HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER, HRERA, PANCHKULA

Complaint No. : 1050 of 2024
Date of Institution: 07.08.2024
Date of Decision: 01.12.2025

Mr. Joginder Singh Malik s/o Sh. Ram Chander Singh, R/o Flat No E-1/201, Kingsbury Apartment, TDI City, Kundli Sonipat, Pin Code- 131029

...COMPLAINANT

Versus

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

....RESPONDENT

Hearing: 4th

Present: - Mr. Chaitanya Singhal, 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 'Joginder Singh Malik against M/s TDI Infrastructure Limited, seeking compensation and the interest from this Forum, in accordance with the provisions of Rule 29 of the HRERA Rules, 2017 (hereinafter to be

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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 4 BHK Floor in the project- TDI Tuscan Floors of the respondent from the original allottee i.e. Mr. Amarjit Behal, on the original terms and conditions.

On dated 23.10.2010, Mr.Amrjit Behal, booked a 4 BHK Floor in TDI Tuscan Floors by making payment of ₹3,00,000/- to respondent. On dated 16.03.2011, Unit no. T-40, Duplex Floor was allotted in favour of original allottee i.e Mr. Amrjit Behal and on dated 25.03.2011 BBA was executed between original allottee and respondent and original allottee was unit T-40 in project "Tuscan Floors"in Tuscan City having an area of 1434 sq.ft for total sale consideration of ₹36,03,484/- including EDC and IDC. That, as per Clause 30 of BBA the possession was to be handed within 30 months from date of signing of agreement which is dated 25.09.2013. Thereafter, Mr. Joginder Singh Malik purchased the unit from Mr. Amrjit Behal which was endorsed in favour of complainant Mr. Joginder Singh Malik, by the respondent on dated 07.07.2012.That, on that date complainant stepped into the shoes of the original allottee with all his rights and obligations towards the respondent. Complainant paid ₹17,16,587/- to respondent. It has also been mentioned that project is incomplete and Occupation & Completion Certificate has not been obtained till

date. That, due to deficiency in service the possession has not been delivered to complainant; That, complainant had many times visited the office of respondent and written several letters for seeking refund of amount paid with 18% interest however, respondent neither replied nor refunded the amount. The respondent failed to make refund of the amount, therefore, legal notice dated 15.09.2016 was served to respondent but no reply was received from respondent. It is further mentioned that respondent had accepted the whole amount and further used the same to earn personal profits. Therefore, complainant was left with no other option but to approach this Authority and filed complaint No. 2394 of 2022 before the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula, for refund along with interest which was allowed vide order dated 28.05.2024 and the respondent was directed to refund the amount paid by the complainant, i.e., ₹17,16,587/- along with interest calculated till the date of order which works out to ₹24,61,876/-; That, price of property has got increased 4 times since 2011 and the complainant has requested to take into consideration while deciding quantum of compensation; That, complainant further approached this Forum for the compensation for harassment caused in the hands of respondent. Hence, the present complaint has been filed. That, complainant suffered a lot due to non-delivery of the said unit. That, cause of action is continuing and also referred to judgment passed by Hon'ble Appellate Tribunal in Appeal No. 305 of 2021 titled as Anil Suri v/s Jindal Realty wherein Appellate Tribunal had awarded six percent per annum compensation on account of failure of

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respondent to timely deliver the possession of flat to the complainant. Finally, the complainant prayed that the respondent be directed to pay a compensation of ₹10,00,000/- on account of mental harassment and mental agony caused to the complainant for not completing and delivering the possession of booked unit; pay compensation @ 6% per annum on account of amount paid by compliant from the respective date of payment till the date of realization as per HRERA Appellate Tribunal; ₹2,50,000/- on account of litigation expenses; ₹25,000/- per month towards loss of rentals/earnings if flat would have been given on rent/lease to a tenant; and other relief this Forum may grant.

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 due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely-Tuscan Floors in TDI Tuscan City, Kundli, Sonipat; That, the said project is covered under License no. 177 of 2007 dated 13.04.2007 and the respondent company had applied for Occupation Certificate and had also paid the compounding fee to DTCP; That, when the respondent company commenced the construction of the said project, the RERA Act was not in existence. Therefore, the respondent company could not have contemplated any

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violations and penalties thereof, as per the provisions of the RERA Act, 2016. That, the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act. That, the agreement was executed much prior from the date when the RERA Act came into existence. Accordingly, the agreement executed between the parties is binding on the buyer/allottee. Complainant is bound by the terms of the agreement and as such cannot withdraw their consent. The complainant is educated person and has signed on each and every page of the agreement, hence, each term is binding on the complainant. That, complainant herein as investor has accordingly invested in the project of the Respondent Company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine. Further, it has been submitted that handing over of possession has always been tentative and subject to force majeure conditions and the complainant has been well aware about the same; That, complainant has been regular defaulter in making payments therefore reminder letters were sent to complainant; That, relief has already been granted by Hon'ble Authority in Complaint no. 2934 of 2022, decided on 25.08.2024 wherein refund along with interest has been granted to the complainant and the said interest includes the interest in the form of compensation which is over and above the compensation as claimed by the complainant in the present complaint, which is not justified. The complainant can not claim double benefit when relief has already been

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granted by the Authority in the form of interest; That, complainant is a subsequent buyer who purchased the plot in question in the year 2012 from original allottee having been aware of the fact that the respondent had failed to deliver the possession in stipulated time; Finally, the respondent has prayed that the present complaint filed by the complainant may kindly be dismissed with heavy costs, in the interest of justice.

