

**BEFORE THE REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH AT SHIMLA**

Complaint no.HPRERA2024028/C

In the matter of:-

Sh. Shailesh Kumar Chaturvedi, Son of Sh. DP Chaturvedi, Resident of B-25, Ground Floor, Golf View Apartment Pramod Mahajan Marg, Saket, New Delhi, Delhi, 110017 and also resident of G-33, First Floor,G- Block, Saket, Near Behind Gurudwara Road, New Delhi-110017

..... Complainant

Versus

M/s Rajdeep and company infrastructure Private Limited, Resident of office at SCO 12, First Floor, Hollywood Plaza, VIP Road, Zirakpur 140603

..... Respondent

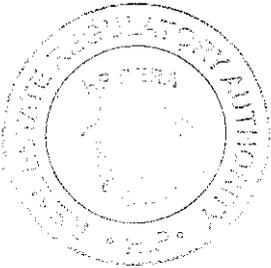
Present: Sh. Vikrant vice Sh. Kartik Kumar for complainant in person
Sh. Shakti Bhardwaj, Ld. Counsel for the respondent

Final date of hearing: 21.11.2025
Date of pronouncement of order: 16.01.2026

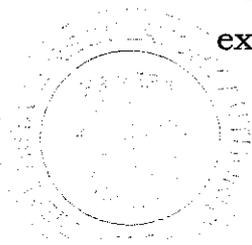
Order
Coram: Chairperson and Member

1. FACTS OF THE CASE:

That the Complainant Sh. Shailesh Kumar Chaturvedi filed an online Complaint on 06.12.2024 before this Authority, in 'Form-M' bearing Complaint no. HPRERA2024028/C of the HP Real Estate

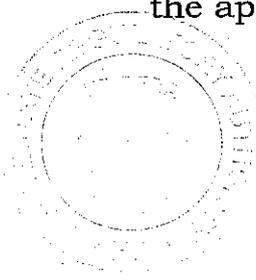


(Regulation & Development) Rules, 2017. As per the complaint the respondent is operating under the name and style of M/s Rajdeep & Company Infrastructure Private Ltd., a company registered with ROC, through its Director/Authorized Signatory, Mr. Rajdeep Sharma, son of Sh. Sansar Chand. The respondent represented himself to be the owner of the land comprised in Khewat/Khatoni No. 23/31, Khasra Nos. 134/1, 135/1, 136, 138/1 and 139/1, measuring a super area of 620 square feet, situated at Mauja Kuni, Mashobra, Tehsil Shimla (U), District Shimla, Himachal Pradesh. On the basis of such declarations, while introducing the residential apartments as a promoter, the respondent obtained registration of the said project under the provisions of the Real Estate (Regulation and Development) Act, 2016 with the Himachal Pradesh Real Estate Regulatory Authority, Shimla, bearing RERA Registration No. HPRERASHI2022001/P. it is further stated that the respondent advertised the sale of 1 BHK, 2 BHK, and 3 BHK residential flats through various modes and provided detailed descriptions of the flats and apartments on their official website www.rajdeepandcompany.com. Upon coming across the said advertisements, the complainant contacted the respondent. The employees of the respondent made representations regarding the project and the apartments. Upon such representations and after detailed discussions, the complainant agreed to purchase two residential apartments in the project, out of which one apartment was agreed to be purchased by the complainant himself and the other by the wife of the complainant. It is further stated that an Agreement for sale for Residential Apartment was executed between the complainant and the



respondent for the allotment of Studio Apartment No. 202, Tower-C, Second Floor, Type-1 Bedroom, having a super area of approximately 620 sq. ft., in the Mashobra Hills Group Housing Project, along with proportionate undivided interest in the common areas and facilities of the project. The said agreement was executed on 22.07.2019. The total consideration amount of the apartment, inclusive of all miscellaneous charges, was fixed at Rs. 31,00,000/-, in addition to society charges amounting to Rs. 3,00,184/-. Pursuant thereto, the complainant paid a sum of Rs. 25,53,000/- to the respondent towards the said apartment, which amount was duly acknowledged by the respondent by issuance of receipts.

