HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER, HRERA, PANCHKULA

Complaint No. : 1051 of 2024
Date of Institution: 07.08.2024
Date of Decision: 01.12.2025

Mr. Krishan Kumar s/o Sh. Dayanand , R/o House No. 82-A, Ishwar Colony, Bawana, Delhi- 110039

...COMPLAINANT

Versus

TDI Infrastructure Limited, having its Registered office at 10 Shahed Bhagat Singh Marg , New Delhi 110001

....RESPONDENT

Hearing: **3rd**
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 'Mr. Krishan Kumar s/o Sh. Dayanand against TDI Infrastructure Limited', seeking compensation and the interest from this Forum, in accordance with the provisions of Rule 29 of the HRERA, 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 complainant after having gone through the advertisement given by the respondent company i.e. TDI Infrastructure Limited (hereinafter to be referred as the respondent) had booked a 4 BHK Floor in the project- TDI Tuscan Floors of the respondent. On dated 27.06.2011, complainant booked 4 BHK Floor bearing no. T-41measuring 1434 sq.ft. in the project 'Tuscan Floors' in Tuscan City. At the time of booking complainant paid ₹4,50,000/-. The Builder Buyer Agreement was signed on 04.09.2012 and possession was to be handed over on dated 04.03.2015. The complainant had made payment of ₹19,93,000/- and total sale consideration was ₹36,03,484/-. That, no Occupation Certificate has been received by developer/respondent till date and respondent has not offered possession to complainant even after lapse of 9 years. That, complainant had invested his hard earned money and has also taken loan for purchasing the unit for residing and have been paying EMI's on the loan. 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,

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complainant was left with no other option but to approach this Authority and filed complaint No. 3030 of 2022 before the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula, for refund along with interest which was allowed vide order dated 02.07.2024 and the respondent was directed to refund the amount paid by the complainant, i.e., ₹19,93,225/- along with interest calculated till the date of order which works out to ₹27,77,980/-; 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 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 complainant 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

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loss of rentals/earnings if flat would have been given on rent/lease to a tenant; and other relief this Forum may grant.

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 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 his 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

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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. 3030 of 2022, decided on 02.07.2024 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 granted by the Authority in the form of interest; That no documentary evidence has been placed on record by the complainant to support its averments. 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.

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6. In support of its contentions, learned counsel for the complainant has argued that in the instant case, complainant is very much entitled to get compensation and the interest thereon, because despite having played its part of duty as allottee, the complainant had met all the requirements including payment of sale consideration for the unit booked but it is the respondent which made to wait the complainant to get its unit well in time complete in all respect for more than 9 years, which forced the complainant to go for unwarranted litigation to get the refund along with interest by approaching Hon'ble Authority at Panchkula, which has finally granted on dated 02.07.2024. He further argued that the complainant has been played fraud upon by the respondent as it despite having used money deposited by the allottee did not complete the project and enjoyed the said amount for its own cause which amounts to misappropriation of complainant's money on the part of respondent. He has also argued that the allottee has made maximum payment and also suffered mental and physical agony because of delay in possession, thus, in view of clause 30 of the Builder Buyer Agreement, the complainant is entitled to 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 had argued that the complainant can not claim compensation when relief of refund along with interest has already been granted by the Authority. He has further argued that there has not been any intentional delay on the part of the respondent to complete the project which got delayed because of the circumstances beyond

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the reach of the respondent. He has also argued that since the project was launched prior to inception of Act, 2016, provisions of Act, 2016 shall not apply in this case. He also argued that the complaint is barred by limitation, hence, it be dismissed. He has also argued that the complainant can't take benefit of clause 30 of Builder Buyer Agreement, as there has been no willful delay on the part of promoter to complete the project. 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 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. He further argued that in the instant 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 a case of no evidence in support of the claim of the complainant, the complaint is to be dismissed being devoid of merit. Finally, he has prayed to dismiss the complaint.

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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 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?

(f) Whether complainant is 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?

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

With due regards to the rival contentions and facts on record, this Forum is of the view the law of limitation does not apply in respect of a complaint filed under the provisions of the RERA Act, 2016. Rather, Section 29 of the Limitation Act, 1963, specifically provides that Limitation Act, 1963, does not apply to a special enactment wherein no period of limitation is provided like RERA Act, 2016. For ready reference, Section 29 of the Limitation Act, 1963, is reproduced below;

Section 29 - Limitation Act, 1963

29. Savings.--

(1)Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2)Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed

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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

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an application in this case as the project has not been completed till date, resulting into refund of the amount to the complainant, so, cause of action for the complainant 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 of the Act, 2016, the Adjudicating Officer exclusively has the power to determine compensation, 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

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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 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:-

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"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

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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

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*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?

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

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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

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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 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

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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.

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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(c) 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 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

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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 complainant is entitled to get compensation in the case in hand?