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. Chaitanya Singhal, Advocate, for the complainant and Sh.Hunarveer Sharma, Advocate, for the respondent and has also gone through the record carefully.

6. In support of its contentions, learned counsel for the complainant has argued that in the instant case, complainant is 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 10 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 50% of basic sale consideration, thus, not the case of

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distress sale as there was no intention to purchase the plot at low price from the original allottee. He has also argued that it cannot be a case of distress sale, as the complainant had purchased the unit much prior to deemed date of possession, as till then there was no question of delay in delivery of possession. 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.

7. On the other hand, learned counsel for the respondent has argued that this complaint as such is not maintainable in view of the law laid down by Hon'ble Apex Court in Surjeet Singh Sahni vs State of U.P. and others 2022

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SCC Online SC 249 as the project pertains to the year 2010, whereas present complaint to seek compensation was filed on dated 07.08.2024 much after the period of limitation. He has further argued that in the case in hand, the allotment letter was issued on dated 16.03.2011 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 allottee 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 okay to the satisfaction of the original allottee, there was no occasion for the

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original allottee to have left the project in between. In support of this argument, he has referred to the order of this Forum passed in "Kanta Malhotra versus Parsvnath Developers Ltd." in Complaint No. 918 of 2018 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.

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?

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

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 2011, 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.

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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.

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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.

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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 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

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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*

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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."

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

> *"122. We have already discussed that the above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting/existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports. As regards Article 19(1)(g) it is settled principles that the right conferred by sub-clause (g) of Article 19 is expressed in general language and if there had been no qualifying provisions like clause (6) the right so con*ferred would have been an absolute one."

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

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

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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

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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,

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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*

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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*

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

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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. Amrjit Behal, 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	2010
ii)	Date of joining of project by original allottee i.e. Mr. Amrjit Behal	23.10.2010
iii)	Date of issuance of allotment letter in favour of original allottee i.e. Mr.Amrjit Behal	16.03.2011
iv)	Date of execution of BBA with original allottee i.e. Mr.Amrjit Behal	25.03.2011
v)	Proposed date for handing ove of Possession	30 months from the date of execution of BBA i.e. 25.09.2013
vi)	Total sale consideration	₹36,03,484/-
vii	Endorsement by original allottee i.e. i.e. Mr.Amrjit Behal in the name of the complainant i.e Mr. Joginder Singh Malik, second allottee	07.07.2012

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<table>
<tr><td>viii</td><td>Total amount paid</td><td>₹17,16,787/-</td></tr>
<tr><td>ix)</td><td>Dates and amount of payment made by complainant i.e. subsequent allottee.</td><td>
<table>
<tr><th>S.No.</th><th>Date of payment</th><th>Amount in (₹)</th></tr>
<tr><td>1.</td><td>23.10.2010</td><td>₹3,00,000/-</td></tr>
<tr><td>2.</td><td>25.01.2011</td><td>₹5,50,000/-</td></tr>
<tr><td>3.</td><td>27.01.2011</td><td>₹1,50,000/-</td></tr>
<tr><td>4</td><td>10.05.2011</td><td>₹3,53,481/-</td></tr>
<tr><td>5.</td><td>12.08.2011</td><td>₹2,12,423/-</td></tr>
<tr><td>6.</td><td>22.08.2011</td><td>₹1,50,000/-</td></tr>
<tr><td>7.</td><td>17.11.2011</td><td>₹683/-</td></tr>
<tr><td></td><td>Total</td><td>₹17,16,587/-</td></tr>
</table>
</td></tr>
<tr><td>x)</td><td>Occupancy Certificate whether received till filing of complaint</td><td>NO</td></tr>
<tr><td>xi)</td><td>Date of filing of complaint under Section 31 before Hon'ble Authority</td><td>14.09.2022</td></tr>
<tr><td>xii</td><td>Date of order of Hon'ble Authority</td><td>28.05.2024</td></tr>
<tr><td>xii</td><td>Date of filing of complaint under Sections 71 read with Rule 29</td><td>07.08.2024</td></tr>
<tr><td>xiii</td><td>Date when total refund made</td><td>₹5,00,000/- on 01.04.2025</td></tr>
</table>

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It is matter of record that the project advertised in the year 2010, did not get completion certificate till filing of the complaint on dated 07.08.2024 and also that the complainant on its part had performed his part of duty by paying 50% of basic price of the unit. Admittedly, basic price of the unit was ₹36,03,484/- whereas the complainant paid ₹17,16,587/ 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 07.07.2012, 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 28.05.2024, wherein learned counsel for complainant has informed that in execution complaint no. 134 of 2023 amount of ₹5,00,000/- 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?

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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, 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 he 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

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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, under the Act,2016 it would amount to rewarding a person for intentionally wrong done. Otherwise also, allotment was endorsed with second allottee i.e. complainant in the year 2012, there was no occasion for the present complainant to have suffered any agony w.e.f. the year 2010 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

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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, it would amount to withdrawal from the project on the part of original allottee because of

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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 complainant, who filed complaint under Section 31 of the Act, 2016, against the builder for violation as was not handed over possession, means the subsequent allottee had knowing fully well taken a boat to cross the canal, which he 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;

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"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 2012,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.Amrjit Behal, 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

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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
01.12.2025

Note: This order contains 30 pages and all the pages have been checked and signed by me.

MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
01.12.2025

Indu Yadav
(Law Associate)