# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## BEFORE THE ADJUDICATING OFFICER

**Complaint No. : 1867 of 2023**
**Date of Institution: 05.09.2023**
**Date of Decision: 07.04.2026**

1. Mr. Manish Gandotra s/o Sh. Manohar Lal Gandotra, R/o House no.123, Sector-28, Faridabad, Haryana-121008.
2. Mrs. Sapna Gandotra w/o Sh. Manish Gandotra, R/o House no.123, Sector-28, Faridabad, Haryana-121008.

...COMPLAINANTS

Versus

1. M/s BPTP Ltd., having its Corporate office at M-11, Middle Circle, Connaught Circus, New Delhi-11001.
2. M/s Countrywide Promoters Pvt. Ltd., having its Corporate office at M-11, Middle Circle, Connaught Circus, New Delhi-11001.

....RESPONDENTS

**Hearing:** 13th
**Present: -** Mr. Akshat Mittal, Advocate, for the Complainants through VC.
Mr. Hemant Saini, Advocate with Ms. Neha, Advocate, for the respondent.

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**ORDER**

This order of mine will dispose of a complaint filed by the complainants namely 'Mr. Manish Gandotra and Mrs. Sapna Gandotra' against M/s BPTP Ltd., seeking compensation and the interest from this Forum, in accordance with the provisions of Rule 29 of the HRERA, Rules, 2017 (hereinafter to be referred as the Rules 2017), read with Sections 71 & 72 of the RE(RD) Act, 2016 (hereinafter to be referred as the Act, 2016).

2. Brief facts of the complaint are that complainants after having gone through the advertisement given by the respondent company i.e. M/s BPTP Ltd. (hereinafter to be referred as the respondent) had booked a flat measuring 1382 sq. ft. at the basic price of ₹33,85,900/- in the project- Park Arena, Faridabad, Haryana, of the respondent. At the time of booking, complainants paid ₹3,50,000/- on 11.09.2010 through cheque no. 948271 dated 03.09.2010. Vide allotment cum demand letter dated 25.11.2010, flat bearing no. D-1201, 12th Floor, Tower-D, was allotted to complainants. That, instead of executing builder buyer agreement, respondent had sent demand letters dated 16.12.2010, 14.01.2011, 06.07.2011, 10.12.2011, 11.11.2011 and 06.02.2012. That, on dated 28.03.2012, complainants sent an email stating that they want to surrender their allotment due to shortage of funds and the same was accepted by the respondent via e-mail dated 03.04.2012

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wherein stating that refund would be processed as per the forfeiture clause mentioned in the application form. That, the complainants sent various emails dated 16.04.2012, 29.08.2012, 10.09.2012 and 27.09.2012 to the respondent for return of the money paid by them, but nothing was done by the respondent to refund the money. That, feeling aggrieved, complainants again sent a legal notice dated 30.04.2013 for return of their paid amount along with interest. That, in response to the said legal notice, respondent sent a reply dated 03.07.2013 denying the allegations of the complainants and sent a termination/cancellation letter dated 18.07.2013 wherein it was mentioned that the booking stands cancelled/terminated with effect from the date of final notice i.e. 14.03.2012.Thereafter, the complainants approached Consumer Forum, Faridabad but their complaint was dismissed on dated 07.07.2017, by the ld. forum on technical grounds observing that the bench had no pecuniary jurisdiction in view of judgment dated 07.10.2016 passed by Hon'ble NCDRC in case titled as 'Ambrish Kumar Shukla and ors versus Ferrous Infrastructure Pvt Ltd.'. That, as per clause 16 of application form, the respondent was duty bound to hand over possession within 36 months i.e. latest by 10.03.2014. That, despite sending various reminders, respondent had not executed builder buyer agreement. Therefore, complainants were left with no other option but to approach the Hon'ble Authority and filed Complaint No.3081 of 2019 before the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula, for refund along with interest



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which was allowed vide order dated 29.03.2022 and the respondent was directed to refund the amount paid by the complainants, i.e., ₹10,14,542.37/- plus interest of ₹8,21,254/- calculated from 18.07.2013 i.e. date of termination till the date of order; That, cause of action is continuous and default is repetitive in nature. That, complainants had to take loan for the higher education of their children, which could have been avoided if the respondent acceded to the request of amount. That, the respondent has tried to conceal the factum of project being stalled owing to non-sanction of approach roads, etc. That, the complainants have suffered pecuniary loss qua cost escalation for similar property during 13 years. That, complainants further approached this Forum for the compensation for harassment caused in the hands of respondent. Hence, the present complaint has been filed. That, the complainants further submitted that the complainants suffered a lot due to non-delivery of the said unit. Complainants prayed that the respondent be directed to pay compensatory interest @18% p.a. on paid amount of ₹11,27,269.30/-; compensation of ₹25,00,000/- for deficiency in service, unfair trade practices, financial loss, loss of business opportunity and damages for physical and mental torture, agony, discomfort and undue hardships by not delivering possession in a time bound manner; ₹2,50,000/- on account of litigation expenses and other relief this Forum may grant.

