



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

Complaint No. 580 of 2023

Yogi Garg and Another

....Complainant

VERSUS

VATIKA LIMITED

.....Respondent

Date of Hearing: 14.05.2026

Hearing: 24th

Present: Mr. Sagar Ratusaria, Adv., for the complainant through VC.
Mr. Abhishek Kathuria, Adv., for the respondent through VC.

ORDER

1. This order of mine will dispose of a legal query raised vide order dated 04.11.2025 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? In addition thereto, whether or not the complainant in the facts and circumstances of the case, without pleadings and without compliance of

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provisions of Section 31 of the Act, 2016 read with Rule 28 of the Rules, 2017, is entitled to get relief under Section 18(3) of the Act, 2016?

2. Ld. Counsel for the complainant has argued that no bar to grant compensation is mentioned in Section 18(1) of the Act, 2016 and otherwise also Section 18(2) & (3) of the Act, 2016, specifically caters for grant of compensation to the allottee who elect to continue with project, hence the present complaint for compensation is maintainable. Learned counsel for the complainant has further argued that in the instant case, provisions of Section 18(3) of the Act, 2016 are there in support of the complainant to seek compensation even if the allottee elected to continue with the project and there is an order of Regulatory Authority dated 29.06.2022 directing the promoter to make fresh offer of possession with delayed interest. He has further argued that case of the complainant is duly covered under Section 18(3) of the Act, 2016, as there has been a number of breaches of statutory as well as contractual obligation on the part of the promoter who not only made offer of possession without requisite compliances/essential approvals but it also departed from sanctioned layout/amenities including defective termination which was not in consonance with BBA/contract. He has further argued that the promoter is also defaulter as has not complied with Authority's final order dated 29.06.2022 till date and had indulged in unfair trade practices and misrepresentations. He further argued that such breaches of obligation as reflected

in the written submission dated 04.11.2025 are sufficient to enable the complainant to get compensation in view of the law laid down by Hon'ble Apex Court in M/s New Tech Promoters and Developers Pvt. Ltd. v/s State of U.P., 2021 (18) SCC 1 and by Hon'ble Bombay High Court in Karan Chopra v/s Skystar Buildcon Pvt. Ltd., 2nd Appeal no.63/2024, date of decision 05.02.2024, and also the law laid down in Anil Kumar Grover v/s U.P. Real Estate Regulatory Authority & M/s Gardenia India Limited (Casemine) more so when Section 18(1) does not create an implied bar on grant of compensation to the complainant whose case is duly covered under Section 18(3) of the Act, 2016. At the end, he has submitted that since proviso to Section 18(1) does not oust Section 18(3) where the claim is not for "extra delay compensation" but for separate losses because of layout violations, invalid offer possession, illegal termination procedure, lack of essential procedure, lack of essential approvals and disobedience of the Hon'ble Authority's order, etc. the present complaint for compensation under Section 18(3) of the Act, 2016, is maintainable before this Forum, thus be decided on merit.

3. On the other hand, learned counsel for the respondent has argued that Section 18(1) does not use the word "compensation" but speaks about interest on delayed delivery of possession, hence as per proviso to Section 18(1) of the Act, 2016, no relief of compensation can be granted. He has further argued that even no compensation under Sections 18(2) & (3) or Section 14 of the Act, 2016, could be

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granted till the complaint for compensation is filed as per the prescribed procedure in the Act, 2016, which mandates first following the course available under Section 31 of the Act, 2016, read with Rule 28(2)(m) of the HRERA Rules, 2017 followed by compliance of procedure laid in Section 72 of the Act, 2016, and the Rule 29(1) of the Rules, 2017. He further argued that no relief under Section 71 of the Act, 2016, could also be granted in this case as there has been no pleadings covering the grounds mentioned in the Section 18(2) & (3) of the Act, 2016. He has also argued that if the complainant had any grievance or grounds to get compensation, mentioned in section 18(2) or (3) of the Act, 2016, he should have approached the Regulatory Authority for getting its grievances approved which it did not do. He has also argued that because of bar provided under Order II rule 2 CPC, the complainant can't be permitted to raise such issues during arguments in this complaint for compensation which it did not raise when complaint under section 31 of the Act, 2016, was filed. Finally, he has prayed to dismiss the complaint for compensation it being non-maintainable. In support of his arguments, he has referred to the law laid down in "Greater Noida Industrial Development Authority Vs. Ranjan Mishra", Appeal no. 70 of 2023, "Neelkamal Realtors Suburban Pvt. Ltd. and Ors. Vs. Union of India and Ors." Writ Petition no. 2737 of 2017 decided by Bombay High Court and "DLF Homes Panchkula Pvt.

