount of the complainants so paid thus caused even loss of opportunity as the kind of unit which complainants had applied, is not available now because of escalation in prices even if triple of the amount earlier paid is offered. He has further argued that the association of allottees cannot be burdened with discharging the financial liabilities of the respondent as such allottees themselves are victims of misdeeds of the respondent, thus do not have a common interest with respondent, nor, the respondent has placed any legal document on record which could show that association of allottees was responsible for handing over the possession or to pay compensation in place of the respondent i.e. promoter. He has further argued that the complainants have been burdened to get into

unwarranted litigation, running around here and there to get the relief which they legally deserve, which could have easily been avoided, had there been fulfilment of assurances given by the respondent at the time of execution of Builder Buyer Agreement. He has also argued that the complainants were forced to withdraw from the project because of unwarranted and unexplainable delay in completion of project on the part of respondent. Finally, he has prayed to grant the compensation in the manner prayed in the complaint.

7. Since, in the instant case, the respondent has been proceeded ex-parte, there is none to argue for it but in the interest of justice the specific averments made in its reply by the respondent against the complainants' claim for compensation, are reproduced in brief in the following manner;

- i) That, the complaint is barred by limitation;
- ii) That, the complainants are not entitled for any compensation as have been granted the relief of refund with interest by Hon'ble Authority under Section 31 of the Act, 2016;
- iii) That, the complainants have not led any evidence to fulfil the ingredients of Section 71 read with Section 72 of the Act, 2016, so not entitled to get compensation;
- iv) That, after handing over the project to the association of allottees under Section 8 of the RE(RD) Act, 2016, it is the responsibility of the said

association to handover the possession or to pay compensation or to refund the amount with interest as such transfer exempts the promoter from such liabilities;

v) That, the complainants themselves were defaulter in making payment in time for the unit which is the reason they elected to surrender the unit, instead of making the payment, thus the complainants themselves were responsible for delay in completion of the project and not the respondent being promoter.

Finally, prayer is made to reject the claim for compensation.

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

- (a) Whether the law of limitation is applicable in a case covered under RERA Act, 2016 and Rule 2017 made thereunder?
- (b) Whether the 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?
- (d) What are the factors to be taken note of to decide compensation?

- (e) 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?
- (f) Where under Section 8 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as 'RE(RD)Act,2016') association of allottees is given duty to complete the project, would that exempt promoter to escape financial liabilities accrued against it?
- (g) Whether complainants are entitled to get compensation in the case in hand?

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

9(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 2009, whereas complaint was filed in the year 2024.

On the other hand, the plea for the complainants is that the provisions of Limitation Act are not applicable in this complaint filed under RERA Act, 2016, hence, plea of limitation so raised be rejected.

With due regards to the rival contentions and facts on record, this Forum is of the view the law of limitation does not apply in respect of a complaint filed 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 date, resulting into refund of the amount to the complainants, 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 negative.

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 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 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 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 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 conferred 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) 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.

Section 18(1) of the Act, 2016, caters for grant of compensation to the allottee who withdraws from the project and its proviso bars the grant of compensation to the allottee who elects to continue with project.

(ii) How an Adjudicating Officer is to exercise its powers to adjudicate, has been mentioned in a case titled as Mrs. Suman Lata Pandey & Anr v/s Ansal Properties & Infrastructure Ltd. Appeal no. 56/2020, by Hon'ble Uttar Pradesh Real Estate Appellate Tribunal at Lucknow dated 29.09.2022 in the following manner;

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

12.9 – *The Adjudicating Officer, thus, has been conferred with power to directed for making payment of compensation or*

interest, as the case may be, "as he thinks fit" in accordance with the provisions of Section 12, 14, 18 and 19 of the Act after taking into consideration the factors enumerated in Section 72 of Act.

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

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

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

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

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused as a result of the default;*
- (c) the repetitive nature of the default;*
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.*

(iv) For determination of the entitlement of complainant for compensation due to default of the builder/developer Hon'ble Apex Court in M/s Fortune Infrastructure (now known as M/s.

Hicon Infrastructure) & Anr. Vs. Trevor D'Lima and Others,
Civil Appeal No.(s) 3533-3534 of 2017 decided on 12.03.2018.

has held as under:-

“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."