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

<table>
<tr><td>(i)</td><td>Project pertains to the year</td><td>2011</td></tr>
<tr><td>(ii)</td><td>Proposed Handing over of possession</td><td>As per clause 30 of builder buyer agreement dated 04.09.2012, 30 months from the date of BBA (04.03.2015)</td></tr>
<tr><td>(iii)</td><td>Basic sale price</td><td>₹36,03,484/-</td></tr>
<tr><td>(iv)</td><td>Total amount paid</td><td>₹19,93,225/-</td></tr>
<tr><td>(v)</td><td>Period of payment</td><td>10.08.2011-
02.01.2012
<table><tr><td>Sr. No.</td><td>Date of payment</td><td>Amount in (₹)</td></tr><tr><td>1.</td><td>10.08.2011</td><td>₹4,50,000/-</td></tr></table></td></tr>
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		<table><tr><td>2.</td><td>18.08.2011</td><td>₹10,38,000/-</td></tr><tr><td>3.</td><td>19.10.2011</td><td>₹4,90,000/-</td></tr><tr><td>4.</td><td>16.12.2011</td><td>₹225/-</td></tr><tr><td>5.</td><td>02.01.2012</td><td>₹15,000/-</td></tr><tr><td></td><td>Total-</td><td>₹19,93,225/-</td></tr></table>
(vi)	Occupancy certificate Whether received till Filing of complaint	NO
(vii)	Date of filing of complaint under Section 31 before Hon'ble Authority	14.11.2022
(viii)	Date of order of Authority	02.07.2024
(ix)	Date of filing of complaint under Sections 71 read with Rule 29	07.08.2024
(x)	Date when total refund made, if made	Part-payment made in the following manner <table><tr><td>Sr. no.</td><td>Date of payment</td><td>Amount in (₹)</td></tr><tr><td>1.</td><td>01.05.2025</td><td>₹5,00,000/-</td></tr><tr><td>2.</td><td>07.07.2025</td><td>₹5,00,000/-</td></tr><tr><td></td><td>Total</td><td>₹10,00,000/-</td></tr></table>

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It is a matter of record that the project advertised in the year 2011, 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 its part of duty by paying more than 50% of basic price of the unit. Admittedly, the basic price of the unit was ₹36,03,484/- whereas the complainant paid ₹19,93,225/- till 02.01.2012.

It is also admitted on record that the complainant did not get possession of the unit allotted. There can also be no denial that allottee of the unit generally spend their lifetime earning and they are not at equal footings with that of the promoter, who is in a dominating position. The position of the allottees becomes more pitiable and sympathetic when he or she has to wait for years together to get the possession of a unit allotted despite having played its bid. But, on the contrary, it is the promoter who enjoys the amount paid by allottees during this period and keep on going to delay the completion of the project by not meeting legal requirements on its part to get the final completion from competent Authority about fulfilling which such promoter knew since the time of advertisement of the launch of the project. Further, the conduct of the promoter to enjoy the paid amount of

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allottee is nothing but misappropriation of the amount legally paid as the promoter did not hand over possession, which the promoter was legally bound to do. It is not out of place to mention here that if the promoter/respondent had a right to receive the money from the allottee to hand over the possession in time, it is bound to face the consequences for not handing over the possession in time. Here, it is worth to quote a Latin maxim "ubi jus ibi remedium," which means "where law has established a right, there should be a corresponding remedy for its breach." If this be the legal and factual position, the promoter is not only bound to refund the amount but also to compensate the allottee for disappropriate gain or unfair advantage on the part of the promoter within the meaning of Section 72(a) of the Act 2016, of the amount paid. It is not out of place to mention here that as per record, the allottee had paid ₹19,93,225/-. However, it is not in dispute that the respondent neither completed the project, nor handed over possession till allottee having been forced to approach Hon'ble HRERA Authority, Panchkula, to get relief of refund along with delay 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,

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harassment, mental pain and agony during the said period bringing its case within the ambit of Section 72(d) of the Act, 2016 as such feelings are to be felt/sensed by this Forum without seeking any proof thereof.

In view of the above, since, the promoter had been using the amount of ₹19,93,225/-, for the last more than 9 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 complainant after taking into consideration, the default of respondent for the period starting from 2011 to till date and also misutilization of the amount paid by the complainant to the respondent. In fact, the facts and circumstances of this case itself are proof of agony undergone by the complainant for so long, hence, there is no need to look for formal proof of the same. Further, there can't be denial to the effect that the 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 complainant to file the complaints/execution petition by engaging counsel(s) at

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different stages, and also that because of escalation of prices of unit in last 9 years, the complainant 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.

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

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

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

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

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

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

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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

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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

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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

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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.

