BEFORE THE REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH AT SHIMLA
Complaint no. HPRERA2025002/C

In the matter of:-

1 Mrs. Suprabha Kumari Mohan Singh, Wife of Sh. Udit Jai Bhutani, Resident of 41-B, First Floor, Fafrana Road, Surat City, Modinagar, Ghaziabad, UP-201204

2 Mr. Udit Jai Bhutani , Son of Sh. Jai Prakash Bhutani, Resident of 41-B, First Floor, Fafrana Road, Surat City, Modinagar, Ghaziabad, UP-201204

..... Complainants

Versus

M/s Rajdeep and company infrastructure private limited, resident of Rajdeep co. Infrastructure Pvt. Ltd. SCO 12, 1st Floor Hollywood Plaza, VIP Road, Zirakpur, Mohali, Punjab,140603

.....Respondent

Present: Sh. Udit Jai Bhutani, complainant.
Sh. Rishi Kaushal, Ld. Counsel for the respondent

Date of hearing: 15.11.2025
Date of pronouncement of order: 06.12.2025

ORDER
CORAM: CHAIRPERSON AND MEMBERS

1. FACTS OF THE CASE:-

REAL ESTATE REGULATORY AUTHORITY HP RERA ° H.P. °

Briefly, the complainants had booked a 1 BHK Flat No. 301, Second Floor, having built up area 593.4114 sq. ft. (i.e. 55.13 sq. mtrs.) & carpet area 442.61 sq. ft. (i.e. 41.13 sq. mtrs.), Tower H/Block-8, in the project Mashobra Hills, situated at Mashobra, Shimla, Himachal Pradesh, being developed by the respondent, Rajdeep & Co. Infrastructure Pvt. Ltd. The Agreement for sale in respect of the said unit was executed on 06.08.2024. The complainants have further stated that, for the purpose of financing the said unit, he applied for a home loan with Bank of Baroda. However, the loan application was rejected on account of discrepancies noticed by the bank between the valuation report and the particulars of the property as reflected in the Agreement for sale. Upon verification, the complainants discovered that the agreement contained incorrect and misleading information regarding the size of the unit and the floor details. These inaccuracies have caused him financial hardship and constitute a breach of trust on the part of the respondent. It is further averred that the complainant, being an employee of Bank of Baroda, had expressly informed the respondent at the time of booking that availing a home loan from Bank of Baroda was a mandatory and non-negotiable condition, as per the internal policy of his employment, which prohibits him from taking a loan from any other financial institution. Despite this clear communication, the respondent failed to provide accurate information in the agreement, resulting in the complainant becoming ineligible for the loan. This has caused him serious

inconvenience and financial loss. The complainants have stated that instead of resolving the issue, the respondent is demanding 100% deduction of the booking amount of Rs. 7,01,000/- as cancellation charges. Such a demand, according to the complainant, is arbitrary, unjustified, and unsustainable, particularly when the default and misrepresentation lie solely on the part of the respondent. The complainants, feeling cheated and misled by the respondent, has approached this Authority seeking appropriate relief. He has requested that the booking may be cancelled and that the respondent be directed to refund full booking amount of ₹7,01,000/- at the earliest. In support of his complaint, he has placed on record copies of the Agreement for sale, correspondence with the bank, supporting documents, and the payment receipt mentioned at point no. 6 on page 4 of the allotment letter.

2. REPLY FILED ON BEHALF OF THE RESPONDENT

In response to the complaint, the respondent has filed a detailed reply raising several preliminary objections. It is submitted that the complainants have no cause of action and the complaint is liable to be dismissed. The respondent contended that the complainants have not approached this Authority with clean hands and have suppressed material facts, and therefore are not entitled to any relief. It is further stated that the complainants lack locus standi and are estopped from filing the present complaint by virtue of their own acts and conduct. It is further stated that the complaint is a coercive attempt to evade contractual obligations under the Agreement for Sale. The

