



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

Complaint No. 1706 of 2023

Sanjay Kumar Saini

....COMPLAINANT

VERSUS

Express Projects Pvt. Ltd.

.....RESPONDENT

Date of Hearing:- 17.02.2026

Hearing:- 11th

Present:- Mr. Akshat Mittal, Adv., for the complainant through VC.

Mr. Kamaljeet Dhiya for the respondent through VC.

ORDER

Today, the case is fixed for advancing arguments on the query of maintainability of complaint within the meaning of provision of Section 18(1) of the RE(RD) Act, 2016.

2. Arguments heard.

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3. Vide separate detailed order of even date, the present complaint is dismissed being non maintainable within the meaning of Section 18(1) of the RE(RD) Act,2016
4. File be consigned to the record room after compliance.
5. Let the orders be uploaded on the website of the Authority.

Phalit Sharma

MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
17.02.2026

Akhil Bhardwaj
Law Associate



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Date of Hearing:- 17.02.2026

Hearing:- 11th

Present:- Sh. Sanjay Kumar Saini, complainant in person/VC
Mr. Akshat Mittal, Adv., for the complainant through VC.
Mr. Kamaljeet Dahiya, Adv., for the respondent through VC.

ORDER

This order of mine will dispose of a legal query raised vide order dated 26.08.2025 as to whether present complaint for compensation is maintainable within the meaning of Section 18(1) of RE(RD) Act, 2016 (hereinafter to be referred as the Act, 2016), particularly when the allottee/complainant has got the relief of possession from the Hon'ble Authority under Section 31 read with Section 35 of the Act, 2016?

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2. Learned counsel for the complainant has argued that Section 18(1) of the Act, 2016, do not bar grant of compensation to the compliant/allottee who elected to continue with the project as there is no such mention in the proviso to Section 18(1) of the Act, 2016, thus present complaint is maintainable. He has further argued that the Act, 2016 and the HRERA Rules, 2017 (hereafter to be referred as the Rules, 2017), are beneficial in nature, hence, its provisions are not to be given narrow interpretation particularly when in the case in hand the promoter had even violated the conditions laid in the Occupancy Certificate as it did not make provisions for water proofing despite its mandatory requirement, warranting attraction of provisions of Section 14(3) of the Act, 2016 in favour of the allottee to get compensation. He has further argued that even if this Forum do not find the present complaint maintainable, still the complainant be compensated for getting involved in unwarranted litigation and also for the payment of loan taken to pay for the unit as well rent paid as was not given possession of the unit allotted in time because such relief is duly covered under Section 72 of the Act, 2016. He has also argued that even Section 18(2) and 18(3) of the Act, 2016, empowers an allottee to get compensation, who continued with project, so in the case in hand, the compensation be allowed as the complaint is maintainable.

3. On the other hand, learned counsel for the respondent has argued that because of bar to grant compensation under Section 18(1) to the allottee who continues with project as the case under consideration is, the present complaint

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for compensation is not maintainable. He has also argued that the relief under Section 18(2) & (3) and Section 14(3) of the Act, 2016, can also not be granted as neither there are pleadings to that effect, nor, complaint for compensation on such grounds has been filed as per provisions of Section 71 of the Act, 2016 read with Rule 28(2)(m) and Rule 29(1) of the HRERA Rules, 2017. Finally, he had prayed to dismiss the complaint, it being non-maintainable.

4. With due regards to the arguments advanced for and against to prove maintainability of the present complaint, the main legal issue which crops up to decide is whether the present complaint for compensation is maintainable within the meaning of Section 18 read with Sections 12, 14, 15 & 16, Sections 71 & 72 of the Act 2016 read with Rules 28(2)(m) and Rule 29(1) of the Rules, 2017?

A. Before answering this question, this Forum would refer to the relevant provisions relating to maintainability of the complaint for compensation under the Act, 2016 and the Rules, 2017.