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3. On receipt of notice of the complaint, respondent no.1 filed reply, which in brief states that respondent no.2 is not a necessary party to present complaint as there was no privity of contract between the complainants and respondent no.2 and also respondent no.2 company has transferred its assets to transferee company as per order dated 20.09.2024 passed by Hon'ble NCLT, Chandigarh in CP(CAA) 26/Chd/Hry/2023, hence, its name be deleted from array of parties; That, complaint is not maintainable being not in consonance with provisions of Section 72 of the Act, 2016, as there is no proof led by the complainants as to how they could prove the factors required to be proved within the Section 72 of the Act, 2016; That, timely payment of total sale consideration was essence of the allotment and complainants chose a construction linked plan but never made payment as per schedule made despite reminders and demand notices; That, on the request of the complainants to surrender the unit and non-making of payments by complainants despite reminders, allotment of the unit was cancelled on dated 18.07.2013 and the complainants had filed complaint on dated 20.08.2023 i.e. after delay of almost 10 years; That, complainants never made any request for quashing of termination; That, vide order dated 29.03.2022, Hon'ble Authority had ordered refund of the amount after deduction of 10% as earnest money; That, in Execution no.2627 of 2022, respondent no.1 has refunded over and above decretal amount, thus, no compensation is required to be paid . That, relief sought by complainants



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qua alleged mental harassment , agony, grievances, frustration, deficiency in service, and unfair trade practices cannot be granted to the complainants as there is no provision, rule, or regulation that support claim of compensation for alleged mental harassment , agony, grievances, frustration, deficiency in service, and unfair trade practices. He has further referred to Ld. UPREAT in Appeal no. 70 of 2023 titled as Greater Noida Industrial Development Authority Vs. Ranjan Misra dated 20.04.2023, wherein it has been mentioned that the compensation for mental agony or harassment has not been defined in the Act. That, complainants relief of grant of compensation on alleged escalation of similar property cannot be considered and is unsubstantiated claim as per Section 101 of Indian Evidence Act, 1872 and also referred to following decisions i.e. *Rangammal Vs. Kuppuswamy 2011 TLPRE 576*; Parimal Vs. Veena @ Bharti 2011Supreme1-731(Para 15) and Jetty Naga Lakshmi Parvathi Vs The Union of India Andhra Pradesh HC in Civil Miscellaneous Appeal No. 947 of 2008. That, the complainants' claim for litigation charges is merely to harass the respondent and is bogus. Also, the complainant has not submitted the proof of litigation fee. Finally, prayer is made to dismiss the complaint being not maintainable.

4. No rejoinder was filed. Nor, necessity for compliance of Rule 29(2)(d) of the Rules, 2017, arose.

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5. This Forum has heard Mr. Akshat Mittal, Advocate, for the complainants and Mr. Hemant Saini, Advocate, for the respondent and has also gone through the record carefully.

6. In support of its contentions, learned counsel for the complainants has argued that in the instant case, complainants is very much entitled to get compensation and the interest thereon, because despite having played their part of duty as allottees, the complainants had met all the requirements including payment of sale consideration for the unit booked but it is the respondent which made to wait the complainants to get their unit well in time complete in all respect for more than 13 years, which forced the complainants to go for unwarranted litigation to get the refund along with interest by approaching the Ld. Consumer Court and then Hon'ble Authority at Panchkula, which has finally granted it on dated 29.03.2022. He has further argued that the complainants have been played fraud upon by the respondent as it despite having used money deposited by the allottees did not complete the project and enjoyed the said amount for its own cause which amounts to misappropriation of complainant's money on the part of respondent.