The complainant has averred that the respondent failed to act in accordance with the terms and conditions of the agreement, thereby causing irreparable loss and hardship to the complainant. It is submitted that after execution of the Agreement for sale, the parties were bound by its terms, including the payment schedule and possession timeline, which were on the basis of Construction Linked Plan. The complainant regularly paid the installments raised by the respondent and released nearly 75% of the total consideration amount, with the bona fide belief that the respondent was utilizing the funds for construction and would deliver possession within the stipulated time. The complainant has asserted that he was always ready and willing to perform his contractual obligations, subject to the respondent handing over possession of the flat and executing the conveyance/sale deed in his favour. However, the complainant later realized that despite receiving substantial amounts, the respondent failed to construct the apartment within the agreed timeline and mutualized the funds



for other purpose. It has further been alleged that the respondent fraudulently received nearly 75% of the total consideration amount, misappropriated the same, and failed to carry out construction in a scheduled and timely manner. The complainant has relied upon Clauses 29 and 30 of the agreement, which stipulate that possession of the unit was to be handed over by 28.02.2020, subject to force majeure conditions and a grace period of three months, and that in the event of failure to deliver possession within the stipulated period, the developer would be liable to pay penalty/compensation at the rate of Rs. 5 per sq. ft. of the built-up area per month for the entire period of such delay. The complainant has further contended that the agreement was executed by the respondent with an intent to deceive, as possession was not delivered even after expiry of the agreed date. From 28.02.2020 till the filing of the complaint, the respondent has allegedly and arbitrarily violated the terms and conditions of the agreement without providing any satisfactory explanation for the inordinate delay. It is also averred that despite repeated communications through calls, emails, and legal notices, the respondent intentionally failed either to hand over possession or to cancel the allotment and refund the amount along with interest. Copies of emails and notices have been annexed with the complaint. However, according to the complainant, the respondent neither delivered possession nor refunded the amount, thereby adopting unfair and fraudulent practices. It has further been alleged that the respondent has flouted the terms of the agreement by failing to pay the stipulated penalty/compensation at the rate of Rs. 5 per square

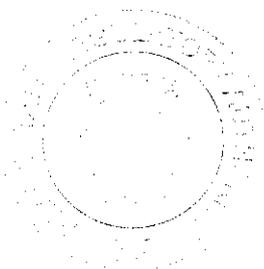
ft. per month for the entire period of delay, as provided under the agreement.

In view of the aforesaid facts and circumstances, the complainant has sought directions for handing over possession of Apartment No. 202, Tower-C, Second Floor, Type-1 Bedroom, having a super area of approximately 620 square feet, situated in Mashobra Hills, Shimla, Himachal Pradesh. The complainant has further sought payment of penalty/compensation at the rate of Rs. 5 per square foot per month with effect from 28.02.2020 till actual possession. Alternatively, in the event of failure to deliver possession, the complainant has prayed for refund of Rs. 25,53,000/- along with interest at the rate of 24% per annum. Additional reliefs sought include Rs. 12,00,000/- towards compensation for harassment and mental agony, Rs. 3,00,000/- towards litigation expenses, and any other relief deemed just and proper in the facts and circumstances of the case.

Pending final adjudication of the complaint, the complainant has also sought an interim direction restraining the respondent from selling, transferring, or otherwise alienating Apartment No. 202, Tower-C, Second Floor, Type-1 Bedroom, till final disposal of the complaint.

2. REPLY TO THE COMPLAINT:-

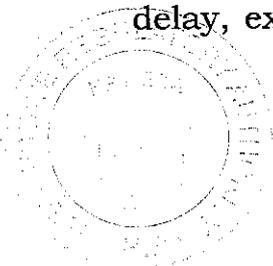
In reply, it was stated that the complainant has no cause of action, therefore, the complaint is liable to be dismissed. It is further stated that the complainant has not approached this Authority with clean hands, inasmuch as the complainant has intentionally and deliberately concealed and suppressed material facts and material



information. It is also contended that the complainant has no locus standi to file the present complaint and is further estopped from filing the present complaint on account of his own acts, deeds, and conduct. It is further stated that the present complaint is nothing but a coercive and blackmailing tactic adopted by the complainant with the intention to harass the respondent to their illegal and unreasonable demands and to evade his contractual obligations under the Agreement for sale. The respondent has further stated that as per Clause 33 of the Agreement for Sale dated 23.07.2019, all disputes arising out of or in relation to the agreement, including interpretation and validity thereof and the respective rights and obligations of the parties, are required to be resolved amicably and, failing which, through arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time. On this basis, the respondent has asserted that the present complaint is not maintainable before this Authority and is liable to be rejected on account of the contractual bar to jurisdiction and the existence of an arbitration clause. The respondent has denied the allegation that it failed to adhere to the terms of the agreement or caused any irreparable loss or hardship to the complainant. It is asserted that the respondent has acted in good faith at all times and kept the complainant duly informed of developments. It is further submitted that the agreement itself provided that possession timelines were subject to force majeure conditions. The respondent has detailed that construction activities were severely affected due to unforeseen and uncontrollable events, including the outbreak of the COVID-19 pandemic resulting in complete lockdowns and shortages of labour and materials from

March 2020 onwards, regulatory delays in obtaining approvals from local authorities, and restrictions arising out of orders passed by the Hon'ble National Green Tribunal in Yogendra Mohan Sengupta v. Union of India, which impacted construction activities in Shimla. Consequently, the Municipal Corporation, Shimla, suspended processing of building maps, resulting in stoppage of construction until compliance directions were clarified. It is further averred that during the period when construction was stalled, no further payment demands were raised from the complainant in accordance with the Construction Linked Plan, and the respondent bore the financial and operational burden of the delay without penalizing or pressurizing the complainant. The respondent has asserted that the complainant was regularly informed of these developments and was fully aware of the valid, documented, and bona fide reasons for the delay.

