BEFORE THE REAL ESTATE REGULATORY AUTHORITY, HIMACHAL PRADESH AT SHIMLA

Complaint no. HPRERA2025009/C

In the matter of:-

Smt. Kavitha Sashidhar, Daughter of late Sh. Surendra, Resident of Ward no. 9, Gharoh Khas, Dharamshala, Kangra, Himachal Pradesh, 176216

.....Complainant

Versus

M/s Royal Nest Forest View Dharamshala, Resident of Delhi NCR Head office, Corporate Building no. 64, H Block, Sector 63, Noida, Gautam Buddha Nagar, Uttar Pradesh, 110096

.....Respondent

Present: Smt. Kavitha Sashidhar complainant
Sh. Raj Duggal, Ld. Counsel for respondent promoter.

Date of hearing: 20.09.2025
Date of pronouncement of order: 08.12.2025

Order
Coram: Chairperson and Members

1. **BRIEF FACTS:** The matter, in brief, is that the complainant approached M/s Royal Nest Builders, Dharamshala, through their official email IDs, with the intention of purchasing two residential apartments, namely Flat No. 107 and Flat No. 108, in a project situated at Dharamshala, which was then under construction. Pursuant to the proposed transaction, the complainants made payments to the respondent amounting to Rs. 51,000/- on 12.02.2025 as advance booking through Cheque No. 606191, and further sums of

Rs.6,73,875/- and Rs. 4,41,950/- on 21.02.2025 through NEFT transfers. It is the complainants' case that the respondent did not issue any receipts acknowledging the said payments. Subsequently, on 02.03.2025, the complainants addressed an email from their account (sashicrafts@gmail.com) to the respondent, informing that due to compelling domestic circumstances they were unable to proceed with the purchase and, therefore, sought cancellation of the bookings along with refund of the entire amount deposited. On 08.04.2025, the respondent refunded an amount of Rs.11,11,262/-, but, withheld a sum of Rs.55,563/-, claiming the same to have been deducted towards GST. The complainant contends that no GST receipt or documentary proof was provided to substantiate such deduction and further aver that under the applicable GST procedures, GST paid on a transaction that stands cancelled is refundable from the GST authorities. Despite the complainant having brought this legal position to the notice of the respondent, the withheld amount was not refunded, compelling the complainants to file the present complaint seeking directions for refund of the balance amount of Rs. 55,563/- along with appropriate reliefs in the interest of justice.

2. REBUTTAL BY RESPONDENT: In rebuttal, the Respondent, M/s Royal nest Forest View, has filed its detailed reply and objections submitting that the complaint dated 30.06.2025 is misconceived, premature, and liable to be dismissed. The Respondent states that the Complainant had, voluntarily, applied for the booking of two units in the project and had paid a total amount of Rs.11,66,825/- through various transactions dated 12.02.2025 and 21.02.2025. The Respondent further submits that before seeking cancellation, the complainant, through email dated 13.02.2025, requested several

structural and interior changes in the booked units, such as laying of red-oxide flooring, removal of the store-room door, exclusion of modular kitchen fittings, installation of a designer entrance door, connecting the balconies, and providing a PVC water connection. The Respondent claims that these modifications were initiated, and an amount of approximately Rs.1,30,000/- was incurred, as supported by contractor bills. It is stated that on 03.03.2025, the Complainant requested cancellation of the booking due to domestic reasons. The Respondent informed her that, as per Clause 5 of the booking form, 10% of the Basic Sale Price constituted earnest money which was liable to forfeiture in the event of cancellation. The Respondent asserts that the refund, issued, on 08.04.2025 was made strictly as per the agreed terms after deducting Rs.55,563/- towards earnest money, and therefore, nothing further is payable to the Complainant. It is contended that the Complainant did not return the signed booking form, failed to comply with the contractual terms, and has filed the present complaint on false and untenable grounds. The Respondent maintains that it has acted strictly in accordance with law and the terms of the booking and prays that the complaint, being without merit and cause of action, be dismissed with costs. The Reply and Objections are stated to have been filed within the prescribed time.