He has further argued that the complainants were ready to pay the balance amount to the respondent and had offered the same through mail on receipt of termination notice, which was after sending request to withdraw from the project

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due to financial crunch but the respondent illegally declined its request and terminated the allotment on dated 18.07.2013. He has further argued that it is also a case wherein the complainants deserve compensation due to loss of opportunity. He has further argued that Hon'ble Authority vide its order dated 29.03.2022 passed in complaint filed under Section 31 of the RERA Act, 2016, has also held violations on the part of the respondent and given relief of refund with interest which also entitles the complainants to get compensation because of the mental and physical suffering at the hands of respondent. Finally, he has prayed to grant the compensation in the manner prayed in the complaint.

7. On the other hand, learned counsel for the respondent has argued that the complainants themselves are defaulters in making payment of dues as per demands raised by the respondent. He has further argued that complainants can not take benefit of their own wrong. In support of his contention, reliance has been placed in case titled as "Kusheshwar Prasad Singh vs State of Bihar and Ors.", Civil Appeal No.7351 of 2020, by Hon'ble apex Court, wherein held that "wrong doer ought not to be permitted to make profit of his own wrong." He has further argued that it is a case, wherein the complainants themselves were at fault in making payment of instalments demanded as per the schedule given in the allotment letter and are also the one who had shown its inclination to surrender the unit because of financial crunch and further are the one who did not pay the amount despite



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repeated reminders which finally resulted into termination notice of allotment, hence, the termination was done legally. He has further argued that though the complainants have claimed termination as illegal but the same was never challenged to get it quashed. He has further argued that once the facts related to the complaint indicates that it's the complainants who were at fault throughout resulting into order of forfeiture of earnest money in favour of the respondent by the Hon'ble Authority, the complainants cannot claim any harassment or mental agony attributable to the respondent. He has further argued that in this case, the complainants have been paid the entire amount payable as per the order under execution, hence, there remains nothing payable in the form of compensation.

He in support of his argument, has placed on record following details of payments and reminders:

| **Date** | **Details** |
|---|---|
| 11.09.2010 | Payment receipt |
| 16.12.2010 | Demand |
| 14.01.2011 | Reminder |
| 04.02.2011 | Payment receipt |
| 06.07.2011 | Reminder |
| 11.07.2011 | Payment receipt |
| 12.10.2011 | Demand |

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| | |
|---|---|
| 11.11.2011 | Demand |
| 14.03.2012 | Last and final notice |
| 18.07.2013 | Termination |

He has further argued that the complainants can not claim compensation when relief of refund along with interest has already been granted by the Hon'ble 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 the reach of the respondent and also because allottees did not pay the instalments in time. 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 complainants cannot take benefit of their own cause, as there has been no willful delay on the part of the promoter to complete the project. He has also argued that in this case, there is no special proven circumstances which enable the complaints to get compensation as whatever they deserve, have already got. Finally, he has prayed to dismiss the complaint being devoid of merit.

8. With due regards to the rival contentions and facts on record to decide the lis, this Forum possess following issues/questions to be answered;



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(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 complainants to give evidence of mental harassment, agony, grievance and frustration caused due to deficiency in service, unfair trade practice and miserable attitude of the promoter, in a case to get compensation or interest?

(f) Whether the complainants are 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 Rule, 2017, made thereunder?**

The answer to this question is in negative.



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The plea for the respondent is that the complaint is barred by limitation as the project pertains to the year 2010, whereas the complaint was filed in the year 2023.

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

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

***Section 29 - Limitation Act, 1963***

*29. Savings.--*

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

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



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*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 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) SSC 58'.

Notwithstanding anything stated above, academically, even if it is accepted that law of limitation applies on quasi-judicial proceedings, though not, still in the case in hand, it would not have an application in



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this case as the project has not been completed till date, resulting into refund of the amount to the complainants, so, cause of action for the complainants is in continuation, if finally held entitled to get compensation.

In nutshell, plea of bar of limitation is devoid of merit.

9(b) **Whether the RERA, Act, 2016 and Rules, 2017, bars this Forum to grant compensation when relief of refund with interest has already been granted by Hon'ble Authority?**

The answer to this question is in negative.

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, keeping in view the provisions of Section 71 read with Section 72 of the Act, 2016. The relevant Para of the judgment is reproduced below;

> *"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the Regulatory Authority and Adjudicating Officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly*



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*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 observes that the operation of the Act is retroactive in nature. Reference can be made to the case titled "M/s Newtech Promoters &



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Developers Pvt. Ltd. vs. State of UP & Ors. Etc." 2022(1) R.C.R. (Civil) 357,

wherein the Hon Apex Court has held as under:-

> *"41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottees 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*



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*any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.*

*54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."*

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*



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*the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports. As regards Article 19(1)(g) it is settled principles that the right conferred by sub-clause (g) of Article 19 is expressed in general language and if there had been no qualifying provisions like clause (6) the right so con*ferred would have been an absolute one."