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

The answer to this question is that no hard and fast rule could be laid to seek proof of such feelings from an allottee. He/she may have documentary proof to show the deficiency in service on the part of the builder and even this Forum could itself take judicial notice of the mental and physical agony suffered by an original allottee due to non-performance of duties on the part of the promoter, in respect of the promises made to lure an allottee to

invest its hard earned money to own its dream 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(f) Where under section 8 of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as 'RE(RD) Act, 2016') association of allottees is given duty to complete the project, would that exempt promoter to escape financial liabilities accrued against it?

The respondent has raised a legal objection to the effect that once the project in question was handed over to the association of allottees (hereinafter referred to as 'AOA'), it is the responsibility and liability of the said AOA to pay the refund with interest, if any, or even the compensation with interest, if any or the responsibility to handover possession was of the AOA. Hence, the present complaint for compensation is not maintainable against the promoter respondent.

On the other hand, this contention has been rebutted by Id. Counsel for the complainant to say that allottee had invested the money with the respondent whose default forced the HRERA Authority to allow the association of allottees to carry out the remaining development works, hence, it

is the promoter only bound to discharge its liabilities accrued in the form of refund or compensation, as the case may be.

(A) Before commenting upon the merits in rival contentions, it would be apt to refer to the following provisions of Section 8 RE(RD)Act,2016, which impose obligations upon Authority consequent upon lapse of or on revocation of registration;

Section 8: Obligation of Authority consequent upon lapse of or on revocation of registration.

Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:

Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.

The perusal of section 8 described above makes it clear that the RERA Authority, if deem appropriate, while exercising its powers under section 8, where project's registration is expired or revoked by the Authority, would first give an opportunity to association of allottee to carry out the remaining development work and if such Association refuses, then give such task to any

other competent authority or may decide other mechanism to get the remaining development works done of project in question. However, the Act, 2016 and the HRERA Rules, 2017, are silent as to, on handing over of works to the association of allottees, whether the promoter's rights and the liabilities in the project would also get transferred or assigned to such AOA, as otherwise mandated in respect of third party in Section 15 of the Act 2016, which for ready reference is reproduced below:

Section 15:- Obligations of promoter in case of transfer of a real estate project to a third party.

(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation.— For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently

comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter; and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

The perusal of section 15 indicates as to how the promoter can transfer the real estate project to a third party i.e. intending promoter and what would be the role of the intending promoter with respect to rights and liabilities transferred in the said project. Before proceeding further, it is worth to mention here that the intent and purpose of Section 15 of the Act 2016 cannot be applied in respect of AOA because such Association in a project is not a third party but an association of allottees related to the project concerned, having common interest. In other words, the Legislature itself has distinguished the AOA vis-a-vis third party because AOA is not shown to have got the rights and liabilities of earlier promoter which provision otherwise has been catered for in case of transfer to the third party. Even, provisions of section 11(4)(a),(c), section 17(1),(2) and section 19 of the Act,2016, do not say anything on this aspect and the Haryana Apartment Ownership Act, 1983 read

with the Haryana Registration of Societies Act, 2012, is also silent on this aspect.

With above described relevant provisions and in the absence of any other provision in the Act, 2016 and Rules, 2017, to the best of the knowledge of this forum, it is safe to conclude that where the Authority as per procedure has allowed association of allottees to complete the remaining development works, there the Legislature never intended that the AOA would discharge legally enforceable amount against the promoter whose failure had resulted into handing over of development work to AOA.

(B) Moving further, the term AOA do not fall within the definition of the term 'Promoter' given in Section 2(zk). For ready reference, the same is reproduced below;

Section 2(zk) "Promoter" means

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.— For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

The AOA since does not develop land into project nor is a development authority or a co-operative society, or a builder, colonizer, etc. and also does not complete incomplete work for sale to general public, it no

way is covered under the provisions of section 2(zk)(ii) to (vi). Similarly, association of allottees which is assigned the work of construction left in between by the promoter who was to construct and to convert the building into apartments for its sale, it also do not fall in the ambit of section 2(zk)(i). For the sake of repetition, it would be worth to mention here that AOA is an association of its own people interested in the project's development without looking for any financial benefits, hence, cannot be termed as 'promoters'. Thus, if AOA does not fall in the definition of the term "promoter", the order for grant of compensation cannot be said to be executable against such Association which has come into picture only when the actual promoter mention of which is there in sections 12, 14, 18 and 19, has faltered in execution of its own duties.