respondent further submitted that the complaint is misconceived, not maintainable in law, and not filed in the prescribed manner under the provisions of the RERD Act, 2016. It is alleged that the complainants have withheld essential documents, including bank correspondence and any loan rejection letter, and that the allegation of incorrect details in the Builder-Buyer Agreement is baseless and unsubstantiated. The respondent further submitted that the complainants were duly allotted Flat No. 301, Second Floor, Tower H/Block-8, Mashobra Hills, vide Allotment Letter dated 19.07.2024, after payment of a total booking amount of Rs. 7,01,000/-, acknowledged in Clause 6 of the Allotment Letter. As per Clause 5 of the Allotment Letter dealing with "Withdrawal from the Project," the cancellation charges were clearly mentioned, and in cases where a request for cancellation is received after 91 days from the issuance of the Allotment Letter, the entire booking amount is liable to be forfeited. It is submitted that a Demand Notice dated 23.07.2024 was issued to the complainants, raising a demand of Rs. 59,55,081/- as per the construction-linked payment plan agreed between the parties. The complainants, however, defaulted in making the requisite payments despite due demand. It is further submitted that instead of complying with their contractual obligations, the complainants addressed a cancellation request only on 23.10.2024, which was after the expiry of 91 days from the date of the Allotment Letter. In such circumstances, the respondent contended that the booking amount is non-

refundable in terms of the contractual clauses. The Agreement dated 20.07.2024 executed between the parties governs the relationship. In terms of Clause 7.5 of the Agreement, the allottees may cancel the unit, but where such cancellation is "without any fault of the Promoter," the Promoter is entitled to forfeit the booking amount. Clause 9.3 further provides that default in payment entitles the Promoter to cancel the allotment and refund the balance after deducting the booking amount and other liabilities. Clause 24 (Waiver Not a Limitation to Enforce) clarifies that even if the respondent extended certain cooperation, such as issuing the Undertaking dated 23.07.2024 or providing a "No Objection" letter to the Bank for mortgage purposes, such leniency does not constitute a waiver or limitation of the respondent/Promoter's contractual rights, nor does it create any binding obligation requiring the respondent to follow such a course in future cases. The respondent further submitted that the Undertaking dated 23.07.2024 and the letter addressed to Bank of Baroda on the same date, granting permission for lien creation and permitting mortgage of the flat, indicates that the respondent acted in good faith and facilitated the complainants' choice of bank for loan processing. It is contended that any alleged rejection of the loan was not attributable to the respondent, and no deficiency can be attributed to them. The respondent asserted that having performed its obligations and having extended full cooperation, it cannot be penalized for the complainants' inability to secure the loan. The cancellation being

without any fault on the part of the Promoter, the respondent claims that it is legally entitled to forfeit the entire booking amount. The allegations of misrepresentation or incorrect details are denied as false, and an afterthought to evade contractual liability. The sanctioned plans and approved layouts were duly disclosed to the complainants and uploaded on the HP-RERA website as required under law.

In view of the above, the respondent prays that the present complaint be dismissed as being devoid of merit, not maintainable, and barred by the contractual terms; that the respondent's right to forfeit the booking amount of Rs. 7,01,000/- be upheld; and that such other orders as may be deemed fit and proper in the facts and circumstances of the case be passed.

3. REJOINDER / REPLY ON BEHALF OF THE COMPLAINANTS

The complainants submitted that the respondent is misleading this Authority by concealing material facts and by furnishing unclear and contradictory documents with the intent of defeating the rightful claim of complainants. The complainants have placed on record the true chronology of events to demonstrate the actual sequence of transactions. It is stated that on 04.07.2024, the complainant paid a booking amount of ₹1,01,000/-, followed by the balance amount of ₹6,00,000/- on 19.07.2024, thereby completing the total booking amount of ₹7,01,000/-. On 23.07.2024, the respondent issued a demand letter seeking a further sum of Rs. 59,00,000/-, despite the fact that the

Agreement for sale had not yet been executed. The said agreement was executed on 06.08.2024. After making 10% payment of the consideration amount, the complainant immediately applied for a home loan from Bank of Baroda, and the respondent was fully aware that the comp'ainant was entirely dependent on this home loan to meet subsequent payment obligations. The complainant further stated that on 07.09.2024, the first home loan rejection was communicated by Bank of Baroda on the ground of low valuation of the property. This rejection was promptly conveyed to the respondent's representatives, namely Ms. Sampada and Mr. Sanjeet Singh (Sales Head), along with a request for refund. It is further stated that instead of cooperating, the respondent compelled the complainant to submit a fresh loan application. Thereafter, on 20.10.2024, the loan was again rejected by Bank of Baroda for the same reason. The complainant again informed the respondent and reiterated their request for refund. It is alleged that thereafter the respondent started ignoring calls, blocked numbers, and arbitrarily offered only Rs. 1.5 lakh as refund while unlawfully forfeiting the remaining amount. In response to the submissions made by the respondent, the complainants asserted that the respondent has misrepresented facts and documents. The complainant contended that the demand letter dated 23.07.2024, which precedes the execution of the Agreement for sale dated 06.08.2024, clearly reflects mala fide intent on the part of the respondent in raising an unjustified demand even