Thus, it is clear from the above said law that the provisions of the Act are 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) <u>What are the factors to be taken note of to decide compensation?</u>**

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,—*



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

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

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

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

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

Section 18(1) of the Act, 2016, caters for grant of compensation to the allottee who withdraws from the project and its proviso bars the grant of compensation to the allottee who elects to continue with project.

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**(ii)** How an Adjudicating Officer is to exercise its powers to adjudicate, has been mentioned in a case titled as "**Mrs. Suman Lata Pandey & Anr v/s Ansal Properties & Infrastructure Ltd." Appeal no. 56/2020, by Hon'ble Uttar Pradesh Real Estate Appellate Tribunal at Lucknow dated 29.09.2022**, in the following manner;

> *"12.8- The word "fail to comply with the provisions of any of the sections as specified in sub section (1)" used in Sub-Section (3) of Section 71, means failure of the promoter to comply with the requirements mentioned in Section 12, 14, 18 and 19. The Adjudicating Officer after holding enquiry while adjudging the quantum of compensation or interest as the case may be, shall have due regard to the factors mentioned in Section 72. The compensation may be adjudged either as a quantitative or as compensatory interest.*
>
> *12.9- The Adjudicating Officer, thus, has been conferred with power to directed for making payment of compensation or interest, as the case may be, "as he thinks fit" in accordance with the provisions of Section 12, 14, 18 and 19 of the Act after taking into consideration the factors enumerated in Section 72 of Act."*

**(iii)** What is to be considered by the Adjudicating Officer, while deciding the quantum of compensation, as the term "compensation" has not been defined under RERA Act, 2016, is answered in Section 71 of the Act, 2016, as per which "he may direct to pay such compensation of interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections,"



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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.**

*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 complainants for compensation due to default of the builder/developer Hon'ble Apex Court in "**M/s Fortune Infrastructure (now known as M/s. Hicon Infrastructure) & Anr. Vs. Trevor D'Lima and Others", Civil Appeal No.(s) 3533-3534 of 2017 decided on 12.03.2018 , has** held as under:-

"*Thus, the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The*



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*Commission/Forum would then need to determine the loss. Loss could be determined on the basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises, then on the basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical."*

In the aforesaid case, Hon'ble Apex Court laid down the principle for entitlement of the compensation due to loss or injury and its scope in cases where the promoter of real estate failed to complete the project and defaulted in handing over its possession. Similarly, Hon'ble Three Judge Bench of the Hon'ble Apex Court in "**Charan Singh Vs. Healing Touch Hospital & Ors. (2000) 7 SCC 668",** had earlier held regarding assessment of damages in a case under Consumer Protection Act, in the following manner;

"*While quantifying damages, Consumer Forums are required to make an attempt to serve the ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be 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."*

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

The answer to this question is that no hard and fast rule could be laid to seek proof of such feelings from an allottee. He/she may have documentary proof to show the deficiency in service on the part of the builder and even this Forum could itself take judicial notice of the mental and physical agony suffered by an original allottee due to non-performance of duties on the part of the promoter, in respect of the promises made to lure an allottee to invest its hard earned money to own its dream house without realising the hidden agendas or unfair practices of the builder in that project.

In nutshell, to award compensation, the Forum can adopt any procedure suitable in a particular case to decide the availability of factors on record entitling or disentitling an allottee to get compensation which is the reason even under Rule 29 of the Rules 2017, it is not compulsory to lead evidence.

9(f) **Whether complainants are 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;