Section 31: Filing of complaints with the Authority or the adjudicating officer:

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation.--For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed].

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Provisions of Section 31 indicates that it speaks about filing of complaint before the Authority as well as before the Adjudicating Officer as per form prescribed which are prescribed under the headings as 'CRA' (Rule 28(1) and 'CAO' (Rule 29(1)). How, a complaint filed under Section 31 of the Act, 2016, is to be proceeded with is described in Rule 28 of the Rules, 2017 and while conducting enquiry what all powers Authority can exercise is mentioned in Section 35 of the Act, 2016. For ready reference, relevant portion of Rule 28(1) and 2(m) of Rules, 2017 as well as Section 35 of the Act, 2016, are reproduced below:

28. Filing of complaint with Authority (section 31), and inquiry into allegations of contravention (2) or violations (section 35) and disposal of complaint (section 36, section 37 and section 38). -

(1) Any aggrieved person may file a complaint with the Authority for any violation or contravention of the provisions of the Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent as the case may be in Form 'CRA', or in the form specified in the regulations, which shall be accompanied by a fees as prescribed in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled bank or online payment in favour of "Haryana Real Estate Regulatory Authority".

(a) xxx.

(b) xxx.

(c) xxx.

(d) xxx.

(e) xxx.

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- (2) (a)xxxx
- (b) xxxx.
- (c) xxxx.
- (d) xxxx.
- (e) xxxx.
- (f) xxxx.
- (g) xxxx.
- (h) xxxx.
- (i) xxxx.
- (j) xxxx.
- (k) xxxx.
- (l) xxxx.

(m) "If the complaint in form 'CAO' filed before the adjudicating officer for adjudging quantum of compensation, the complaint shall be admissible from the stage of concluding inquiry by the Authority that respondent being promoter has violated or contravened provisions of the Act or the rules or regulations made thereunder warranting liability of the promoter to pay compensation to the allottee under the provisions of the Act or the rules or regulations made thereunder. The Authority may refer the matter to the adjudicating officer for adjudging the quantum of compensation payable to the complainant allottee, and direct both the parties to appear before the adjudicating officer on the appointed day. The quantum of compensation payable to the complainant may be expressed by the adjudicating officer in the form of lump sum amount or in the form of percentage of interest on the amount paid by the complainant to the respondent promoter (compensation expressed in terms of interest i.e. compensatory interest)."

Section 35: Powers of Authority to call for information, conduct investigations.

(1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and

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recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) issuing commissions for the examination of witnesses or documents;

(iv) any other matter which may be prescribed.

Perusal of Rule 28 of the Rules, 2017, indicates that it lays down the procedure as to how the complaint be filed before the Hon'ble Authority under Section 31 of the Act, 2016 and enquiry thereon is to be conducted as per guidelines laid in Section 35 of the Act, 2016, and to pass orders as mentioned in Sections 36, 37, 38 of the Act, 2016. The sub Rule 28(2)(m) in particular makes it clear that the complaint for compensation is admissible from the stage of concluding enquiry by Hon'ble Authority.

It means that it is mandatory for filing a complaint for compensation that such complaint shall only be admissible

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on the conclusion of enquiry by the Authority, holding therein that promoter has violated or contravened the provisions of Act 2016. The word "shall" used in Rule 28(2)(m) has to be construed in its true sense to meet the real object of this special welfare oriented statute without giving it any other connotation to dilute its impact.

Now, this Forum would refer to relevant provisions of Section 71 and provisions of Rule 29 which deals with complaints before the Adjudicating Officer and summary procedure to be adopted by the Adjudicating Officer, to grant compensation.

Section 71: Power to adjudicate.