(C) Academically also, if the aim and purpose of the term 'AOA' is considered, it becomes clear that association of allottees has common interest to work for upliftment of common cause. Such Associations are formed to ensure that the Association as an umbrella take care of welfare oriented steps to be taken for the betterment of its members and for that, if need be, to fight against the builder/promoter to protect common interest, which means, they have nothing common with the promoter and if not, how could the AOA be asked to bear burden to discharge financial liabilities of the promoter, which had committed violation of the Act, Rules and Regulations leading to

unwarranted financial and physical agonies to its allottees. If this be the practical situation, there appears no reason to think that promoter could be exempted to compensate the aggrieved allottee for the agonies faced by later without his fault, at the hands of defaulter/violator promoter.

In nutshell, having detailed observation made above in mind and in the absence of any legal provision, or, any judicial order of Hon'ble Higher Judicial Forum, in knowledge of undersigned or produced, it is held that the association of allottees assigned work to complete incomplete development works, within the meaning of section 8 of the Act, 2016, can't be asked to pay for the misdeeds of promoter. Consequently, the answer to above question is in negative.

9(f) Whether complainants are 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;

(i)	Project pertains to the year	2009
(ii)	Date of Allotment	12.03.2010
(iii)	Proposed Handing over of possession	06.05.2015, 3 years and twelve months grace period from the date of BBA (07.07.2011)
(iv)	Basic sale price	₹27,20,250/-

(v)	Total amount paid	₹15,66,762/-																					
(vi)	Period of payment	12.03.2010- 09.07.2014																					
		<table> <tr> <th>Sr. N o.</th><th>Date of payment</th><th>Amount in (₹)</th></tr> <tr> <td>1.</td><td>12.03.2010</td><td>₹2,75,000/-</td></tr> <tr> <td>2.</td><td>12.03.2010</td><td>₹1,49,800/-</td></tr> <tr> <td>3.</td><td>22.06.2010</td><td>₹2,18,700/-</td></tr> <tr> <td>4.</td><td>25.06.2011</td><td>₹4,18,000/-</td></tr> <tr> <td>5.</td><td>09.07.2014</td><td>₹5,05,262/-</td></tr> <tr> <td></td><td>Total-</td><td>₹15,66,762 /-</td></tr> </table>	Sr. N o.	Date of payment	Amount in (₹)	1.	12.03.2010	₹2,75,000/-	2.	12.03.2010	₹1,49,800/-	3.	22.06.2010	₹2,18,700/-	4.	25.06.2011	₹4,18,000/-	5.	09.07.2014	₹5,05,262/-		Total-	₹15,66,762 /-
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	Total-	₹15,66,762 /-																					
(vii)	Reallotment to Sh. Rahul Gupta	14.01.2015																					
(viii)	Request for re-allotment	Not mentioned																					
(ix)	Date of submission of surrender certificate/documents by complainants	28.12.2014 and 14.07.2018																					
(x)	Date of order of Authority under Section 8 of the Act, 2016 i.e. Transfer to Association of Allottees	18.05.2022																					
(xi)	Occupancy certificate Whether received till Filing of complaint	NO																					
(xii)	Date of filing of	06.04.2023																					

	complaint under Section 31 before Hon'ble Authority	
(xiii)	Date of order of Authority	08.11.2023
(xiv)	Date of filing of complaint under Sections 71 read with Rule 29	15.05.2024
(xv)	Date when total refund made, if made	NO

It is a matter of record that the project advertised in the year 2009, did not get completion certificate till filing of the complaint on dated 15.05.2024 and also that the complainants on its part had performed its part of duty by paying more than 60% of basic price of the unit. Admittedly, the basic price of the plot was ₹27,20,250/- whereas the complainants paid ₹15,66,762/- till dated 09.07.2014.

It is also admitted on record that the complainants did not get possession of the unit allotted till the date is surrendered the unit. 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 allottee 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 ius 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 ₹15,66,762/-. However, it is not in dispute that the respondent neither completed the project, nor handed over possession or even refunded the amount with interest 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 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 ₹15,66,762/-, for the last more than 15 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 allottee 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 complainants after taking into consideration, the default of

respondent for the period starting from 2010 to till date and also misutilization of the amount paid by the complainants to the respondent. In fact, the facts and circumstances of this case itself are proof of agony undergone by the complainants 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 allottee must have had to 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 complainants to surrender the unit and 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 14 years, the complainants may not be in a position to purchase the same unit now even by paying triple of the amount invested, which amounts to loss of opportunity to the allottee. These factors also enable an allottee to get compensation.