before the contractual obligations were finalized. It is further submitted that from the very beginning, the respondent was aware that the complainant was reliant solely on home loan financing through Bank of Baroda and that, in the event of loan rejection, the booking would stand cancelled. Despite this, the respondent misled the complainant by creating false assurances and unnecessarily delaying the refund process. The complainant further submitted that the respondent's assertion regarding the absence of proof of loan rejection is incorrect and misleading. The complainant has annexed the official rejection letters issued by Bank of Baroda, thereby disproving the respondent's allegation that the complainant acted with unclean hands. It is further contended that the respondent's reliance on forfeiture clauses is wholly misplaced, as such forfeiture cannot be invoked when the cancellation is occasioned by circumstances beyond the control of buyer, particularly when the cancellation resulted from loan rejection due to the respondent's own inflated valuation claims and lack of transparency. The complainant also alleged that the respondent has engaged in unfair trade practices by failing to disclose hidden charges such as GST and fees under Section 118, further proving that the transaction lacked transparency and fairness. In view of the above submissions, the complainant respectfully prayed that this Authority may direct the respondent to refund the entire booking amount of Rs. 7,01,000/- along with appropriate interest, as the cancellation occurred solely due to the respondent's misrepresentation and failure to provide clear

and accurate valuation details. It is further prayed that this Authority hold the respondent's act of offering only ₹1.5 lakh as refund while forfeiting the balance amount to be illegal and arbitrary, impose appropriate penalties upon the respondent for misrepresentation and unfair trade practice, and grant any other relief deemed just and proper in the interest of justice.

4. ARGUMENTS ON BEHALF OF COMPLAINANT(S): -

During the course of arguments, the complainant submitted that the rejoinder had already been filed and placed on record during the previous hearing. The complainant further contended that the respondent was under an obligation to refund the amount paid by him. However, despite having received the money, the respondent has failed to take any action in this regard. The complainant stated that he is compelled to withdraw from the transaction/unit since his home loan has been rejected by the bank. The complainant further submitted that an amount of ₹7,01,000/-, along with applicable interest, is liable to be refunded to them. The complainant further submitted that the rejoinder contains a detailed, date-wise explanation of all relevant facts, and they have already responded to all queries raised by this Authority.

5. ARGUMENTS ON BEHALF OF RESPONDENT

The ld. counsel for the respondent submitted that the complainant has not supplied a copy of the rejoinder to the respondent. The respondent therefore sought an opportunity to file written arguments within one week. However, written

submissions have been received through email on 4th December, 2025. It is averred by the respondent that the rejection of loan was due to valuation report which is an independent assessment of bank, there is no allegation in loan rejection letter regarding incorrect plans, documents or misrepresentation and further the valuation done by the bank is only meant for internal risk assessment of the bank and has no bearing on the contractual value agreed upon between the parties. Further, the respondent averred that he had issued an undertaking and no objection dated 23.07.2024 which clearly proved that respondent cooperated fully with the complainants in securing their loan and as per terms and condition of allotment letter 23.07.2024 the complainants were required to fulfill their obligation within stipulated timelines. It was further contended by the respondent that the complainant issued their cancellation request on 23.10.2024 i.e. after 91 days of the allotment letter and agreement and bank letter cannot right to refund as the cancellation is not attributable to any fault of the respondent. Lastly the respondent referred clause 24 of the agreement for sale that is waiver not a limitation to enforce. In this regard, the respondent contended that even if he had extended cooperation or leniency i.e. NOC & undertaking, such actions do not amount to waiver of respondent's contractual rights, do not prevent the respondent from enforcing forfeiture provisions and also do not bind him to grant refund.