(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner; after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:

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Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

Perusal of Section 71 indicates that an Adjudicating Officer is to be appointed by Hon'ble Authority to adjudge compensation under Sections 12, 14, 18, and 19 of the Act, 2016, who is required to conduct enquiry in the manner prescribed under Section 71 read with Section 72 of the Act, 2016. This Section does not mention what procedure is to be adopted to conduct enquiry in prescribed manner, which otherwise is provided in Rule 29, relevant portion of which is described below;

"Rule 29(1)(a) Any aggrieved person may file an application/ complaint with the Adjudicating Officer for adjudging quantum of compensation as provided under sections 12,14,18 and 19, where violation by the promoter has been established by the Authority in an enquiry under section 35, in Form 'CAO' or in such form as specified in the regulations, which shall be accompanied by a fee as mentioned in Schedule III in the form of demand draft or a bankers cheque drawn on a Scheduled bank, or online payment in favour of "Haryana Real Estate Regulatory Authority" and payable at

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the branch of that bank at the station where the seat of the said Authority is situated.”

The above described provisions, if read collectively, it emerges that Section 31 indicates that it deals with the provisions for filing complaint with the Authority or Adjudicating Officer against the promoter, allottee, real estate agent as the case may be, if there are any violations or contraventions of provisions of this Act or Rules and Regulations made thereunder. This Section also mentions that the complaint has to be filed as per the form, manner and fees so prescribed. The required format is given in the Form ‘CRA’ and this form pertains to a complaint before the Authority to claim relief or directions or order and penalty proceedings under Section 31 read with Sections 35, 36, 37 and 38 of the Act, 2016. In nutshell, Section 31 does not relate to the procedure for filing the complaint for compensation but deals with provisioning of filing of complaint before Authority or Adjudicating Officer, as per its subject and Section 35 speaks about how enquiry to be conducted by Authority where complaint under Section 31 is received. How a complaint is to be filed before the Adjudicating Officer has been described in Rule 28 Sub rule 2(m) which mandates that conclusion of enquiry by Authority under Section 35 of the Act, 2016, is must before filing of complaint for compensation.

Further, perusal of Rule 29 makes it clear that there is no provision in Rule 29 of Rules, 2017, which enables an allottee to apply for compensation under Section 71 of Act,

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2016, read with Rule 29 of the Rules, 2017, directly by approaching Adjudicating Officer to get relief without approaching Hon'ble Authority for conducting enquiry under Section 35 of the Act, 2016 read with Rule 28 of the Rules, 2017. It is worth to mention here that Rule 29 nowhere prescribes and even also Section 71, that to decide compensation, an Adjudicating Officer is also authorised to decide the violations or non-discharge of obligations on the part of the promoter. Had it been the intent of the Legislature, it would not have had made amendment in Rule 29 vide Notification no. Misc-862/1/83/2019/1TCP dated 12.09.2019 to bring unamended Rule 29 in consonance with the requirement of filing a complaint for compensation as mandated in Rule 28(2)(m), explained above. Further, by using the word in Rule 28 as, "complaint shall be admissible", legislature has made its intent clear that complaint for compensation is only admissible when Hon'ble Authority has concluded the enquiry and has arrived at conclusion that there has been violations by the promoter of any of the provisions mentioned in Sections 12, 14, 18 and 19 of the Act, 2016. It is the reason that the form 'CAO' at Column 4 "facts of the case", requires such information. For ready reference, column 4 is reproduced below;

*"4. **Facts of the case:**[give a concise statement of facts and grounds of claim for compensation against the promoter and the contravention or violation of provisions of the Act or the Rules or regulations made thereunder as established by an enquiry under section 35 by the Authority being ground for claim of the compensation, if yes, copy be enclosed];"*