The respondent has further denied that the agreement was executed with any intent to deceive and reiterated that the delays were attributable solely to force majeure conditions and regulatory bottlenecks. It is stated that the complainant and his wife were in regular communication with the respondent, and all communications were duly acknowledged by the complainant. An email dated 05.07.2023 is relied upon to demonstrate that payment adjustments were made in accordance with the complainant's own requests. The allegation that communications were ignored has been specifically denied. With regard to the penalty clause, it is stated that Clause 30 of the agreement provides for compensation at the rate of Rs. 5 per sq. ft. per month only in cases of unjustified delay, excluding periods covered under force majeure, and that no

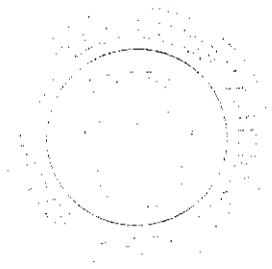


penalty is payable without adjudication after considering such exclusions. The respondent in his reply has further stated that it is willing to offer possession of Unit No. 202, Tower-E, in accordance with the Construction Linked Plan and subject to the complainant fulfilling his outstanding payment obligations, and that possession has never been refused. The respondent has denied the claim for compensation or penalty, asserting that the delay cannot be attributed solely to the respondent. The claim for refund has also been denied on the ground that the complainant himself requested for cancellation of Studio Unit C-202, which was acted upon by the respondent in good faith. It is reiterated that the respondent is ready and willing to offer possession of Unit No. 202, Tower-E. With respect to the interim relief sought, the respondent has denied the same, stating that the flat in question has neither been sold nor transferred and that there is no intention to do so. On the basis of the aforesaid submissions, the respondent has prayed that the complaint be dismissed with exemplary costs and that any other order deemed fit and proper in the facts and circumstances of the case be passed in favour of the respondent and against the complainant, in the interest of justice.

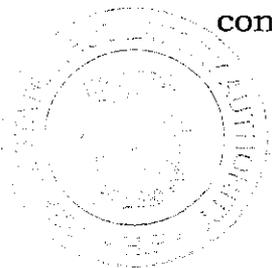
3. REJOINDER FILED BY THE COMPLAINANT:

The complainant has filed the rejoinder refuting the preliminary objections raised by the respondent. The complainant has denied the preliminary objections as false, frivolous, and devoid of merit, asserting that he has a valid cause of action and full locus to institute and maintain the present complaint. It has been specifically denied that the complainant approached this Authority

without clean hands or that any material facts were concealed or suppressed. The allegation that the complainant is disentitled to equitable relief is also denied. The complainant has affirmed that all relevant facts were duly disclosed and no misrepresentation can be attributed to him. The objections contained in preliminary objections Nos. 4 and 5 have been termed misconceived and raised merely for the sake of objections, without any legal force. It has further been asserted that the maintainability objections are misleading and contrary to settled law, particularly in view of the respondent's registration under the Real Estate (Regulation and Development) Act, 2016, which imposes statutory obligations on promoters and protects the rights of allottees. Accordingly, the respondent cannot raise defense contrary to the mandate of the Act and that the present complaint is fully maintainable before this Authority. The complainant has further stated that the contents of paragraphs 1 to 4 of the reply, being matters of record, are not denied, while the remaining averments are incorrect and are accordingly denied, and the pleadings contained in the corresponding paragraphs of the complaint are reaffirmed. The complainant has denied the respondent's plea of force majeure as unsubstantiated, asserting that no specific acts and circumstances have been pleaded to justify the prolonged delay. The defence based on the COVID-19 pandemic, regulatory delays, or alleged orders of the Hon'ble National Green Tribunal in *Yogender Mohan Sengupta vs. Union of India* has been denied in the absence of any documentary evidence relating such events to the present project. It has been further stated that at the time of execution of the agreement for sale, the respondent had represented that all