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Ltd. & Anr. Vs. Sudesh Goyal etc. CA Nos. 4942-4945/2019 decided by the Supreme Court of India”.

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 under Section 31 & Section 71 of the Act, 2016 and the Rules, 2017;

Complaint before Authority

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 the format 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, to be proceeded with is described in Rule 28 of the Rules, 2017 and while conducting enquiry what all powers the Regulation 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.

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

(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.

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(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 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 Regulatory 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, 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

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of concluding enquiry by Regulatory Authority. It means that it is mandatory for filing a complaint for compensation that such complaint shall only be admissible 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.

Complaint before Adjudicating Officer

Now, this Forum would refer to relevant provisions of Section 71 and provisions of Rule 29 which deals with filling of complaint 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:

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 Section 12, 14, 18, and 19 of the Act, 2016, who is required to conduct enquiry in the prescribed manner. This Section does not mention what procedure is to be adopted to conduct enquiry in prescribed manner, which is provided in Rule 29, relevant portion of which is reproduced 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 the branch of that bank at the station where the seat of the said Authority is situated."

Impact of co-joint reading of prescribed procedures.

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The above described provisions, if read collectively, it emerges that Section 31 indicates that it deals with the provisions for filing complaint with the Regulatory 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 Regulatory 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 with provisioning of filing of complaint before Regulatory Authority or Adjudicating Officer, as per its subject and Section 35 speaks about procedure to conduct enquiry by Regulatory Authority when complaint under Section 31 is received. How a complaint is to be filed before the Adjudicating Officer has been prescribed in Rule 28 Sub rule 2(m) which mandates that conclusion of enquiry by Regulatory 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, 2016, read with Rule 29 of the Rules, 2017, directly by approaching Adjudicating Officer to get relief without approaching Regulatory 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 empowered to decide the violations on the part of the promoter besides adjudging compensation. 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/ITCP 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) as explained above. Further, by using the word in Rule 28 (2)(m) as, "complaint shall be admissible", legislature

has made its intent clear that complaint for compensation is only admissible when Regulatory Authority has concluded the enquiry and 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];"*

In view of the above observations, it is concluded that as per the procedure prescribed in the Act, 2016 and the Rules, 2017, violations and non-compliance of obligations are required to be established before the Regulatory Authority to enable the complainant to seek compensation. Undoubtedly, Regulatory 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 Regulatory 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 Regulatory 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 and not by Regulatory Authority, it would have found such mention in prescribed procedure laid in Rule 29 or even Rule 28(2)(m) which is not the case. These observation of the Forum gets 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, if extended to the Adjudicating Officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the Adjudicating Officer under Section 71 and that would be against the mandate of the Act, 2016”. The relevant Para 82 of the judgment is reproduced below;

“82.....that there is a complete delineation of the jurisdiction vested with the regulatory authority and the adjudicating officer. If there is any breach or violation of the provisions of Sections 12, 14, 18 and 19 of the Act by the promoter, such a complaint straightaway has to be filed before the regulatory authority. What is being referable to the adjudicating officer is for adjudging compensation, as reflected under Section 71 of the Act and accordingly rules and regulations have been framed by the authority for streamlining the complaints which are made by the aggrieved person either on account of violation of the provisions of Sections 12, 14, 18 and 19 or for adjudging compensation and there appears no question of any inconsistency being made, in the given circumstances, either by the regulatory authority or the adjudicating officer.”

