



Real Estate Regulatory Authority

Government of Himachal Pradesh

Complaint Application

Application No.

CTA0420230005

printed : 20-04-2024 09:24 AM

Complaint Details

Complaint Subject	complaint under section 31 of the Act
Facts of the complaint	<ol style="list-style-type: none">1. The complainant in pursuance of the advertisements and offers stating that non-himachalis 118 permission taken can buy provided by the respondent booked the flat 403, in Tower A-1 vide agreement dated 28-04-2011 for the allotment of an apartment No. 403 on 4th floor in tower A-1 of 1575 sq. Feet.2. That the complainants made the full and final payment amounting to Rs. 19,00,000/- (Rupees Nineteen Lakhs only), receipts of which have been acknowledged from time to time. That the respondent has never complied with the legal formalities to get the conveyance deed executed and registered in favour of the complainant inspite of the fact that all the documents were given to them and all full and final payment made.3. The respondents make lame excuses on the pretext of that the apartment buyers agreement dated 28-04-2011 is not valid and asked to execute a fresh agreement dated 22-05-2016. The respondent is issuing /tendering various affidavits to both complainants and authorities to mislead them and circumvent the law. These documents/ affidavits are not only false and vexatious but also liable to expose the complainants to various legal litigations under Income Tax Act and confiscation of property by Government of H.P. for violations, in which complainant is in no way a party.4. That the complainant filed a consumer complaint no 95/2017 for conveyance deed of the flat which was decreed and opposite parties despite the award of the Hon'ble Commission not executed the conveyance deed and all necessary documents for getting the permission under section 118 of H.P. Tenancy and Land Reforms Act were again tendered to the respondents again. The respondents have neither taken completion certificate/ occupancy certificate from the concerned authorities and without such certificate are issuing "Offer to Possession letter and Possession Affidavits /letters" to the complainant as to misguide the RERA and other authorities.5. That the respondent has already made an illegal deduction of Rs. 1,14,922/- which is neither maintainable in the eyes of law nor valid on the basis of such baseless and illegal "Possession letters/ Affidavits", the opposite parties are illegally demanding "MAINTENANCE CHARGES" and extorting money from the complainant.6. The complainants have was paid to the respondent total sale consideration since 2011 and till date not been furnished with the copy of sale deed or any marketable or interest.7. The respondent is not getting permission under section 118 of H.P. Tenancy Act as he has being acting in variation to the laws of state of H.P. and defeating the rights and interest of the complainants over the property.8. It is pertinent to mention here that in the respondents are disposing off the properties to other purchasers but not conveying the complainants who have

paid in full.

9. The respondents are charging the complainants monthly maintenance charges on the incomplete project without obtaining the occupancy certificate from the concerned authorities under the garb of Orders of Hon'able H.P. Real Estate Regulatory Authority.
10. That the cases of the Non-Himachali Purchases need your special attention as:
 - i. The law of Section 118 of H.P. LAND TENANCY ACT bars the Non Himachali Agriculturists from acquiring any property in any manner without the permission of the Government of the state of Himachal Pradesh, thus proposed buyer can only make agreements and neither take possession nor get sale deed prior to such permission and such possession or sale deed is in violation of law under Section 118 of H.P. LAND TENANCY ACT, which will subsequently lead to an action by the authorities leading into show cause notice to both the Builder and the buyer and confiscation of property in violation of Section 118 of H.P. LAND TENANCY ACT by the government of Himachal Pradesh in favour of government of Himachal Pradesh.
 - ii. Moreover the mere paper possession entitles the Builder to charge maintenance Charges under RERA provisions but under THE CONSUMER PROTECTION ACT, 1986 AS AMENDED BY CONSUMER PROTECTION ACT, 2019 and subsequent rulings laid down by the Honable *National Consumer Disputes Redressal Commission (NCDRC)*

"Regarding the issue of maintenance charges, it is fact that, the Complainants have taken physical possession of their respective units. It would be logical that, there would be expense on the maintenance of certain common services. It is also a fact that, the Occupancy Certificate has not been obtained yet. It means that the project is not yet fully complete and that not all services promised are being provided."

"As per the Order of this Commission in Kamal Kishore & Anr. Versus M/s. Supertech Limited (Supra), No maintenance charge should be levied before obtaining the Occupancy Certificate. In this case, even if some of the allottees including the Complainants, have taken possession of their respective Units, it would be considered as paper possession only. So, the question of charging maintenance charge is in our considered view not proper and therefore should not have been collected and should not be collected till receipt of the Occupancy Certificate. The Complainants will be liable to pay maintenance charge only after the Occupancy Certificate is received."