Though, in the case in hand, learned counsel for the complainant by relying upon the order passed by Hon'ble Appellate Tribunal, in Appeal no.305 of 2021 titled as "Anil Suri v/s Jindal Realty", has prayed to grant interest @ 6% as was approved in the quoted case. But, if this Forum adopts the criteria laid by Hon'ble Appellate Tribunal, obviously the amount of compensation is going to be lesser than the one calculated now by this Forum, means a decision detrimental to interest of allottee/ the complainant who otherwise deserves more. Before proceeding further, it is worth to note here that this Forum is performing

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its duties under a welfare oriented statute and the rules made thereunder, thus, has to interpret the law in the manner it meets the scope and object of the Act, 2016 read with Rules, 2017. Having this duty in mind, this Forum having all due regards of the order passed by Hon'ble Appellate Tribunal on dated 16.05.2022 vide which it upheld the order passed by learned Predecessor of this Forum which had granted 6% rate of interest, holds that since on the face of it the relevant provisions of Sections 2(za), 18 of the Act, 2016, read with Rules 15 & 16 of Rules, 2017, were not brought to the notice of learned Predecessor of this Forum and then to the notice of Hon'ble Appellate Tribunal, the order dated 16.05.2022, of Hon'ble Appellate Tribunal cannot be made base to grant the rate of interest in the manner complainant has desired as the relevant provisions regarding grant of interest and its rate provided in the Act, 2016 & Rules 2017, were never brought to its notice for discussion and consideration, which now have been discussed above by this Forum. Moreover, if this Forum grants rate of interest as per the provisions of this special Act, 2016 with Rules 17 and not as per the quoted case, it would not be doing injustice to any party, as it is doing so to the best of its knowledge as per the relevant law on the subject. To grant a relief more than prayed for, this Forum has taken strength from the three Latin maxim. Firstly, "*Ex debito justitiae*", means "As a debt of justice". Secondly, "*Actus curiae neminem gravabit*", means "An act of the court shall prejudice to no

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one". Thirdly, "*Ex aequo et bono*" means "According to equity and good conscience". Similarly, has placed reliance on the law laid down in Babulal v/s Hazari Lal Kishori Lal, AIR 1982 SC 818, State of Karnataka v/s Appa Balu Ingale, (1995) 2 SCC 273, Rameshwar v/s Jot Ram, (1976) 1 SCC 194 and Rajesh Kumar Aggarwal v/s K. K. Modi (2006) 4 SCC 385.

With above observations, it is concluded that this Forum has decided to grant the relief of compensation having in mind the relevant provisions of the Act and the Rules dealing with RERA cases and even if it has granted relief much more than demanded by the complainant may be due to lack of knowledge of the relevant provisions of law, such grant of relief cannot be termed to be the one granted more than demanded as the calculations have been made as per the special law on the subject. Moreover, even if such relief is granted, it would not surprise the opposite party, nor change the nature of case because from the very beginning the respondent knew the facts and law to fight against which it had opportunity to contest till the matter was decided on merit. It is not out of place to mention here that this Forum has repeatedly been giving benefit of compensation in the manner given in the present case after having discussed the relevant provisions of law and till date no such order has been set-aside by any of the Hon'ble Higher Judicial Forums meaning thereby as of now the line adopted by this Forum so far to grant

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compensation in similarly circumstanced cases, is legally intact, thus has decided to go on with the same chain of thoughts in this case as well.

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 by complainant (in ₹) and date	Amount paid by respondent(in ₹) and date	Time period	Rate	Compensation Amount (in ₹)
₹4,50,000/- paid on 10.08.2011	₹5,00,000/- paid on 01.05.2025	10.08.2011-01.05.2025 (₹5,00,000/- paid on 01.05.2025) on ₹4,50,000/-	10.85 %	₹6,70,708/-
₹10,38,000/- paid on 18.08.2011		18.08.2011-01.05.2025 (₹5,00,000/- paid on 01.05.2025) on 50,000/-	10.85 %	₹74,404/-
	₹5,00,000/- paid on 07.07.2025	18.08.2011-07.07.2025 (₹5,00,000/- paid on 07.07.2025) on remaining amount of ₹9,88,000/-	10.85 %	₹14,89,905/-

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		18.08.2011-01.12.2025 (Date of order) on remaining amount of ₹4,88,000/-	10.85 %	₹7,57,229/-
₹4,90,000/- paid on 19.10.2011		19.10.2011-01.12.2025 (Date of order) on ₹4,90,000/-	10.85 %	₹7,51,302/-
₹225/- paid on 16.12.2011		16.12.2011-01.12.2025 (Date of order) on ₹225/-	10.85 %	₹341/-
₹15,000/- paid on 02.01.2012		02.01.2012-01.12.2025 (Date of order) on ₹15,000/-	10.85 %	₹22,665/-

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

The total compensation comes to ₹37,66,554/-+ ₹30,000/- = ₹37,96,554/- (Thirty Seven Lakhs Ninety Six Thousand Five Hundred and Fifty Four 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 much more than they spent but it is justified because the property which he had applied in the year 2011, 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 ₹37,66,554/- i

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₹30,000/- = ₹37,96,554/- (Thirty Seven Lakhs Ninety Six Thousand Five Hundred and Fifty Four 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(za) 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 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

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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
01.12.2025

Note: This judgement contains 35 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