Hence, after having discussed the relevant provisions regarding filling of complaint before the Regulatory Authority and the Adjudicating Officer only conclusion to be arrived at is that the complainant to get compensation must have an order of the Regulatory Authority passed after enquiry concluded as per procedure laid in Section 35 read with Rule 28 of the Rules 2017, wherein Regulatory 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 A complaint for compensation is also not maintainable if the allottee in general, had not withdrawn from the project or did not specifically plead for the grounds mentioned in section 18(2) and (3) of the Act, 2016. To hold so, findings of this Forum are based on the following relevant provision of Section 18 of the RE(RD) Act, 2016;

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.

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 prescribed under the Act, 2016 and the Rules, 2017. However, there is no mention in section 18(1) of the Act,2016, 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 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. In other words, his compensation is “grant of interest till delivery of possession”.

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B(ii) 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. 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 where promoter fails to discharge obligations as explained in Sections 12, 15 & 16 of the Act, 2016. Academically, the word "any other" used in Section 18(3) of the Act, 2016, means that apart from the delay in possession, any other breach of the terms and conditions of the Agreement to sell or breach of the obligations imposed on promoter by the provisions of the Act, 2016 or the Rules, 2017, the promoter shall also be liable to compensate the allottee. 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 Regulatory Authority by adopting the procedure laid under Section 31 read with Section 35 of the Act, 2016 and the Rule 28 of the Rules, 2017, 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 different grounds mentioned in Section 14 or Section 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 on the part of promoter is the sole domain of the Regulatory 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.

(C) The above described legal position regarding maintainability of a complaint for compensation makes clear 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 Regulatory Authority the violations as mentioned in Sections 12, 14, 18 and 19 of the Act, 2016, on the part of promoter. It is also clear that even if allottee is entitled to as per Section 18(2) and (3) of the Act, 2016, or even under Section 14 of the Act, 2016; he/she must first resort to the provisions of Section 31 read with Section 35 of the Act, 2016, before pleading for compensation within the meaning of rule 28(2)(m) and rule 29 of HRERA Rules, 2017 the legality of which has not been disturbed by Hon'ble higher judicial Forums so far. In nutshell, the Adjudicating Officer has no jurisdiction to entertain a complaint for compensation where there is non-compliance of provisions of Section 31 read with rule 28 ; or, allottee's case falls within the meaning of proviso to Section 18(1) of the Act, 2016.

(5) 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, from the point of view of law of pleadings or otherwise?

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

(a) Firstly, 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 Regulatory 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, wherever needed, the Court will not entertain the point." To hold so, this Forum has taken strength from the law laid down by Hon'ble apex Court in **Bachhaj Nahar Vs. Nilima Mandal & Anr,**

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CIVIL APPEAL NOS.5798-5799 OF 2008, decided on dated 23.9.2008, Union of India vs Ibrahim Uddin & Anr, CIVIL APPEAL NO. 1374 of 2008, decided on dated July 17, 2012, The National Textile Corporation Ltd. vs Nareshkumar Badrikumar Jagad & Ors, CIVIL APPEAL NO. 7448 of 2011, decided on dated September 5, 2011. Even, if it is taken that Regulatory Authority in its order after enquiry had mentioned about such violation or non-discharge of obligation on the part of the promoter, still it is necessary for the complainant seeking compensation to plead as to how such established non-compliance of provision of Section 12, 14, 18 & 19 on the part of promoter, entitled allottee to get compensation within the parameters laid in Section 72 of the Act, 2016. Mere mention of such violation etc. at the stage of arguments, without there being any finding therein of the Regulatory Authority in its order passed under Section 31 of the Act, 2016, would ipso facto not entitle the allottee for compensation as the pleadings must correspond with the relief claimed. In the case in hand, there had neither been findings of Regulatory Authority, nor, pleadings have mention about the same. Consequently, no relief can be grant merely on the basis of arguments raised.