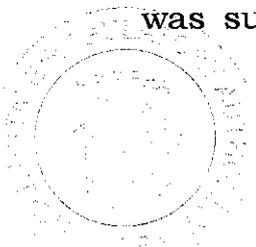
necessary approvals and sanction of maps, were already completed it is further stated that the pandemic impact ended more than four years ago and the respondent failed to give possession despite receipt of a huge amount of the sale consideration which causing huge loss to the complainant. The complainant has further denied the respondent's assertion that no further payments were demanded or that the complainant was regularly updated about the progress of the project. It has been stated that due to continuous delay, the complainant repeatedly visited the respondent's office and was given only oral assurances without any written confirmation. Emails dated 10.09.2020 and 14.09.2020 seeking clarification regarding possession remained unanswered. Thereafter, vide email dated 08.02.2021, the complainant sought cancellation of the studio apartment and adjustment of the amount towards the 2 BHK unit. Subsequently, an email dated 28.05.2023 was sent requesting possession of both units, followed by reminders dated 28.06.2023, 30.06.2023, 03.07.2023, and 04.07.2023. It has further stated that the respondent responded only on 05.07.2023, acknowledging the request for adjustment and refund, to which the complainant objected vide email dated 06.07.2023 and letter dated 10.07.2023. The complainant has highlighted that the respondent took more than two years and five months merely to acknowledge the cancellation request and even thereafter failed to refund the balance amount or deliver possession as per the Construction Linked Plan. It has been reiterated that despite payment of nearly 75% of the total consideration, construction at site remains negligible. In view of the aforesaid



facts and circumstances, it is most respectfully prayed that the complaint be allowed with costs and interest.

4. ARGUMENTS ON BEHALF OF THE COMPLAINANT

The Ld. counsel on behalf of the complainant submitted that the complainant has been suffering for the last approximately six years due to the respondent's persistent failure to hand over possession or provide any clear response. It was argued that ever since the complainant first started sending emails to the respondent, the respondent has largely remained non-responsive. It was submitted that the complainant is a retired person, aged about 70 years, and has been continuously pursuing the respondent for possession or refund, but to no avail. It was further submitted that the Agreement for sale was executed in July 2019, and as per the agreement, the respondent had promised to hand over possession by 28.02.2020. It was mentioned in the page 28 (Annexure C) and page 33 of the Agreement for sale dated 22.07.2019, wherein it is clearly stipulated that possession was to be handed over within the agreed timeline. It was argued that even if the respondent takes the benefit of the COVID-19 period, the delay from 2020 to 2025 remains wholly unjustified. It was further argued that despite repeated attempts to contact the respondent through post, phone calls, emails, and personal visits, no proper response was received. The complainant referred to emails sent on 10.09.2020, to which no reply was received. The complainant stated that he made several personal visits to the respondent's office, including visits from Delhi to Zirakpur, but was not entertained and was humiliated, despite being a senior citizen. It was submitted that due to continued non-delivery of possession

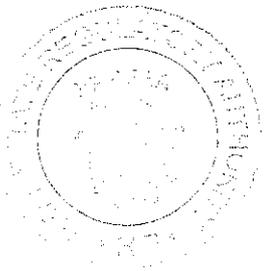


and lack of progress at the site, the complainant eventually sought cancellation and refund. It was mentioned in the communications dated 18.05.2023 and 28.05.2023, wherein the complainant sought either possession or refund. It was argued that the respondent replied only on 05.07.2023, acknowledging receipt of the request for adjustment of payments relating to the Studio Apartment and the 2 BHK apartment, one booked in the complainant's name and the other in the name of his wife, Mrs. Ranjana Chaturvedi. The complainant submitted that no amount has been refunded till date, despite assurances. It was argued that although the respondent proposed adjustment of payments and refund of the excess amount, no refund has ever been made, even after lapse of two to three years. It was further contended that the complainant did not finally accept the proposal, particularly because the respondent took more than two and a half years merely to acknowledge the cancellation request, and only responded when the complainant again started demanding possession of both units. It was argued that there was no clarity or sincerity on the respondent's part and the project shows no meaningful progress even till date. The complainant argued that the respondent's request of force majeure, arguing that the date of possession was prior to COVID-19, and even after considering force majeure, an unreasonable and excessive period has elapsed. It was submitted that the complainant never intended for his hard-earned retirement savings to be indefinitely blocked and that he has now lost all confidence in the respondent. It was argued that there is no realistic possibility of completion of the project in the near future. The complainant, therefore, prayed by the Authority

by granting appropriate relief, as no settlement or reconciliation appears possible.

