



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER HIRERA, PANCHKULA

Complaint No.: 841 of 2025

Date of Institution: 27.06.2025

Date of Decision: 19.01.2026

Narendera Pal Gupta through Legal Heirs

.... Complainant

VERSUS

Parsavnath Developers Ltd.

....Respondent

Hearing: 4th

Present: Mr. Akshat Mittal, Adv for the complainant.
Ms. Neetu, Adv., proxy for Ms. Rupali Shekhar Verma, Adv for the respondent.

ORDER

This order of mine will dispose of a complaint filed by the complainant namely 'Narendera Pal Gupta through Legal Heirs' against Parsavnath Developers Ltd., seeking compensation and the interest from this Forum, in accordance with the provisions of Rule 29 of the HIRERA Rules, 2017 (hereinafter to be referred as the

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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 late Mr. Narendra Pal Gupta was the third allottee of a plot measuring 300 sq. yards @ Rs. 3500/- per sq. yards. That the respondent Company floated a scheme for the development of a residential township on land situated in the revenue estates of Kundli, Sonapat, Haryana, under the name and style of "Sonapat Project". That, the respondent Company approached the original allottee in relation to the booking of the said unit and, pursuant thereto, the original allottee, namely Mr. Prabir Kumar Das, booked a plot for a total sale consideration of ₹10,50,000/- (Rupees Ten Lakh Fifty Thousand only) in the year 2004. That, the respondent Company allotted a customer code bearing No. PDL/COMMON/0183 and Mr. Prabir Kumar Das deposited a sum of ₹5,25,000/- (Rupees Five Lakh Twenty-Five Thousand only) with the respondent Company on different occasions, and the respondent Company assured that the plot would be allotted to the applicant within a period of three years. That, the conduct of the respondent company was in violation of Section 13(1) of the R.E. (R & D) Act, 2016. That, the said Prabir Kumar Das transferred his rights to one Sh. Navneet Nasa and the said Navneet Nasa transferred his rights for the complainant i.e. Late Sh. Narendra Pal Gupta in the year 2007. The respondent duly endorsed the transfer vide letter dated 25.10.2007. As such, a sum of ₹ 5,25,000 was paid by the

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complainant to Sh. Navneet Nasa on account of transfer of ownership rights on dated 09.10.2007. That, the entire sale consideration has already been paid to the respondent company. That, at the time of endorsement of the letter dated 25.10.2007, the respondent had already started the process of allotment and as per the assurances, the latter was to allot the plot to the complainant within a period of six months thereof, i.e. latest by 25.04.2008 but the respondent has not allotted the plot till date to the complainant. That, the complainant made repeated visits to the offices of the respondent and also made several telephonic calls; however, all such efforts proved futile as the respondent failed to disclose any information whatsoever regarding the status of the project, thereby violating the rights of the allottee as guaranteed under Section 19 of the Act, 2016. That, upon the complainant enquiring about the allotment of the plot, the staff of the respondent not only behaved in an arrogance and abusive manner but also manhandled the complainant, and further failed to respond to any of the letters and reminders addressed by the applicant. That, on account of the fraudulent and deceitful conduct of the respondent, the complainant suffered severe mental stress and developed multiple serious ailments, which ultimately led to his unfortunate demise. It is respectfully submitted that due to continuous harassment and anxiety, the complainant underwent major heart surgery in the year 2011 and thereafter suffered paralysis attacks in the years 2014 and 2016. The family members/legal representatives of the complainant repeatedly

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approached the respondent with requests for allotment of the plot or refund of the amount so as to enable the complainant to undertake medical treatment, ultimately resulting into death of the complainant; however, the respondent deliberately ignored all such requests and showed complete apathy towards the condition of the complainant. Even after the death of the complainant, the legal heirs have neither been granted possession nor paid refund or compensation, and the respondents have illegally retained the amounts received, in violation of Section 19(4) of the RERA Act, 2016. All payment demands were duly complied with by the complainant; however, the respondent company acted fraudulently and with malafide intent by failing to deliver possession within the stipulated time. The conduct of the respondents amounts to cheating and fraud, causing grave mental harassment to the complainant, which ultimately led to his demise. That, being deeply aggrieved by the respondent's conduct and left with no alternative, the complainant was compelled to approach the Hon'ble H.R.E.R.A., Panchkula by filing Complaint No. 1009 of 2021 seeking refund of the amount along with interest. The said complaint was allowed by the Ld. Authority vide order dated 14.03.2023. That, the present complaint was filed on behalf of the deceased allottee, Sh. Narendra Pal Gupta, through his legal heirs, namely his wife Smt. Neelam Gupta, son Sh. Karan Gupta and daughter Smt. Bhavya Gupta. As Smt. Bhavya Gupta is presently residing in the United States of America, she has authorized her mother, Smt. Neelam Gupta, to