Learned counsel for the complainant has referred to the law laid down in Anil Kumar Grover v/s U.P. Real Estate Regulatory Authority & M/s Gardenia India Limited (Casemine) to claim that the Adjudicating Officer had granted relief

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under Section 18(3) of the Act, 2016, without compliance of Section 31 of the Act, 2016, so it be granted in this case also. But, having due regards to the law referred to, benefit of the same is not available to the complainant because of two reasons. Firstly, the mandate of Rule 28(2)(m) and Rule 29(1) of the Rules, 2017, has not been discussed therein to hold that compliance of such provisions is not must to maintain a claim for compensation. Secondly, in the quoted cases, there were pleadings raised in petition, which is not the case in hand.

(b) The Act, 2016, read with the Rules, 2017, are 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 the 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 in this case as there is non-compliance of mandatory prescribed procedure on the part of complainant to get such relief. For the sake of repetition, it is mentioned here that both Section 18(2) and 18(3) of the Act, 2016, speaks about grant of compensation, "in the manner as provided under the Act" and the said

manner has been prescribed in Rule 28(2)(m) and Rule 29(1) of the Rules, 2017, explained above. These provisions unambiguously and clearly mandate allottee to get the violation or non-discharge established on the part of the promoter from the Regulatory Authority before pleading for compensation. In the given circumstances, it is mandatory for this Forum, to give effect to the natural meaning of the words used in the provisions of Rule 29(2)(m) and Rule 29(1) of the Rules, 2017, as it can't confer jurisdiction on itself, which is not provided in law. To hold so, this Forum has taken strength from the law laid down in R. S. Nayak v/s A. R. Antulay AIR 1984 SC 684, A. R. Antulay v/s R. S. Nayak (1988) 2 SCC 602, M/S. Grasim Industries Limited vs Collector Of Customs, Bombay (2001) 4 SCC 297. The collective reading of these citations is that "power to create and enlarge jurisdiction is legislative in nature and it is the settled proposition of law that jurisdiction of the Court comes solely from the law of the land and can't be exercised otherwise." Having these cited proposition of law and the provisions of Sections 71 & 72 read with Rules 28(2)(m) and Rule 29(1) of the Act, 2016 and the Rules, 2017, respectively, it is suffice to conclude that this Forum has no jurisdiction to entertain a complaint for compensation until & unless the complainant has duly complied with the prior conditions laid in the Act, 2016 and the Rules, 2017 made thereunder, to ensure that complaint for compensation is maintainable. Further, this Forum would also be legally right to hold that "it has no

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power to assume jurisdiction by ignoring the clear provisions laid, as such step would vitiate the order passed on merit.” To hold so, this Forum has taken strength from the law laid down by Hon’ble apex Court in Smt. Shrisht Dhawan vs M/S. Shaw Brothers (1992) 1 SCC 534. In the quoted case, Hon’ble apex Court has held that “It is a settled law that no statutory authority or tribunal can assume jurisdiction in respect of subject-matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the Court or Tribunal exercises the jurisdiction, then the order is vitiated.”

In nutshell, in the presence of clear and unambiguous procedure laid to entertain a complaint for compensation, this Forum can’t adopt any other procedure to give relief as the same would be nonest in the eyes of law. Hence, in the given case, the present complaint can’t be held maintainable as not filed as per prescribed procedure in respect of relief claimed under Section 18(3) of the Act, 2016.

6. Though, learned counsel for the complainant by referring to provisions of Section 18(2) and (3) of the Act, 2016, has claimed that this Forum in the absence of specific bar to entertain a complaint for compensation without availing remedy under Section 31 of the Act, 2016, is duty bound to entertain the claim so raised for compensation. But, this Forum do not find any merit in this argument in view of

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the reasons given above as per which this Forum can't overlook the clear and unambiguous procedure laid to be followed to grant compensation.