3. **REJOINDER BY COMPLIANANT:** In rebuttal, to the defense of the respondent, the Complainant, in her rejoinder, submits that the signed copy of the booking form was taken back by the sales team of the Opposite Party on the representation that the same was required for preparation of the Agreement to Sell. However, no such agreement was ever prepared or furnished by the Opposite Party until the Complainant formally requested cancellation through email dated

02.03.2025. The Complainant asserts that she had been in continuous telephonic communication with the sales team for nearly a week prior to the said email, informing them of her intention to withdraw from the project. It is further contended that, in terms of the RERA guidelines, no builder is permitted to accept any advance or deposit from an allottee prior to execution of a formal agreement, and the Complainant was induced into making payments due to pressure and manipulative persuasion by the sales personnel, which ultimately compelled her to reconsider the purchase. The Complainant emphatically denies the Opposite Party's assertion that any structural or interior modifications were undertaken based on her email, stating that the suggestions were sought only for the purpose of estimating the revised cost of the units and that the second installment was made only after payment of the initial booking amount of Rs. 51,000/-. It is further stated that the Opposite Party neither issued an allotment letter prior to receiving advance payments nor provided any allotment letter even after collecting an amount equivalent to 10% of the sale price, contrary to the statutory provisions. The Complainant relies upon Annexure-I of the prescribed format of the Allotment Letter, particularly Para 6 relating to withdrawal from the project, which stipulates that no deduction is permissible if the request for cancellation is received within 30 days from issuance of the allotment letter. Further, the Complainant submits that the cancellation request was made within 18 days from the date of payment of the booking amount and, therefore, the withholding of Rs. 55,563/- by the Opposite Party is wholly illegal, arbitrary, and unjustified. The respondent/ opposite party also filed written submission stating that the complaint is not maintainable and is liable to be dismissed at the very outset. It is

submitted that the cause title mentioned by the Complainant is erroneous, as no entity exists under the name "Royal Nest Builders, Dharamshala," and therefore the complaint itself stands vitiated. Without prejudice to the aforesaid objection, the Opposite Party contends that it is an admitted and undisputed fact that the Complainant had booked two residential units in its project and had paid the booking amount of Rs. 51,000/- on 12.02.2025, followed by additional payments of Rs. 6,73,875/- and Rs. 4,41,950/- through NEFT, which clearly demonstrates her intention to purchase the units. The respondent further submits that the Complainant voluntarily cancelled the booking out of her own free will, as duly reflected in her email, and that such cancellation was initiated solely for personal reasons, without any compulsion or influence from the Opposite Party. Placing reliance on the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017, the Opposite Party asserts that Form L expressly permits the promoter to deduct 10% of the booking amount as cancellation charges, the said deduction being a statutorily recognized and reasonable measure meant to compensate the promoter for administrative efforts and opportunity costs. It is further contended that Clause 5 of the Booking Form, admittedly signed by the Complainant, stipulates in clear terms that 10% of the Basic Sale Price shall constitute earnest money liable to forfeiture in the event of cancellation or breach, and that such contractual terms, being neither unconscionable nor contrary to law, are binding and enforceable. The Opposite Party also relies upon the judgment of the Hon'ble Supreme Court in *Godrej Projects Development Limited v. Anil Karlekar & Ors.* (Civil Appeal No. 3334 of 2023), wherein the Apex Court upheld the deduction of 10% of the booking amount in cases of cancellation by

the allottee as a fair and reasonable practice. It is submitted that although the Opposite Party was entitled to deduct 10% of the booking amount for both units, amounting to Rs. 1,16,682/-, it has, in good faith and in the interest of maintaining cordiality, deducted only approximately 5% and refunded the remaining amount to the Complainant, thereby acting beyond its statutory and contractual obligations. This, according to the Opposite Party, demonstrates its bona fides and an intention to resolve the dispute amicably. In view of the above submissions, the Opposite Party prays that its written submissions be taken on record, that the complaint be dismissed, and that any other appropriate relief be granted in its favour.