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act and sign on her behalf by way of a "No Objection Certificate-cum-Declaration". She has further declared that she has no vested interest in the project and has authorized her mother to take all decisions in respect thereof. While adjudicating of Complaint No. 1009 of 2021, the Ld. Regulatory Authority directed publication in one national and one local newspaper regarding the claim of the complainants being the sole legal heirs of the deceased and through publications in *The Hindu* and *Rashtriya Sahara* and after considering the affidavits, death certificate, and proof of publication, and in the absence of any objection, the Ld. Authority vide order dated 14.03.2023 confirmed the complainants as the rightful legal heirs and allowed the relief of refund under Section 18 of the Act, therefore the issue of legal heirship stands conclusively settled by the Ld. Authority. That, the respondent, made false representations, promises and assurances from inception to the complainant with mala fide intention and a deliberate motive to cheat and unlawfully extract money from him. The respondent's conduct has been vague, manipulative and fraudulent in nature, resulting in continuous harassment and severe mental agony to the complainant. That, the acts and omissions of the respondent also amount to criminal breach of trust, as the respondent has failed to hand over possession of the plot and has also failed to refund the amount paid by the complainant even after a lapse of more than 18 years. The complainant continues to suffer on account of the respondent's unlawful conduct. The respondent has attracted all the essential

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ingredients of Sections 406, 420 and 120-B of the Indian Penal Code, 1860, and has acted with a clear intention to cheat and dishonestly deprive the complainant of his hard-earned money. The respondent has abused the complainant's bona fide conduct and has made a mockery of his trust, thereby subjecting him to extreme mental harassment, trauma and distress. That, the complainant has suffered enormous financial loss and has not derived any benefit from the said plot, which has directly and indirectly adversely affected every aspect of his life. Finally, the complainant prayed that the respondent be directed to pay compensatory interest @24% per annum compounded monthly, on the entire amount so deposited by the complainant qua the flat in question, w.e.f. The relevant dates of deposit; ₹25,00,000/- for mental harassment, agony, grievance and frustration caused to the complainant by deficiency in service, unfair trade practices and miserable attitude of the respondent, along with interest; ₹2,50,000/- on account of litigation expenses and other relief this Forum may grant.

3. On receipt of notice of the complaint, respondent filed reply, which in brief states that complaint is not maintainable as complainant is not the allottee of any project of the respondent company and the said registration was merely an expression of interest towards the new projects of the respondent Company. That, the disputed questions of facts cannot be adjudicated in summary proceedings and respondent denied that it has ever promised any allotment or has assured any future

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allotment to the Complainant as well as all predecessors. That, the Complainant is/are speculator(s) who purchased the money receipts and/or registration from previous holders, with full knowledge that no allotment had been promised or granted to the original holders from whom such receipts were acquired. That no valid cause of action has been disclosed in the present Complaint, inasmuch as the money receipts relied upon are dated 08.06.2004, 21.12.2005 and 12.10.2007 respectively. The case set up by the Complainant is that he/they have been awaiting compensation for the past 18 years and have now approached the Hon'ble Adjudicating Officer seeking indulgence for grant of compensation after an inordinate and unexplained delay, well beyond the prescribed period of limitation. That, the plea of continuous cause of action is not maintainable in the present case, as the alleged money receipts were brought to the notice of the concerned legal forum only after a lapse of 18 years, and therefore cannot revive a time-barred claim. That, the money receipts annexed with the present Complaint pertain to the expression of interest/advance registration made by the Complainant for present as well as future/new projects of the Respondent Company. However, it is an admitted and undisputed fact that no unit/plot was ever allotted to the Complainant in any of the projects of the Respondent Company, as the Complainant did not meet the eligibility criteria prescribed by the Respondent Company. That, the complaint is barred by limitation in view of the law laid by Hon'ble Apex Court in