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In view of the above observations, it is concluded that violations and non-compliance of obligations are required to be established by the Hon'ble Authority to enable the complainant to seek compensation. Undoubtedly, the Hon'ble Authority as well as the Adjudicating Officer have different powers to exercise and their judicial powers do not interfere in each other's domain. But at the same time, the condition of Hon'ble Authority deciding violations first and then Adjudicating Officer deciding whether or not the complainant deserves compensation, by no stretch of imagination could be construed as intruding in each other's affair. Rather, such two legal actions are supplementary to each other, which want harmonious interpretation. Moreover, the work to decide violation has been assigned to Hon'ble Authority and not to the Adjudicating Officer and the Adjudicating Officer is assigned the job to decide compensation and not the violations. Had it been the intent of the legislature to allow the Adjudicating Officer to decide compensation after deciding violations or non-discharge of obligations, by it and not by Authority, it would have found such mention in Rule 29 or even Rule 28(2)(m) which is not the case. These observation of the Forum gets the full support from the observations made by Hon'ble Apex Court in M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of UP & Ors. Etc." 2022(1) R.C.R. (Civil) 357, wherein it is specifically mentioned that "If the adjudication upon Sections 12, 14, 18 and 19 other than compensation as envisaged, it extended to the Adjudicating Officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of

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the Adjudicating Officer under Section 71 and that would be against the mandate of the Act, 2016”.

Hence, in all probabilities only conclusion to be arrived at is that the complainant to get compensation must have an order of the Authority passed after enquiry concluded as per procedure laid in Section 35 read with Rule 28 of the Rules 2017, wherein Hon'ble Authority has concluded that there had been established violations on the part of the builder/promoter, giving right to the complainant to claim compensation in addition to the relief got under Section 31, read with Section 35 of the Act, 2016.

B(i) Now, the question arises, whether or not an allottee who did not withdraw from the project and got relief of possession, is entitled for compensation despite there being implied bar as per provisions of proviso to Section 18(1) of the Act?

Legally, a complaint for compensation is not maintainable, if the allottee had not withdrawn from the project. To hold so, findings of this Forum are based on the following relevant provision of Section 18(1) of the RE(RD) Act, 2016, which impliedly bars grant of compensation in such like cases;

(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

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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.

If above described provision of Section 18(1) is considered for its application, it becomes crystal clear that it speaks about two kind of allottees; the one who withdraw from the project and another is the one who continues with the project and gets relief of possession. It further makes clear that the intention of legislature is to provide compensation to an allottee who withdraws from the project, in the manner provided under Sections 71 & 72 of the Act, 2016, read with Rules 28(2)(m) and Rule 29 of the HRERA Rules, 2017 i.e. the manner provided under the Act, 2016. However, there is no mention of grant of compensation to an allottee who decides to continue with the project, means the one who gets relief of possession from the Authority under Section 31 read with

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Section 35 of the Act, 2016. It is not out of place to mention here that in case of delay in handing over of possession, the allottee is entitled for only interest at the prescribed rate and not “compensation” as the suffix “including compensation” has not been provided by the Act, 2016, which otherwise is mentioned in respect of an allottee in Section 18(1), who withdraws from the project. It means, there is no provision made under Section 18(1) of the Act, 2016, to grant compensation to an allottee who does not withdraw from the project.

Undoubtedly, Section 18(2) and (3) of the Act, 2016, speaks about grant of compensation to allottee where allottee suffers loss due to defective title of the land on which project is to be developed, or, has been developed and the demand of such relief is not subject to any limitation period. Similarly, Section 18(3) of the Act, 2016, also caters for the right of an allottee to get compensation from the promoter where promoter fails to discharge obligations as explained in Sections 12, 15 & 16 of the Act, 2016. But, the relief under Section 18(2) & (3) of the Act, 2016, is available only to those allottees who plead for relief on these grounds and prove it before the Authority by adopting the procedure laid under Section 31 read with Section 35 of the Act, 2016, and then apply for grant of compensation under Section 71 of the Act, 2016. Legally, it is not permissible under the Act, 2016 and the Rules, 2017, that an allottee after having elected to continue with the project within the meaning of Section 18(1) and having got the relief of possession, is permitted to adopt

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different grounds mentioned in Section 14 or Sections 18(2) & (3) of the Act, 2016, to get the relief of compensation. For the sake of repetition, it is mentioned here that to give findings on the claim of violations or non-discharge of obligations on the part of promoter, is the sole domain of the Authority under Section 31 read with Section 35 of the Act, 2016, followed by grant of relief of compensation within the meaning of Sections 71 & 72 of the Act, 2016, read with Rule 28(2)(m) and Rule 29 of the Rules, 2017 by the Adjudicating Officer, in appropriate cases.