4. ANANLYSIS: After having heard both the parties and the pleadings submitted by the parties, it is observed by the Authority that the document(s) being referred to and primarily relied upon by the respondent as an application form is unsigned and further is not relevant to the instant issue given that the clause 5 thereof is applicable only to the situation where there is a delay in payment or breach of any terms and conditions of allotment. Here, the parties did not reach to that stage and at the threshold the complainant intended to withdraw from the project. Further, there is a prescribed format with regard to allotment letter which, vide clause 6, covers the situation wherein the deduction is permissible. During the hearing, it is noted that the complainant withdrew from the project within 18 days of the booking and as per the said clause, if the booking is cancelled before 30 days, no amount can be deducted. However, as observed above, no allotment letter was issued to the complainant as per mandate of Section 11(3) of the Act which amounts to violation and punishable under Section 61. The learned counsel further

submitted that GST had been deposited with the Department and that an earlier email regarding GST was mistakenly sent by a new employee. Finally, it was argued that although the Respondent is entitled to recover the remaining amount of Rs. 55,563/-, this amount has not been waived and still remains payable by the Complainant. Further, in order to adjudicate upon the rival contentions of the parties, the following points emerge for consideration:

i. Whether the Respondent violated Section 13 of the RERA Act by accepting more than 10% without executing an Agreement for Sale?
ii. Whether the Respondent violated Section 11 of (3) RERA Act?
iii. Whether the Complainant is entitled to get the refund of the money?
iv. Relief.

FINDINGS: Since, the aforesaid issues are mixed question of facts and law and as such are being decided separately/ point wise:

i. Whether the Respondent violated Section 13 of the RERA Act by accepting more than 10% without executing an Agreement for Sale?

At the outset, it is apt to refer to the said provision which prescribes that:

> *No deposit or advance to be taken by promoter without first entering, into agreement for sale.- (1) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*
>
> *(2) .....*

From the above definition, it is manifestly clear that a promoter shall not accept more than 10 percent of the sale consideration from an allottee unless a duly executed Agreement for Sale, in the prescribed statutory format, has been entered into between the parties. This safeguard ensures that buyers are not required to part with substantial amounts unless their rights and obligations are specifically recorded in a formal agreement. In the present case, as per claim of complainant, she paid a total amount of Rs. 11,66,825/- in February 2025, which undeniably exceeds the ten percent limit of cost of the apartment and the Respondent did not execute/enter any agreement for Sale nor issued allotment letter prior to receiving these payments. Further, the Respondent's failure to execute the Agreement for Sale before accepting excess payment thus constitutes a clear and substantive breach of Section 13 of the Act. However, the Authority observes that the onus to substantiate the very fact of charging more than 10% of amount of the total cost of the apartment was upon the complainant and whereas the total consideration amount of the apartment was never brought to the knowledge of this Authority either in pleadings or during submission of arguments and in absence of this material fact, the Authority concludes that the claim/plea of complainant, for violation of provision contained under section 13 of the Act is not tenable. Hence, the issue is decided against the complainant.

ii. Whether the Respondent violated Section 11 of (3) RERA Act?

In order to consider and decide this issue, the Act mandates that the promoter, at the time of booking and issue of allotment letter shall be

responsible to make available to the allottee, certain informations such as sanctioned plan, layout plans along with specification, the stage wise time schedule of completion of the project etc. as may be prescribed by the regulations made by this Authority. The Authority, after having gone through the relevant provision contained under section 11(3) of the Act, 2016, is of considered view that the respondent/promoter has violated the mandate of the said section which prescribes as under:

"Section 11: Functions and duties of promoter –

(3) The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—

(a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;

(b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity."

Perusal of pleadings as well as arguments submitted by the respondent, he failed to substantiate this very fact that at the time of booking, aforesaid conditions were adhered to and on the contrary the complainant succeeded in establishing that apart from charging booking amount and fulfilling booking form no other documentation was entered into by the respondent. Apart from this, the Authority also observed that though the respondent claimed that Clause 5 of the Booking Form, signed by the Complainant, stipulates in clear terms that 10% of the Basic Sale Price shall constitute earnest money liable to forfeiture in the event of cancellation or breach, and that such