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Subject Singh Sahni v/s State of U.P. and others (2022 SCC Online SC 249);

that, Mr. Prabir Kumar Das was the original applicant had shown his interest towards present and future projects/new projects of the Respondent-Company. Afterwards, in the year January 2006, this expression of interest or advance registration was transferred in the favour of Mr. Navneet Nasa who was the subsequent Applicant. Once again, in the year October 2007, this expression of interest or advance registration was transferred in the favour of Mr. Narendra Pal Gupta who was the second/subsequent Applicant / and then the Complainant after submission of all relevant & necessary documents in the records of the Respondent Company and there was no allotment by the Respondent Company in the favour of any party and had received an amount of ₹5,62,500/- till date. That, the complainant was aware that there was no allotment made to all previous applicants and complainant aware of this voluntarily chosen to purchase the expression of interest or said advance registration from open or secondary market. That, complainant is a subsequent buyer who purchased the unit in question in the year 2007 from the previous applicants having been aware of all the facts about the respondent company; That, the complaint is not maintainable being not in consonance with provisions of Section 72 of the Act, 2016, as there is no proof led by the complainant as to how they could prove the factors required to be proved within the Section 72 of the Act, 2016; Further, it has been mentioned that

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complainant has been granted relief of interest on refund of the amount paid by the complainants and such interest on the refund is nothing but compensation to the complainants in lieu of delay in handing over of possession, loss of opportunity and loss of rent, etc.; Respondents had also placed on record the citations '*DLF Homes Panchkula Pvt. Ltd. & Ors. Vs. D.S. Dhanda & Ors. (2020)16 SCC 318 and Parsvnath Hessa developers pvt. Ltd. Vs. Lt. Col Shailender Singh & Ors. Civil Appeal no. 474 of 2020*'. Finally, it is averred in the reply that there is no legal validity and authenticity for filing the said complaint for compensation before Hon'ble Adjudicating officer, hence, the present complaint be dismissed.

4. This Forum has heard Mr. Akshat Mittal, Advocate, for the complainant and Ms. Nectu, Adv., proxy for Ms. Rupali Shekhar Verma, for the respondent and has also gone through the record carefully.

5. In support of its contentions, learned counsel for the complainant has argued that in the instant case, 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 18 years, which forced the complainant to go for unwarranted litigation to get the refund by approaching Hon'ble Authority at

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Panchkula, which has finally granted the refund with interest thereon. He has further argued that complainant had paid around 50% of basic sale consideration, thus, not the case of distress sale as there was no intention to purchase the plot at low price from the second 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 second 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. Charanjeet Singh, Civil Appeal no.7042 of 2019, VS decided on 22.07.2021, thus subsequent allottee is entitled to all reliefs under RERA Act, 2016 and RERA Rules, 2017, which an original allottee is entitled to. He has also argued second allottee has also suffered mental and physical agony because of delay in possession, which was never delivered as project finally failed, thus, the complainant is entitled for compensation.

Finally, he has prayed to grant the compensation in the manner prayed in the complaint.

6. On the other hand, learned counsel for the respondent has argued that this complaint as such is not maintainable in view of the law laid down by Hon'ble Apex Court in Surjeet Singh Sahni vs State of U.P. and others 2022 SCC Online SC 249 as the project pertains to the year 2004, whereas present complaint to seek compensation was filed on dated 27.06.2025, much after the period of limitation. She has further argued that in the case in hand, grossly barred by limitation, 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. She 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 further argued that it is the requirement of Sections 71 and 72 of the Act, 2016 read with Rule 29 of the Rules, 2017, the Adjudicating Officer to adjudge compensation by conducting an enquiry in the manner laid and for conducting the enquiry there should be sufficient evidence led by the complainant with facts and figures to prove as to how it is entitled to get compensation within the meaning of Section 72 of the Act, 2016. She further argued that in the instant

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case, the complainant has not led any evidence as to how it has spent the amount in the manner claimed to seek compensation under different heads, so it being the case of no evidence in support of the claim of the complainant, the complaint is to be dismissed being devoid of merit.

She has also argued that in the instant case, since the complainant had purchased the unit knowing fully well the likely delay on the part of the promoter in completion of project from the original allottee, it can't claim any harassment etc., so, the subsequent allottees are not entitled for any compensation. Learned counsel for respondent has further argued that it is a case of second subsequent allottee for compensation and it is also a case of the second 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 original allottee to have left the project in between. In support of this argument, she has referred to the order of this Forum passed in "Kanta Malhotra versus Parsynath Developers Ltd." in Complaint No. 918 of 2018, wherein request for compensation of subsequent allottee has been declined.