5. ARGUMENTS ON BEHALF OF THE RESPONDENT

The Ld. Counsel for the respondent submitted that an application has already been filed seeking framing of issues and, in accordance with due process of law, the said application should be considered first. It was argued that the case involves disputed questions of fact and that there is no clarity regarding the complainant's intention, whether the complainant is seeking possession of one unit, possession of both units, or refund of the amount paid. It was further submitted that the respondent has explained the delay in handing over possession in its reply by citing valid reasons, including force majeure conditions. The Ld. Counsel stated that the he is presently facing difficulty due to insufficiency of instructions, as the respondent is in judicial custody, and counsel is presently acting on limited oral instructions. The Ld. Counsel also submitted that email dated 14.09.2024 and other emails indicate that at different points of time the complainant sought cancellation of the studio apartment with refund, and at other times sought possession of both units, which has created uncertainty. It was argued that in response to the complainant's email dated 28.05.2023, the respondent replied on 05.07.2023, stating that, as requested by the complainant, one flat would be cancelled, the other flat would be kept, and the extra money paid would be refunded. It was further submitted that the matter involves factual complexities, including changes in the complainant's requests, and therefore clarity is required before the dispute can be finally



adjudicated or settled. It was submitted that the respondent remains open to reconciliation, if possible, and has sought time to obtain proper instructions, particularly from the respondent's brother, who is the GPA holder.

6. APPLICATION ON BEHALF OF THE RESPONDENT FOR FRAMING OF ISSUES

It was submitted that the present complaint is pending adjudication before this Authority and that the respondent has already filed its detailed reply to the complaint. It was further submitted that upon perusal of the pleadings of both parties, it was evident that several material propositions of fact and law are affirmed by one party and denied by the other, requiring determination by way of proper framing of issues for effective adjudication. It was submitted that framing of issues is necessary to identify the real matters in controversy between the parties, to avoid multiplicity of proceedings, and to facilitate a fair and proper trial. In the interest of justice, the following issues arise for consideration and may kindly be framed by this Hon'ble Authority:

(i) whether the complainant has approached this Hon'ble Authority with clean hands and whether the present complaint is maintainable in its present form? (ii) whether the complainant is entitled to the relief(s) as claimed, in view of the terms and conditions of the Buyer's Agreement and the conduct of the parties? (iii) whether any delay in the project, if any, occurred on account of reasons beyond the control of the respondent, including force-majeure conditions, regulatory restraints, or orders passed by competent authorities? (iv) whether the complainant is entitled to

refund/compensation/interest as claimed and, if yes, to what extent? (v) whether the complainant has violated the agreed payment plan and failed to comply with contractual obligations, disentitling him/her from seeking the reliefs claimed? (vi) and relief. It was further submitted that the issues proposed above were necessary for determining the real dispute between the parties and that the present application is bona fide and made in the interest of justice. It was, accordingly requested that this Authority may frame the issues as proposed above or such other issues as this Authority deems fit and proper in the facts and circumstances of the present case and pass any other order(s) deemed just, appropriate, and necessary in the interest of justice.

7. ISSUES TO BE DICIDED: - On the basis of pleadings of the parties, following issues arise for determination.

- a) Whether this Authority has the jurisdiction to adjudicate the present complaint?**
- b) Whether the respondent failed to give possession of the flat to the complainant within the agreed time or the complainant is entitled to get refund?**
- c) Other issues and penalties, if any?**
- d) Relief.**

8. DISCUSSION AND FINDINGS ON EACH ISSUE:-

- 8. (a) Whether this Authority has the jurisdiction to adjudicate the present complaint?**



It is the case of the complainant that as per the agreement for sale the respondent presented himself to be the owner of residential apartment under the name and style of "Mashobra Hills" at Khewat/Khatoni no-23/31, at Khasra no.-134/1,135/1,136, 138/1 & 139/1 situated at MoujaKuni, Mashobra, Tehsil Shimla (U), District Shimla, Himachal Pradesh. The respondent had agreed to sale apartment no.202, Tower-C, Second Floor, Type-1 bedroom having a super area of approximately 620 sq. feet. The agreed amount as per agreement for sale was fixed at Rs.31,00,000/- in addition to society charges amounting to Rs.3,00,184/- (Rs.31,00,000 + Rs.3,00,184 = Rs.34,00,184/-). The complainant had paid a sum of Rs. 25,53,000/- which is approximately 75% of the agreed amount. The agreement to sale is executed on 22.07.2019. As per clause 29 the possession of the unit was to be delivered on 28th February,2020. The factor of force majeure circumstances and 3 months grace period is also mentioned in the agreement by the parties. As per clause 30 in case the possession is not delivered in time then the developer shall pay to the buyer compensation/ penalty @5/- per sq feet of the built up area.

Clause 29 of the agreement is reproduced as below:

"The seller confirm that they have granting full/final possession of allotment of said unit i.e. date 28th February,2020 subject to whether, availability of materials or force majeure circumstances, the seller and buyer have also mutually agreed on 3 months grace period from the final possession time-line in what so ever reason."