contractual terms, being neither unconscionable nor contrary to law, are binding and enforceable. However, the Authority is not satisfied with such contention of respondent given that as per section 11(3) of the Act, the promoter was under legal obligation to issue allotment letter which has been prescribed in Performa Annexure-1 in terms of section 4 of the Act and, as per clause 6 (i), table at sr. no.1, i.e. withdrawal from the project, in case the allottee requests to cancel the booking with in a period of 30 days from issuance of allotment letter, no deduction would be made and the balance amount due and payable would be refunded to the allottee without interest. In the instant matter, the complainant tendered the booking amount of Rs. 51,000/- on 12.02.2025 through cheque no. 606191 and payment of Rs. 6,73,875/- and Rs. 4,41,950/- (i.e. 11,15,825/- through NEFT) on 21.02.2025 and applied for cancellation of booking vide email dated 02.03.2025 which was within 18 days of the booking. As observed, supra, since, the respondent has not issued allotment letter to the complainant, the determining period to consider 30 days would be taken from date of booking i.e. 12.02.2025. It is further observed from the record that the respondent at the time of filing application for registration of his project had uploaded the required documents including Proforma of allotment letter as per section 4 of the Act and any deviation from terms and conditions of the prescribed proforma is a nullity and is not binding upon the allottee. It is also observed that the application form, relied upon by the respondent wherein clause 5 stipulates forfeiture of earnest money, is, firstly, unsigned and, secondly, in contravention of the prescribed proforma of allotment letter and such stipulation has no legal sanctity. Hence, this Authority concludes that the respondent has clearly violated the provision

contained under section 11(3) read with stipulation contained in proforma of allotment, prescribed in Annexure- 1 in terms of section 4 of the Act and further by withholding Rs.55,563/- out of total paid amount which is punishable under Section 61 of the Act.

iii. Whether the Complainant is entitled to get the refund of the money?

It is observed that the Complainant had paid a total amount of Rs. 11,66,825/-, and the respondent failed to produce any valid Agreement for Sale or a proper allotment letter executed before receiving the payment. After having gone through the defense of the respondent, it is observed that the Respondent, in order to justify such a deduction, must show (i) that it had a legal right to deduct cancellation charges, and (ii) that GST was actually payable and deposited with the Government. In this case, the Respondent has not produced any valid Agreement for Sale or proper allotment letter to show that the Complainant was bound by any clause permitting deduction. It is also observed that the Respondent has not placed on record any GST invoice, deposit challan, GSTR filing, or other proof to substantiate the fact that the deducted amount was actually paid to the tax authorities. A mere statement, that GST was charged or deposited, is not enough and does not absolve the respondent from the authentic proof thereof. Further, the respondent also failed to put forth any documentary proof of any refund from the GST Department after cancellation, had the same, in fact, been paid. Since the Respondent has failed to substantiate the legality of the cancellation charges and the actual payment of GST, the deduction of Rs. 55,563/- cannot be justified. The only document relied upon is an unsigned application

form and such a document cannot create a legal right to deduct money. In the present matter, the Respondent has also not provided any convincing proof to justify the deduction of Rs. 55,563/- on account of cancellation or GST. In the absence of a valid agreement, lawful deduction, or documentary proof of GST deposit, the Respondent has no legal basis to hold the Complainant's money. As such, the Authority holds that the Complainant is fully entitled to receive a refund of the withheld amount. Hence, the issues decided against the respondent.

iv. RELIEF:

Keeping in view the above-mentioned observations, this Authority, in excise of the powers vested in it under various provisions of the Act, issues the following orders/directions:

a) The complaint is allowed and the Respondent/ promoter is directed to refund the amount of Rs. 55,563/- to the complainant along with interest at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 to the complainants. The present highest MCLR of SBI is 8.85%. Hence the rate of interest would be 8.85 %+2% i.e. 10.85 % per annum on the amount paid by the complainant in her account, with in a period of sixty days, from the issuance of this order.

b) That the respondent/ promoter is also directed to pay a penalty of Rs. 50,000/- for violation of section 11(3) of the Act, which, in terms of section 61 of the Act, 2016, is less than 5 percent of the estimated cost of real estate project, to be deposited in the bank account of this Authority, operative in the name of "Himachal

Pradesh Real Estate Regulatory Authority Fund bearing account no."39624498226", State Bank of India, HP Secretariat Branch, Shimla, having IFSC Code. SBIN0050204, within a period of 60 days, from issuance of this order.

c) That the respondent shall comply with the aforesaid directions and submit a compliance report with in thirty days from the date of issue of this order, failing which further appropriate action will be initiated under the provisions of the Act.

(Amit Kashyap)
MEMBER

(R.D. Dhiman)
CHAIRPERSON

(Vidur Mehta)
MEMBER