6. **POINTS FOR CONSIDERATION:** - In order to adjudicate upon the rival contentions of the parties, the following points emerge for consideration:

   i. **Whether the complainants have cause of action to file and maintain the present complaint or not?**

   ii. **Whether the promoter/respondent defaulted as per terms and conditions of agreement for sale?**

   iii. **Whether the complainants are entitled to get refund or not?**

   iv. **Relief**

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

   i. **Whether the complainants have cause of action to file and maintain the present complaint or not?**

In order to adjudicate upon this issue, the terms and conditions of the agreement for sale dated 20.07.2023 requires consideration. As per clause 1(1.1), thereof, the agreed sale consideration amount, between the complainants and the promoter, was settled at Rupees 77,58,421/- including GST and other charges and for this purpose, vide clause 1.3 the payment was to be made as per schedule C of payment plan. Further, the clause 9 of the agreement for sale, stipulates the eventuality of defaults and consequences. As per clause 9.1 the promoter, subject to force majeure clause shall be considered under the condition of default in the following events:

i. Promoter fails to provide ready to move in possession of the flat to the allottee within the time period specified in para 7.1 or fails to complete the project within the stipulated time disclose at a time of registration of the project with the Authority;

ii. Discontinuance of the promoter business as a developer on account of suspension or revocation of his registration under the provision of the Act or the rules or regulations made thereunder.

Further, clause 9.3 stipulates that allottee shall be considered under a condition of default on the occurrence of following events:-

i. In case the allottee fails to make payments for 2 consecutive demands made by the promoter as per the payment plan annexed thereto (herein schedule C)

ii. In case of default by allottee under the condition listed above continues for a period beyond 2 consecutive months after notice from the promoter in this regard, the promoter may cancel the allotment of the flats and refund the money pay to him by the allottee by deducting booking amount and the interest liability and this agreement shall there upon stand terminated.

After having analyzed these clauses, it is imperative to consider clause 7 of the agreement for sale which stipulates for possession of the apartment and as per clause 7.5 the

allottee shall have the right to cancel/withdraw his allotment in the project as provided in the Act. However, a proviso in incorporated in vary clause which restricts the allottee to the effect that where the allottee proposes to cancel/ withdraw from the project without any fault of the promoter, the promoter is entitled to forfeit the booking amount paid for the allotment and the balance amount of money paid by the allottee shall be returned by the promoter to the allottee within 60 days of such cancellation. Now, before referring to relevant provisions of the Act, governing refund/ cancellation, it is apt to look into the conditions imposed in allotment letter dated 23.07.2024. It is observed that clause 5 thereof covers the eventuality where the allottee desired to cancel the booking or withdraw from the project and as per time period prescribed thereunder the promoter is entitle for deduction of 100 % amount.

Now, adverting to the relevant provisions of the Act, 2016, contained in sections 18 and 19, which provide for the obligation on the promoter to refund the amount and rights/ duties of the allottee in case the promoter fails to act in accordance with terms of the agreement for sale. Section 18(1) of the Act prescribes that in case the promoter fails to complete and or discontinue his business as a developer on account of suspension or revocation of the registration of this Act or for any other reason or is unable to give possession of the apartments or plot or building in accordance with the

terms of the agreement for sale, he shall be on demand of the allottees if the allottees desire to withdraw from the project without prejudice to any other remedy available, to return amount received by him in respect of that premises with interest at such rate as may prescribed in this behalf including, compensation in the manner as provided under the Act. Further, Section 19(4) prescribes that allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply with the conditions as per agreement for sale. Now, reverting back to the terms and conditions of agreement for sale as well as compliance of the mandate of the Act, this Authority observes that the complainants applied for raising loan from Bank of Baroda in order to meet out the payment schedule (schedule C) and as per rejection letter dated 18.08.2025, circumstances under which the Bank rejected the loan, was on account of valuation of the flat and not account of any variation in the unit size and floor area, as alleged by the complainants in complaint dated 28.01.2025. Further, in this regard, no documentary evidence has been produced by the complainants during the adjudication of the matter that as to how there was variation in the unit and floor size. It is further observed, from the rejoinder submitted by the complainants that the said bank had rejected their loan for the first time on 07.09.2024 and for the second time on

20.10.2024. However, in order to substantiate this fact no documentary proof has been placed on record and only communication available on record is dated 18.08.2025. Further, as per prayer of complainants, they have claimed the booking amount of Rs.7,01,000/- along with interest from the respondent. As observed, supra, clause 5 (i) of the allotment letter vide sr. no 4 of the table, 100% of the amount will be deducted in case the withdrawal/cancellation is received after 91 days from issuance of allotment letter. The record, on the basis of pleading and the supporting documents, reveals that the allotment letter was issued on 23.07.2024 and the cancellation request was made by the complainants for the first time through email on 23.10.2024 which is after 90 days from the issuance of allotment letter and as per sr. no 3 of the table 50% of the booking amount is liable to be deducted in case sch request is received within 61 to 90 days. However, since, the case of complainant is not covered at sr. no 3 of the said table, the booking amount liable to be deducted is covered under sr. no. 4 of the said table. As such, the complainants, being signatory to the allotment letter, cannot take shelter of the fact that the agreement contains incorrect information regarding unit size and floor that too without producing any documentary proof in this regard. As regard, the reason for rejection of loan of the request of complainants, this Authority find force in the arguments of the respondent that bank conducts independent valuation through their