Clause 30 of the agreement is reproduced as below:

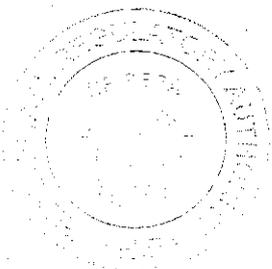
If the developer fails to give possession of the said unit within the aforesaid period then the developer shall pay to the buyer compensation/penalty @ Rs.5/- per sq. ft. of the built up area per month for the entire period of such delay.

9. This Authority has observed that the respondent has failed to deliver the possession of the flat in question even after expiry of five years from the date of execution of the agreement for sale, the complainant is entitled for refund under Section 18 of the RERD Act, which provides that,

“if the promoter fails to complete or is unable to give possession of an apartment, plot or building,—(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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

The section 31 of the Act *ibid*, prescribes that any aggrieved person can file a Complaint before the Authority or the Adjudicating Officer as the case may be for any violation of the provisions of the Act. In the instant cases, the Complainant has sought the relief that the respondent be directed to give possession of the apartment no. 202, Tower-C, Second Floor, Type-1 bedroom having super area 620 sq



ft. approximately in the Mashobra Hills, or refund/return the amount paid by the complainant along with interest @ 24%. It is not the case of the complainant that he is asking for compensation. In the present complaint, the complainant is duly governed by the agreement to sell executed between the complainant and respondent and this Authority has a function to protect the rights of the promoter as well.

10. The important provisions of the RERD Act, Rules and Regulations which are to be taken into consideration are here by reproduced as under:

Section 11(4) (a) of the Act prescribes as follows:

The promoter shall-

"be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made there under or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed."

Section 18 (1) (a) of the Act reads as follows-

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building,- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or "Return of amount and compensation, 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.'

Section 19 (4) of the act provides as under:

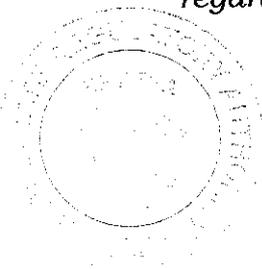
(4) "The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made there under."

12. Section 31 of the Act prescribes that any aggrieved person can file a Complaint before the Authority or the Adjudicating Officer as the case may be for any violation of the provisions of the Act. Thus this Section provides that a separate Complaint be lodged with the Authority and the Adjudicating Officer, "as the case may be." Accordingly Rule 23 of the Himachal Pradesh Real Estate (Regulation and Development) Rules 2017 provides the procedure of filing Complaint with the Authority and prescribes Form M for filing a Complaint. In this case, the Complainant has filed the Complaint in Form-M. The Section 34 (f) of the Act prescribes that the function of Authority shall include:

"to ensure compliance of the obligation cast upon the promoter, the allottee and the Real Estate agent under this act and the rules and regulation made their under",

Further Section 38 (1) of the Act says

"(1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the



allottees and the real estate agents, under this Act or the rules and the regulations made there under."

Thus the section 34(f) of the Act empowers the authority to ensure compliance of any obligation cast upon the promoter and section 11(4)(a) (Supra) cast obligation on the promoter to implement "agreement for sale". Further, section 37 of the Act empowers the authority to issue directions in discharge of its function provided under the Act. The Authority also has power to impose penalties under Sections 59 to 63 for various contraventions of the provisions of the Act. Moreover, Section 38 (1) of the Act in unambiguous terms empowers the Authority to impose penalty or interest.

Thus from the reading of the above provisions of the Act, it is very clear that the Authority has power to adjudicate various matters, including refund along with interest and imposition of penalty under the Act.

13. (b) Whether the respondent failed to give possession of the flat to the complainant within the agreed time or the complainant is entitled to get refund?

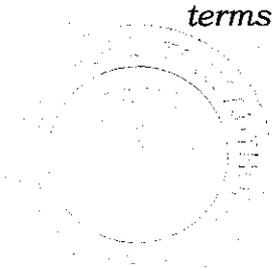
As per the pleadings of the parties, it is observed that the Defence taken in the reply by the respondent, is delay in handing over the possession due to the fact that there was Covid-19 pandemic and some orders in Yogendra Mohan Sengupta's case issued by the Hon'ble National Green Tribunal which affected construction activities in Shimla. As a result MC Shimla was not processing building maps and construction activities had to be stalled until compliance directions were clarified. However, in this regard it is observed by this Authority that the respondent, in order to substantiate the very fact of force majeure, has not submitted any cogent/ documentary proof

which could justify that the circumstances were beyond the control of the respondent which caused delay in either completing the apartment/ unit or handing over the full/ final possession of unit to the complainant. As a matter of fact the Hon'ble NGT had never stopped ongoing projects or constructions in the approved projects.