Further, learned counsel for the complainant has relied upon the law laid down in Karan Chopra's case (supra) to justify the maintainability of present complaint for compensation under Section 18(2) & (3) of the Act, 2016. This Forum is not convinced with this logic as in the quoted case, question before Hon'ble Bombay High Court was "as to under Section 18(1) of the Act, 2016, which Authority will grant interest on delayed possession?" It was held therein that "jurisdiction to decide claims for interest under Section 18(1) lies with the Regulatory Authority, while claims for compensation under Section 18(3) are within the realm of the Adjudicating Officer." In this quoted case, it was not considered "whether or not establishment of violations or non-discharge of obligations on the part of the promoter by Regulatory Authority, is condition precedent for the allottee to get compensation under Section 18(3) of the Act, 2016?" Moreover, Hon'ble apex Court in New Tech's case (supra) at paras 82 to 86 of its judgment has specifically held that "violations are to be established by Regulatory Authority and adjudging compensation is the job of Adjudicating Officer." Otherwise also, Rule 28(2)(m) and Rule 29 of the HIRERA Rules, 2017, makes it abundantly clear that to get compensation on the ground(s) of violation against a promoter, the allottee first have to get the relief from the Regulatory

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Authority and such provisions have not been discussed in Karan's case (supra) to hold that the Adjudicating Officer can bypass the mandate prescribed for manner of filing complaint for compensation, to grant relief. Otherwise also, having due regards to the law cited, it is not binding and there is no finding of our Hon'ble High Court holding that Rule 28(2)(m) and Rule 29(1) of the IIRERA Rules, 2017, are not mandatory in nature.

Learned counsel for the complainant has also referred to the law laid down in New Tech's case (supra) to justify the maintainability of complaint under Section 18(2) & (3) of the Act, 2016. On this point, this Forum is of the view that the law settled by Hon'ble apex Court in New Tech's case (supra) is a landmark finding on the issue of jurisdiction of Regulatory Authority viz-a-viz Adjudicating Officer. This quoted judgment specify specific fields of working of these two Forums, which are independent to each other. In which procedure, both Authorities are to follow has specifically been provided under Section 31 read with Section 35 of the Act, 2016 and Rules 28 of the Rules, 2017 in respect of Regulatory Authority, whereas prescribed manner to file complaint under Section 71 of the Act, 2016, has specifically been provided in Section 72 of the Act, 2016, read with Rule 28(2)(m) and Rule 29 of the Rules, 2017. The co-joint reading of these provisions as discussed above, make it mandatory that "only when Regulatory Authority, has established violations or non-discharge of obligation on

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the part of promoter, the allottee in suitable cases, deserve relief of compensation, when applied.” In nutshell, the complainant's reliance on New Tech's judgment is not justified in the given circumstances.


7. Before parting with this order, it is apt to note here that the Act, 2016 and the Rules, 2017, are beneficial legislation, thus, 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 the Act, 2016 and the Rules, 2017 made thereunder. Undoubtedly, while acting under a special welfare oriented statute like the RE(RD) Act, 2016 or Motor Vehicle Act, 1988 etc., Regulatory Authority/Adjudicating Officer/Tribunal is not required to take a hypertechnical approach on the issue involved but at the same time such Court can't overlook the mandatory compliance of actual procedure laid to entertain a petition and to grant relief. To hold so, this Forum has taken strength from the law laid down by Hon'ble apex Court in Union of India v/s Prabhakaran Vijaya Kumar (2008) 9 SCC 527, wherein it is held that “even in beneficial legislature, Courts can't re-write the statute. Liberal interpretation cannot go beyond the plain language.”

8. In view of foregoing discussions, it is concluded that the present complaint for compensation is not maintainable, not only because of bar provided under

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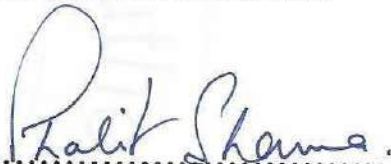
section 18(1) of the Act 2016, but also due to non-compliance of provisions of section 71 of the Act 2016, read with Rules 28(2)(m) and 29(1) of the Rules 2017 plus for want of pleadings in respect of claims raised. Under Section 18(2) and (3) or even under Section 14 of the Act, 2016, at the stage of arguments.

9. 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
14.05.2026

Akhil Bhardwaj
Law Associate

Note: This order contains 26 pages and all the pages have been checked and signed by me.


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MAJOR PHALIT SHARMA
ADSJ (Retd.)
ADJUDICATING OFFICER
14.05.2026

Akhil Bhardwaj
Law Associate