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<table>
<tr><td>(i)</td><td>Project pertains to the year</td><td>2010</td></tr>
<tr><td>(ii)</td><td>Proposed Handing over of possession</td><td>As per clause 16 of allotment letter, 36 months from date of sanction of building plan + grace period of 180 days</td></tr>
<tr><td>(iii)</td><td>Basic sale price</td><td>₹33,85,900/-</td></tr>
<tr><td>(iv)</td><td>Total amount paid</td><td>₹11,27,269.30/- (Authority deducted 10% earnest money and principal amount was considered ₹10,14,542.37/-)</td></tr>
<tr><td>(v)</td><td>Period of payment</td><td>11.09.2010-<br>11.07.2011<br><table><tr><td>Sr.No.</td><td>Date of payment</td><td>Amount in (₹)</td></tr><tr><td>1.</td><td>11.09.2010</td><td>₹3,50,000/-</td></tr><tr><td>2.</td><td>11.09.2010</td><td>₹9,020/-</td></tr><tr><td>3.</td><td>04.02.2011</td><td>₹3,11,287/-</td></tr><tr><td>4.</td><td>11.07.2011</td><td>₹4,56,962/-</td></tr><tr><td></td><td>Total-</td><td>₹11,27,269.30/-</td></tr></table></td></tr>
<tr><td>(vi)</td><td>Date of request for Termination of Allotment made due to financial crunch</td><td>28.03.2012</td></tr>
<tr><td>(vii)</td><td>Date of Acceptance of Termination request</td><td>03.04.2012</td></tr>
<tr><td>(viii)</td><td>Date of Termination of Allotment done</td><td>18.07.2013</td></tr>
<tr><td>(ix)</td><td>Whether Termination challenged before any</td><td>NO</td></tr>
</table>



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| | Competent Authority | |
|---|---|---|
| (x) | Occupancy certificate Whether received till Filing of complaint | NO |
| (xi) | Date of filing of complaint under Section 31 before Hon'ble Authority | 24.12.2019 |
| (xii) | Date of order of Hon'ble Authority | 29.03.2022 |
| (xiii) | Date of filing of complaint under Section 71 of RERA Act, 2016 | 05.09.2023 |
| (xiv) | Date when total refund made, if made | Total Payment of ₹19,28,895.37/- stood satisfied vide order dated 12.03.2026 in Execution No. 2627 of 2022. |

It is a matter of record that in the case in hand, the project was advertised in the year 2010. It is also a matter of record that after having paid instalments amounting to ₹11,27,269.30/- as held by Hon'ble Authority in its order dated 29.03.2022, the complainants wrote to the respondent for surrendering the unit because of shortage of money to pay remaining instalments. It is also a matter of record that despite repeated reminders and letter of termination with notice, the complainants did not pay the remaining amount and finally, on dated 18.07.2013, termination letter by the respondent was issued to the complainants, which termination was never challenged, means



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such order is legally intact. It is also a matter of record that in this case, no Builder Buyer Agreement was executed and also that out of the total consideration amount of ₹33,85,900/-, the complainants had paid only ₹11,27,269.30/-. It is also a matter of record that Hon'ble Authority vide its order dated 29.03.2022, allowed refund of the amount paid with interest from the date of termination notice i.e. 18.07.2013 till passing of order dated 29.03.2022 and that this Forum in execution of the said order, vide its order dated 03.04.2025, had also allowed delayed interest of ₹93,099/-. It is also an admitted fact that the respondent as judgment debtor has paid ₹18,35,796/- (₹10,14,542.37/- Principal Amount plus Interest amount of ₹8,21,254/-) towards satisfaction of order dated 29.03.2022 and also ₹93,099/- in addition to decretal amount. It is also matter of record that Hon'ble Authority vide its order dated 29.03.2022, had allowed the respondent to retain the earnest amount while refunding the remaining amount, meaning thereby, had also found fault with the conduct of allottees/complainants also.

With above facts on record, it is evident that the allottees were expected to do their part of the duty in the form of payment of instalments to get the unit allotted in the manner required to create liability upon the respondent



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being promoter to complete overt acts attributed to it. But, here is a case where the allottees themselves have been at fault in making payments and there is kind of admission on their part to this effect as had applied for termination of allotment due to financial crunch and even after termination they did not challenge legality of such order. Rather, instead of challenging such order, had filed petition initially before Ld. Consumer Court and then under Section 31 of the Act, 2016, wherein Hon'ble Authority though allowed refund with interest minus the earnest money as had also found fault with the allottees. It is also admitted that the respondent as judgment debtor in execution of allottees, has paid ₹10,14,542.37 plus ₹8,21,254/- and also an additional amount of ₹4,68,944/-.

Now, question arises, whether or not the allottees who have already got the principal amount with interest and also additional amount in compliance of order of Hon'ble Authority under execution, still are entitled to get benefit of Sections 71 &72 of the Act, 2016 read with Rule 29 of HRERA Rules, 2017, particularly when they themselves have been at fault in making payment of installments and have finally accepted the legality of order of termination of allotment on their request?

The answer to the above question is in negative because of the principle expressed by the maxim "He who has committed inequity shall not have equity".