valuer with the sole purpose to secure their internal risk assessment and cannot override the conditions of allotment letter or the agreement executed between the parties, as the case may be. Further, it is observed that the said process, undergone by the bank is beyond the influence of the promoter and the promoter has no role in either approval or non-approval of loan by the bank. It is further observed that the complainants have also failed to put fourth any submission as to how the promoter has violated the provisions of the Act, Rules or the regulations made thereunder and merely labeling allegation of incorrect information regarding unit size and floor does not entitle the complainants to invoke the jurisdiction of this Authority.

Now, considering the claim of complainants for refund of full booking amount of Rs. 7,01,000/-, the clause mentioned after the table of allotment letter dated 23.07.2024, further stipulates that for the purpose of considering the refund/ deduction, the booking amount to be considered is the very first payment made by the allottee to the promoter, which has been duly received either in the bank account of the promoter/ duly acknowledged by the promoter. The record reveals that the first payment, towards booking amount was Rs. 1,01,000/- only, paid on 04.07.2024 and as per the said clause the promoter was under obligation to refund the amount received as first payment. However, as observed, supra, since the request of cancellation of unit was

communicated vide email dated 23.10.2024 as such clause 5 (i), sr. no 4 of the table will apply to the instant case. Hence, the issue is decided against the complainants being devoid of merit.

iii. Whether the promoter/respondent defaulted as per terms and conditions of agreement for sale?

The Authority, after having observed the detailed background on facts, stipulations under agreement for sale vis a vis provisions of the Act/ Rule & Regulations, it is observed that the loan request of the complainants was cancelled solely on the basis of tentative valuation conducted by the valuer of Bank of Baroda without any observation of the Bank on incorrect plans, wrong details in agreement for sale or allotment letter or any misrepresentation by the promoter. The only reason assigned for cancellation of loan was that the loan amount exceeded the permissible limit of 90% of the assessed value. It is observed on record that the complainants have applied for raising home loan of Rs. 77,58,421/- only against the flat and as per valuation conducted by the Bank the market value of property, post completion was determined at Rs. 45 Lakhs which substantially exceeded the said eligibility limit. As observed above, in detail, the complainants have failed to substantiate the fact that due to fault of the promoter, the complainants were prevented from getting loan and whereas, the valuation conducted by the valuer is an independent internal act of the Bank in order to assess the

risk factor. Since, the both the parties i.e. complainants as well as promoter/ respondent had entered into agreement wherein clear cut consideration amount was mentioned and was also agreed upon, without any protest, the complainants are legally bound to fulfill the conditions mentioned therein. As such, it is observed that the promoter/ respondent has not violated any terms and conditions of agreement for sale nor the obligations imposed under the provisions of the Act. Hence, the issue is decided against the complainants.

iv. Whether the complainants are entitled to get refund or not?

In order to consider this issue, the authority observes, from the above detailed factual as well legal position that the complainants have failed to substantiate as to how the promoter / respondent had violated terms and conditions of agreement for sale or any provisions of the Act. Whereas, the allotment letter dated 23.07.2024, specifically, stipulated for the time period and deduction of amount. It is settled position that where the parties agree on certain terms and conditions and enter into an agreement, the terms and conditions have binding effect and the parties, later on, cannot wriggle out of the terms and conditions. Since, the complainants had requested the respondent through email dated 23.10.2024, disclosing, thereby, their intention to cancel/withdraw from the project after the period of 90 days from the date of issuance of allotment letter dated 23.07.2024, it is observed

that clause 5 (i) r/w sr. no. 4 of the table will apply to the present case and as such 100% deduction is liable to be made. Hence, this Authority is of the considered view that the complainants are not entitled for any refund of booking amount and therefore this issue is decided against the complainants.

iv. Relief: In view of the above detailed observation on factual as well as legal provisions, the complaint is hereby dismissed being devoid of merit since the complainants have failed to substantiate any violation on the part of respondent.

(Amit Kashyap)
MEMBER

(R.D. Dhiman)
CHAIRPERSON

(Vidur Mehta)
MEMBER