He has also referred to the law laid down by Hon'ble apex Court in 'Experion Developers Pvt. Ltd. versus Sushma Ashok Shiroor' in Civil Appeal No.7149 of 2019 decided on 07.04.2022 to say once in the case in hand, that possession and delay interest has been awarded in favour of the allottee by HRERA

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Authority u/s 31 of the Act, 2016, he or she is not entitled to any amount of compensation separately because interest payable on the refund is restitutionary and also compensatory payable from the dates of deposits and the term "Restitutionary" means Compensation for loss. In other words, once the allottee has been paid compensation for the loss caused in the form of interest granted by Authority, the allottee can't claim the same compensation on the same grounds u/s 71 of the Act, 2016.

Finally, she has prayed to dismiss the complaint being not maintainable in view of provisions of Caveat Emptor.

7. With due regards to the rival contentions and facts on record, this Forum possess following issues /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 present complaint under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, pertaining to a project of the year 2004 is maintainable under the RERA Act, 2016 read with Rules 2017, if filed on dated 27.06.2025?

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

(d) Whether it is necessary for the complainant to give evidence of mental harassment, agony, grievance and frustration caused due to deficiency in

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service, unfair trade practice and miserable attitude of the promoter, in a case to get compensation or interest?

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

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

8(a) Whether the law of limitation is applicable in a case covered under RERA Act, 2016 and IIRERA 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 2004, whereas complaint was filed in the year 2025.

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

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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.

8(b) Whether the present complaint under Section 71 of the Act, 2016 read with Rule 29 of the Rules, 2017, pertaining to a project of the year 2004 is maintainable under the RERA Act, 2016 read with Rules 2017, if filed on dated 27.06.2025?

The answer to this question is in negative.

This question has been answered by Hon'ble Apex Court in M/s New Tech Promoters and Developers Pvt. Ltd. v/s State of U.P. & Ors., (2021 SCC 1044) to the effect that "projects already completed or to which the Completion Certificate has been granted are not under the fold of RERA Act." Since, in the instant case, the project in question was neither completed when the RERA Act came into existence on May 2016. nor any Completion Certificate was issued to it prior thereto, it is a case which is duly covered by the provisions of the Act, 2016 and Rules, 2017. It is not out of place to mention here that in the case in hand the project was not completed even

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when the complaint before Authority was filed to seek refund and even now also probably it is not complete.

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

On this point, relevant provisions of RERA Act, 2016 and also law on the subject for grant of compensation, are as under;

(i) Section 18- Return of amount and compensation

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

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 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."

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

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.

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

After having discussed law to be taken note of to decide compensation by the Adjudicating Officer, now it is to be seen whether, in the present case, wherein the complainant, is third allottee as had got transferred the unit from second purchaser namely Sh. Navneet Nasa who had purchased it from

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original allottee namely Sh. Prabit Kumar Das, 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	2004
ii)	Date of joining of project by original allottee i.e. Sh. Prabit Kumar Das	2004 (01.06.2004)
iii)	Date of issuance of allotment letter in favour of original allottee i.e. Sh. Prabit Kumar Das	Not allotted
iv)	Date of execution of BBA with original allottee i.e. Sh. Prabit Kumar Das	Not executed
v)	Proposed date for handing over of Possession	Cannot be determined as no BBA executed
vi)	Total sale consideration	₹10,50,000/-
vii)	Transfer by original allottee i.e. Sh. Prabit Kumar Das in the name of the complainant i.e. Sh. Navneet Nasa, second allottee	23.01.2006(as per reply by respondents)
viii)	Total amount paid by complainant	₹5,62,500/-