The above described legal position regarding maintainability of a complaint for compensation makes one thing clear that the Adjudicating Officer is competent to entertain a complaint for compensation to adjudicate, only if the allottee had elected to withdraw from the project and got the relief of refund with interest after having established before the HRERA Authority the violations on the part of the promoter as mentioned in Sections 12, 14, 18 and 19 of the Act, 2016. It is also clear that an allottee who has continued with the project is not entitled for compensation under Section 18(1) of the Act, 2016 and even if entitled to as per Section 18(2) and (3) of the Act, 2016, or even under Section 14 of the Act, 2016, he must first resort to the provisions of Section 31 read with Section 35 of the Act, 2016, before pleading for compensation. In nutshell, the Adjudicating Officer has no jurisdiction to entertain a complaint for compensation where there is non-compliance of provisions of Section 31; or, allottee's case falls within the meaning of proviso

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to Section 18(1) of the Act, 2016; or that the allottee has not proved facts of violations or non-discharge of obligation before the competent Authority.

B(ii). Now, it is to be seen in the case in hand, where the complainant has got no relief of refund, rather his complaint seeking possession has been allowed and further there are no proven pleadings under Section 31 of the Act, 2016, to entitle the allottee to get relief under Section 14 or Section 18(2) & 18(3), the present complainant to seek compensation is maintainable?

The answer to this self imposed question is in negative because of the following reasons;

(a) Proviso to Section 18(1) of the Act, 2016, bars grant of compensation when the allottee has elected to go ahead with project;

(b) It is not a case, wherein compensation can be granted under Sections 14 or 18(2) or (3) of the Act, 2016, as there had been no pleadings to that affect, which is otherwise must, and also there is no order of the Authority under Section 31 of the Act, 2016, to hold that such claims of allottee, who elected to proceed with the project, are legally established, to entitle the allottee for compensation. It is not out of place to mention here that it is a cardinal principal of law of pleadings that every pleading shall contain, and contain only a statement in concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be. If the facts were not pleaded or the evidence in support of such facts was not annexed, the Court will not entertain the point.”

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(c) “The Act, 2016, read with the Rules, 2017, is beneficial in nature and its object is to regulate and promote the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal.” It means the provisions of this Act, 2016, being based on public policy are mandatory in nature and not directory, hence, any order passed in violation of such procedure would, undoubtedly be without jurisdiction. On this count also, no relief under Section 18(2) & (3) or even under Section 14 of the Act, 2016, can be granted as there is non-compliance of mandatory provision on the part of complainant to get such relief.

5. It is apt to note here that the Act, 2016 and Rules, 2017, are beneficial legislation, thus called special statutes and in such like legislations, it become necessary for the quasi-judicial forums dealing with it, to interpret its provisions in the manner desired, instead of, diverting from the procedures laid, therein just to grant relief in the name of it being beneficial legislature, as such illegal approach would defeat the real intent and purpose of this Act,2016 and the Rules, 2017 made thereunder.

6. In view of foregoing discussions, it is concluded that the present complaint for compensation is not maintainable not only because of bar provided under section 18(1) of the Act 2016, but also due to non-compliance of

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provisions of section 71 of the Act 2016, read with Rules 28 and 29 of the Rules 2017 plus for want of pleadings in respect of claims sought to be raised for compensation under Section 18(2) and (3) or even under Section 14 of the Act, 2016.

7. File be consigned to record room after uploading the order on the web portal of the Authority.


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MAJOR PHALIT SHARMA
ADSJ(Retd.)
ADJUDICATING OFFICER
17.02.2026

Akhil Bhardwaj
Law Associate