The Section 18(1)(a) of the Act ibid clearly provide that if promoter fails to complete or give possession in accordance with the terms of the agreement for sale then the complainant will be entitled to return of the amount along with interest. Similar provisions have been made in Section 19 (4) of the Act, which clearly provides that the allottee shall be entitled to claim the refund of amount paid along with interest, if promoter fails to comply with the terms of agreement for sale. In the present case, the possession of the flats was to be delivered on 28th February, 2020. It has not come on record if the project or the flat is complete as on today.

- 14.** This Authority while adjudicating upon the issue of refund is also guided by the judgment of the Hon'ble Apex Court in Civil Appeal nos. 3207-3208 of 2019 titled as **Marvel Omega Builders Pvt. Ltd. versus Shri Hari Gokhale and anr. Dated 30.07.2019** whereby the Hon'ble Court under para 10 has observed as under:

“10. The facts on record clearly indicate that as against the total consideration of Rs.8.31 crores, the Respondents had paid Rs.8.14 crores by November, 2013. Though the Appellants had undertaken to complete the villa by 31.12.2014, they failed to discharge the obligation. As late as on 28.05.2014, the Revised Construction Schedule had shown the date of delivery of possession to be October, 2014. There was, thus, total failure on part of the Appellants and they were deficient in rendering service in terms of the obligations that they had undertaken.”



Even assuming that the villa is now ready for occupation (as asserted by the Appellants), the delay of almost five years is a crucial factor and the bargain cannot now be imposed upon the Respondents. The Respondents were, therefore, justified in seeking refund of the amounts that they had deposited with reasonable interest on said deposited amount. The findings rendered by the Commission cannot therefore be said to be incorrect or unreasonable on any count.”

15. The Hon'ble Supreme Court in the case of Newtech Promoter and Developers Pvt. Ltd. VS. State of UP and ors MANU/SC/1056/2021,

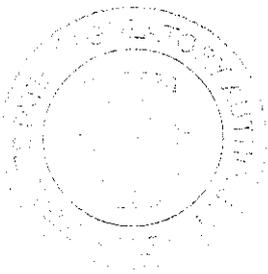
“22. If we take a conjoint reading of sub-sections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.

23. Correspondingly, Section 19 of the Act spells out “Rights and duties of allottees”. Section 19(3) makes the allottee entitled to claim possession of the apartment, plot or building, as the case may be. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund of amount paid along with interest and compensation in the manner prescribed under the Act.

24. Section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both these provisions recognize right of an allottee two distinct remedies, viz, refund of the amount together with interest or interest for delayed handing over of possession and compensation.

25. *The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*”

16. This Authority is also guided by the decision of the Hon'ble Supreme Court in case "**Pioneer Urban Land and Infrastructure Ltd. versus Govindan Raghavan, 2019 SCC Online SC 458**, has held in para 9 that “we see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these



circumstances, the Respondent – Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest.”

17. The Authority is also guided by the decision of the Hon'ble Apex Court in case of **Imperia Structures Ltd. v. Anil Patni, (2020) 10 SCC 783 : (2021) 1 SCC (Civ) 1, at page 791** at para 23 has observed as under:

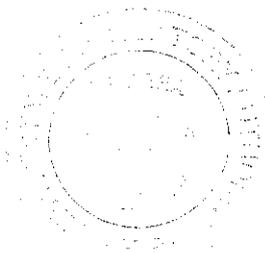
“23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.”

18. Hence, the right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section

18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is up to the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). Thus, it is very clear that the promoters have failed to complete the project and give possession of apartments to the complainants in accordance with the terms of agreement to sale. Therefore, the complainant is entitled to claim refund of the amount paid along with interest as prescribed under section 18(1) (a) read with section 19 (4) of the Act. In the present case the respondent has not disputed the amount of Rs. 25,53,000/- paid by the complainant.

Thus, the Complainant is entitled to get interest as prescribed as per the Section 18 of the Act read with rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017, that clearly states that the rate of interest payable by the promoter to allottee or by the allottee to the promoter, as the case may be, shall be the highest marginal cost of lending rate of SBI, plus two percent.