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It is a case where there was understanding between the parties that its fulfillment depends upon the mutual performance of reciprocal promises constituting the consideration for one another and the reciprocity envisaged and engrafted is such that one party who fails to perform his own reciprocal promise can't assert a claim for performance of the other party and go to the extent of claiming even damages for non-performance by the other party. Meaning thereby, if the complainants wanted to get compensated from the promoter, onus was upon the complainants to have shown the circumstances indicating that despite they being performing their duties as allottees on regular basis, it is the promoter who had faulter at its end to compete its reciprocal promises.

It is a matter of record that it is the allottees who did not pay instalments regularly despite demand notices, nor elected to challenge the legality of termination order of unit. It is a case, wherein the promoter can't be accepted to have completed its part of duty till the allottees had acted in accordance with the understanding arrived to get the unit's delivery in time e.g. payment of instalments in time. Rather, by accepting termination on their request and in addition thereto of their misconduct of non-adhering to payment schedule, they had legally and practically lost their right to get compensation as no one can be benefitted for its own wrongs. It is not a case, wherein the allottees had followed the payment schedule and also is not the case where promoter had wrongly terminated the



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allotment. The allottees can also not claim that Hon'ble Authority has not awarded them sufficient amount as till realisation of the amount of refund and interest thereon, they have got additional amount, meaning thereby whatever amount, in the given peculiar circumstances, were legally entitled to, they have already got. They can also not claim suffering of agony or harassment at the hands of the promoter as they themselves have been at fault, thus can't claim damages/compensation against the promoter on the counts generally which is given to the allottees not ever found fault with their role as allottee. Further, even if there had been unlawful gain on the part of the promoter till it kept allottees amount, for that they have already been given refund, despite the complainants themselves were at fault, so, provisions of Section 72 of the Act, 2016, can't come for their help to get compensation except on the count that had the promoter refunded the amount with interest minus the earnest money well in time without litigation, there was no reason for the complainants' to have got into unwarranted litigation in the form of complaints before Ld. Consumer Court or thereafter under Sections 31 and 71 of the Act, 2016 and the execution. In today's time, litigation is one of the costliest affair, which not only derail the financial resources but also mentally as well as physically adversely costs upon the persona of a litigant forced to follow the path. In other words, had the complainants not followed the route of litigation, since the year 2015, they may not have got the amount which they finally got in the



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year 2026. Hence, in the given circumstances, the complainants in this peculiar case, do deserve to be compensated only for having been forced to get into prolonged litigation by engaging counsel(s) at different stages of litigation starting from the year 2015 till today, obviously on payment of counsels' fee. Consequently, this Forum having in mind the various stages of litigation the complainants have undergone to get the relief which they deserve, decide to compensate the complainants by directing the respondents to pay a consolidated amount of ₹75,000/- (Rupees Seventy Five Thousand only) as compensation within 90 days. The first installment is to be paid within 45 days from the date of uploading of this order and remaining amount within the next 45 days.

10. 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.

11. **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 **8/1422-WPL4804-2020 titled All India Reporter Ltd vs. Kanchan P Dhuri, All India Reporter Ltd. And Anr. vs Ramchandra Dhondo Datar, AIR 1961 BOM**

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**292, M/s. Beacon Projects Pvt. Ltd versus The Commissioner of Income Tax, ITA No. 258 of 2014 decided on dated 23.06.2015 by Hon'ble Kerala High Court, Civil Appeal Nos. 11248-11249 of 2016 titled as Parsvnath Developers Ltd. vs. Rajesh Kumar Aggarwal decided on dated 11.09.2017, Writ Petition (L) No. 4804 of 2020 titled Sainath Rajkumar Sarode and 8 Ors. vs. State of Maharastra and 6 Ors decided on dated 18.08.2021 by Hon'ble Bombay High Court, Execution Application no. 159 of 2022 in CC/277/2019 titled Madhav Joshi vs Vatika Limited decided on dated 26.04.2024 by NCDRC and Civil Appeal nos. 822-823 of 2024 titled as M/S BPTP LIMITED & ORS. vs. Terra Flat Buyers Association decided on dated 28.11.2024 by Hon'ble Apex Court.**

12. 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.

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**MAJOR PHALIT SHARMA**
**ADSJ(Retd.)**
**ADJUDICATING OFFICER**
**07.04.2026**

**Note:** This order contains 31pages and all the pages have been checked and signed by me.

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**MAJOR PHALIT SHARMA**
**ADSJ (Retd.)**
**ADJUDICATING OFFICER**
**07.04.2026**

Akhil Bhardwaj
Law Associate