	Dates and amount of payment made by Sh. Prabir Kumar Das	₹1,60,000/- on 01.06.2004												
ix)	Dates and amount of payment made by Sh. Navneet Nasa	<table> <tr> <th>S.No.</th><th>Date of payment</th><th>Amount in (₹)</th></tr> <tr> <td>1.</td><td>22.12.2005</td><td>₹3,65,000/-</td></tr> <tr> <td>2.</td><td>12.10.2007</td><td>₹37,500/-</td></tr> <tr> <td></td><td>Total</td><td>₹5,62,500/-</td></tr> </table>	S.No.	Date of payment	Amount in (₹)	1.	22.12.2005	₹3,65,000/-	2.	12.10.2007	₹37,500/-		Total	₹5,62,500/-
S.No.	Date of payment	Amount in (₹)												
1.	22.12.2005	₹3,65,000/-												
2.	12.10.2007	₹37,500/-												
	Total	₹5,62,500/-												
x)	Occupancy Certificate whether received till filing of complaint	NO												
xi)	Date of filing of complaint under Section 31 before Hon'ble Authority	24.09.2021												
xii)	Date of order of Hon'ble Authority	14.03.2023												
xii)	Date of filing of complaint under Sections 71 read with Rule 29	27.06.2025												
xiii)	Date when total refund made	Execution still pending before Authority.												
xiv)	Date of endorsement	25.10.2007												
xv)	Transferred to Navneet Nasa	23.01.2006(as per reply by respondents)												
xvi)	Transferred to Narendra Pal Gupta	25.10.2007												

It is matter of record that the project is of the year 2004, and that the complainant on its part had performed his part of duty by paying 50% of basic price of the unit. Admittedly, total price of the unit was ₹10,50,000/- whereas the complainant paid ₹5,62,500/- which includes the payment made by the original allottee.

The above facts, make it clear that when the present complainant purchased plot to his name after endorsing on dated 25.10.2007, after making required payments to Sh. Navneet Nasa, i.e. Second allottee, 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 14.03.2023, and execution of said order is pending adjudication till date.

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

To answer the question, this Forum hold that despite being an "allottee" within the meaning of Section 2(d) of the RERA Act, 2016, the complainant may be entitled to get the relief of refund or possession along with interest thereon from Hon'ble Authority under Section 31 of the Act,

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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 first allottee followed by the subsequent purchaser 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 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 dated 22.07.2021. 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 third allottee i.e. complainant in the year 2007, thus, there was no occasion for the present complainant to have suffered any agony w.e.f. the year 2004 onwards and thereafter also no chance to claim harassment on his part as he knew the consequences of joining a project which was already under turmoil and ineffective. Rather, the Principle "Buyer be Aware" would also act against the subsequent allottee in this case. It is also not out of place to mention here that right to get refund or possession with interest and the right to get compensation under RERA Act, 2016, are two different remedies available with an allottee unlike under Consumer Protection Act and both these remedies need specific factors to be considered by the respective Forums to grant the relief. In other words, these remedies being independent to each other, would not give right to an allottee to claim both as of right e.g. an original allottee can be held entitled to both reliefs but not a subsequent transferee who may get refund or possession but not compensation despite falling within the meaning of definition of "allottee" given under Section

2(d) of the Act, 2016, as had not been victim of sufferings which original allottee initially faced believing builder's false promises. It would be justified to observe here that feelings of suffering or agony or harassment or pains etc. are subjective, means restricted to individuals only, which cannot be transferred from original allottee to subsequent allottee to enable later to claim compensation. Infact, such feeling of suffering cannot be equated with transfer of money from one to another, which is the reason subsequent allottee may be held entitled to get refund or possession with interest but certainly not compensation within the meaning of section 72 of the Act, 2016.

9.(a) Though, learned counsel for the complainant has argued that it is not a case of distress sale, but this Forum is not in agreement with this argument because if the original/ second allottee had left the project without waiting for its completion, it would amount to withdrawal from the project on the part of original/second allottee because of dissatisfaction on its part from the progress and management of the project and if third purchaser bought such property from second 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 given desired results from the project, which 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 second allottee to the third allottee disentitling the latter 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;

“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

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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".

10. Learned counsel for the complainant has not been able to show any law laid down by any Hon’ble Higher Judicial Forum, wherein, in the given circumstances of the present case filed under Section 71 of the Act, 2016, read with Rule 29 of HIRERA 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 he certainly is not entitled to get compensation for the wrong knowingly done. Otherwise also, no question arises to compensate him since the time of inception of the project in the year 2004.

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.

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



MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
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Note: This order contains 33 pages and all the pages have been checked and signed by me.

Akshita
Law Associate



MAJOR PHALIT SHARMA
ADSJ (Retd.)
ADJUDICATING OFFICER
19.01.2026