19. Thus, in the present case, there exist, clear and valid reasons for holding down that the flat buying Complainant is entitled for refund of total payment advanced to the respondent promoter along with interest. There has been a breach on the part of the respondents in complying with the contractual obligation to hand over possession of the flat either on or before 28th February, 2020 or within a grace period of 3 months, as per the agreement for sale executed between the Complainant and the respondent. The failure of the respondent promoter to hand over possession within time, amounts to contravention of the provisions of the Real Estate (Regulation &



Development) Act, 2016. The respondent promoter has failed in fulfilling his obligations as stipulated in Section 11(4)(a) of RERD Act, 2016. Having paid a substantial amount of the consideration price to the respondent, the purchaser is unable to obtain possession of the flat as the same has not been completed, as per terms of agreement for sale.

20. (c) Other issues and penalties, if any?

i. During the adjudication of the matter, the respondent filed an application for framing of the issues proposed by him at the stage of the arguments which could not be adjudicated at that stage. The Hon'ble Supreme Court in **Union of India vs T.R. Verma MANU/SC/0121/1957; AIR1957SC882** has held that:

"14. Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law."

ii. Hence, it clear that the Evidence Act has no application to enquiries conducted by tribunals, forums, or other quasi-judicial Authorities, even though they may be judicial in character. Such tribunals must observe principles of natural justice, and their decisions cannot be impeached on the ground that the procedure followed was not as per that in civil courts. Further, cross examination is an exception, not the rule. If cross-examination is permitted routinely under the RERD Act, the entire purpose of the Act in providing expeditious relief to the allottees would be defeated.

iii. As already discussed, the inter-se liability between the parties is well-defined and spelt out from the documents on record. There are no disputed questions of fact that necessitate leading oral evidence or examination to test the veracity of facts as prayed for by the respondent. Permitting such examination would derail the proceedings, which are already fixed for arguments. If the Authority allows examination of witnesses routinely, as in civil courts, the object of the Act, the speedy adjudication—will be lost. While the Authority is duty-bound to observe principles of natural justice under Section 38(2) of the Act, the application of the Evidence Act depends on the statutory framework of the RERD Act, which does not provide for its application at every stage. Although the Authority is empowered under Section 35 to summon and examine witnesses, this depends on the nature and circumstances of the case. In the present case, the Authority does not find it necessary to permit witness examination and finds no disputed questions of fact involved. Hence, the other issues raised by the respondent are not sustainable and all can be decided based on the documents already on record. Therefore, this Authority is of the considered view that no disputed questions of fact are involved, and the case can be adjudicated on the basis of available documents.

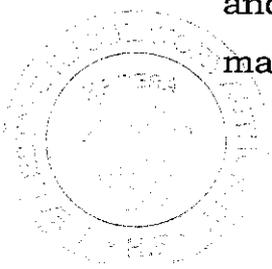
iv. Further, the Respondent Promoter has not shown any sincerity in delivering possession of the unit agreed to the complainant in terms of the agreement for sale. The Authority is of this firm view that Respondent Promoter must be held accountable and penalized under Section 61 of the Act *ibid* for his failure to fulfil his obligations as promoter as prescribed in Section 11 and 18 of the Act *ibid* which should act as a deterrent for the Respondent



Promoter for repeating such Act with any other allottee in any of his existing or proposed real estate projects in future. In this case, there are glaring violation of Sections 11 and 18 of the Act committed by the respondent/promoter that calls for imposition of penalty under section 61 of the Act *ibid*.

21. RELIEF: Keeping in view the above findings, this Authority, in exercise of power vested in it, under various provisions of the Act, Rules and Regulations made thereunder, issues the following orders/directions:

- a. The Complaint is hereby allowed.
- b. The respondent is directed to pay the interest for delayed possession, 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 i.e. Rs.25,53,000/- for every month of delay from the due date of possession i.e. 28.02.2020 till the date when valid offer of possession is made.
- c. In case the respondent failed to make the valid offer of possession within three months from the date of this order, the respondent is directed to refund/ return the amount invested by the complainant along with above mentioned rate of interest within a further period of sixty days.
- d. That in view of violation of provision(s) contained in Sections 18 and 11 read with Section 61 of the Act, 2016, which prescribes the maximum penalty that could be imposed for the contravention of



any provision of the Act other than Section 3 and 4, as five percent of the total cost of the project, the Authority deems it appropriate to impose the penalty of Rs. 7,50,000/- upon the respondent for contravention of the provisions contained under Sections 11(4) (a) and 18 of the Act *ibid*. Accordingly, the penalty imposed, shall be deposited by the respondent 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 the passing of this order, failing which the respondent shall further be liable for coercive action for non-compliance of directions as per relevant provisions of Act/Rules.

- e. The Complainant shall be at liberty to approach the Adjudicating Officer for compensation under Section 71 of the Act *ibid*.
- f. All the pending applications are disposed off in aforementioned terms.



**R.D. DHIMAN
(CHAIRPERSON)**



**VIDUR MEHTA
(MEMBER)**