Though, there is the contention of the respondent that the complainants had surrendered the unit twice because of their inability to pay the instalments in time which is the reason that the project got delayed, so it is the complainants responsible for failure of the project. This Forum is of the view that such contention do not stand to the logic because in normal

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course when an allottee does not see the desired progress in the project, in the manner it was promised by the promoter and the allottee also not getting any concrete assurance from the promoter to complete the project in time, the allottee seeing the bleak future of his in the project is left with no options but to surrender the same to seek the refund particularly when there is unreasonable and unexplained delay on the part of the promoter to fulfil his promise. Otherwise also, why would an allottee elect to withdraw from the project more so when he has already invested the considerable amount by paying instalments. Obviously, it would only happen when the promoter has by its act and conduct left the allottee in lurch, as apparently the case in hand is. Moreover, had it been the case of the respondent that as a promoter he had completed the project to the maximum but because of some financial constraints including non-payment on the part of allottee like complainants, residual completion could not take place, this Forum may have held the complainants partly responsible for the delay, though the reply of the respondent as such do not show as to how the complainants were at fault in making regular payments of instalments. It means on the face of it, the complainants action for surrender was justified in the given circumstances; in the absence of any proof contrary

thereto. It is not out of place to mention here that even till date, the promoter has not been able to complete its responsibilities towards the allottees, which is the reason various litigations are pending adjudication before Hon'ble Authority and this Forum. Resultantly, it is held that the respondent has no ground to decline the compensation to the complainants.

In view of the forgoing discussions, the complainants are held entitled for compensation.

10. Once, the complainants have 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(z) 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 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 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. However, it bars grant of compensation to allottee who continue with project. 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".

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 only in those cases where allottee withdraws from the project. In other words, where allottee continues with project, then is entitled to

relief mentioned in proviso to Section 18(1) only as proviso does not cater for grant of compensation where allottee continues with project.

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 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

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 (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹2,75,000/-	12.03.2010-10.11.2025	10.85%	₹4,67,836/-
₹1,49,800/-	12.03.2010-10.11.2025	10.85%	₹2,53,482/-
₹2,18,700/-	22.06.2010-10.11.2025	10.85%	₹3,65,426/-
₹4,18,000/-	25.06.2011-10.11.2025	10.85%	₹6,53,960/-
₹5,05,262/-	09.07.2014-10.11.2025	10.85%	₹6,22,255/-
Total- ₹15,66,762/-			₹23,62,959/-

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

The total compensation comes to ₹23,62,959/-+ ₹30,000/- = ₹23,92,959/- (Twenty three lakhs Ninety Two thousand and nine hundred fifty nine rupees only). Undoubtedly, the amount of compensation, if calculated with the relief granted by the Hon'ble Authority, it appears that the allottee has got

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much more than they spent but it is justified because the property which they had applied in the year 2010, may be costing now much more than the amount which the allottees is ordered to get in total under the Act, 2016.

13. Consequently, the present complaint is allowed in the manner discussed above. The respondent is directed to pay an amount of ₹23,62,959/-+ ₹30,000/- = ₹23,92,959/-(Twenty three lakhs Ninety Two thousand and nine hundred fifty nine rupees 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(z) of the Act, 2016, the respondent shall be liable to pay interest on delayed payment as per the provisions of Rule 15 of the Rules, 2017, till realization of the amount.

14. **No deduction of Tax at Source**

It is directed that since, the amount so ordered to be paid with interest till realisation of total amount, 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

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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 Aggarwal (Civil Appeal Nos. 11248-11249 of 2016, decided on 11.09.2017, Sainath Rajkumar Sarode and 8 Ors. vs. State of Maharashtra 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
10.11.2025

Note: This judgement contains 46 pages and all the pages have been checked and signed by me.


MAJOR PHALIT SHARMA
ADSJ (Retd.)
ADJUDICATING OFFICER
10.11.2025

Indu Yadav
Law Associate