- iii. Further the practice on part of the Builder and the clauses in the agreement for sale enabling the builder to rent out the premises and pay rent to the proposed buyer is another violation of the Section 118 of H.P. LAND TENANCY ACT and THE TRANSFER OF PROPERTY ACT, 1882 the law laid down by the Honable Supreme Court in "Suraj Lamp Industries Case, **a landmark case relating which explains about how 'Power of Attorney Sales' has been used as a tool to evade stamp duty and able to create black money circulation.**" Such a practice is not only a "**Benami Transaction**" where by the original owner is someone else the money implied is of someone else and the real benefactor is someone else. "Any transaction in which property is transferred to one person for a consideration paid or provided by another person" as provided in THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988.

In addition to this Rental income from property is charged to tax under the head

in addition to this rental income from property is charged to tax under the head "Income from house property in the hands of the owner of the property". If a person receiving the rent is not the owner of the property, then rental income is not charged to tax under the head "Income from house property". Such amount of Rs. 10,000/- per month is unaccounted for and is being adjusted by the builder as maintenance charges. Tax evasion is a criminal offence in India. Chapter XXII of the Income Tax Act, 1961 states provisions related to the prosecution of such offences, failure to file a timely return, false information, deliberate attempt to evade tax, fabrication of numbers etc. The burden of proof in such cases lies on the accused. The buyer is unable to show the income in his income tax return where as the Builder nither is showing the amount in his return. The adjustments are illegal and against the law being made in respect of maintenance charges. Such acts will make the buyer liable for Income Tax assessments and violations if any found will expose the complainant/ buyer to proceeding under the Income Tax Act, 1961 Tax is a common contribution towards the government according to everybody's ability to pay for raising revenue that's for the benefit of society. Tax evasion is an illegal activity in which a person deliberately makes an underpayment or non-payment of tax. It means deliberately hiding and misrepresenting their income from the authorities to reduce their tax liability. It is a white-collar crime. Tax evasion and tax avoidance are often confused by the people. Tax avoidance means using legal methods to decrease the percentage of tax payable.

Now the Builder is threatening to cancel the allotment

Reliefs Sought

5. RELIEF(S) SOUGHT: In view of the facts mentioned in paragraph 4 above, the complainant prays that the Regulatory Authorities may be pleased to allow the present complaint i) respondents parties be also directed to execute and registered the conveyance deed of the FLAT in favour of complainant after getting necessary permission under section 118 of H.P. Tenancy and Land Reforms Act. ii) Any other relief as deem fit by the Hon'ble Regulatory Authorities on the facts and submission made above











Complainant Details

	Personal Info	Contact Details	Address	Notice Address
1.	SITA DEVI Father : Lt. Sh. BANARSI DASS Type : Allottee	9876713607 satyapalnadrajog383@gmail.com	House No 48, Dharmesh Colony Rajpura Patiala, Patiala, Punjab, 140401	House No 48, Dharmesh Colony Rajpura Patiala, Patiala, Punjab, 140401
2.	SATYA PAL NANDRAJOG Father : Lt. Sh. PHULA RAM Type : Allottee	9876713607 satyapalnadrajog383@gmail.com	House No 48, Dharmesh Colony Rajpura Patiala, Patiala, Punjab, 140401	House No 48, Dharmesh Colony Rajpura Patiala, Patiala, Punjab, 140401





Respondent Details

	Personal Info	Contact Details	Address	
1.	AHLAWAT DEVELOPERS & PROMOTERS Type : Project Category : Individual RERA Reg No : RERAHPSOP06180035	9501488466 adp_projects@yahoo.com	Khasra No 602-611, opp. Dr. Reddy Plant, Malku Majra ,, Baddi, Solan, Himachal Pradesh, 173205	

Documents relied upon by the complainant and referred to in the complaint

1.	agreement	 
2.	agreement	 
3.	judgment	 
4.	order	 
5.	possession letter	 

Other Documents as annexed along with the complaint

1.	maintenance charges	 
2.	affidavit	 

Declaration

Jurisdiction of the Authority

☒ I **SATYA PAL NANDAJOG** declare that the subject matter of the claim falls within the jurisdiction of the authority.

Complaint not pending with any other Court

Whether this Complaint is pending with any other court, etc.? : **Yes**

Consumer Execution and Complaint pending before Ld President of Consumer Dispute Redressal Commission Solan

Declaration and Verification

☒ I **SATYA PAL NANDAJOG**, S/O **Lt. Sh. PHULA RAM** do hereby verify that the given details are true to my personal knowledge and belief and the i have not suppressed any material fact(s).

Place : **Solan**

Date : **23/04/2023**

Registration Fee

Fee Amount

₹ 500

Payment Status :  **Payment Received**

Payment Mode : **Online**

Transaction No. : **HPR230420230001**

Transaction Date : **23/04/2023 01:21 PM**

Bank Details : **SBIN~311357022926**