BEFORE THE HIMACHAL PRADESH REAL ESTATE REGULATORY AUTHORITY AT DHARAMSHALA, DISTRICT KANGRA – HIMACHAL PRADESH.

Complaint No.: HPRERA2026004/C.

In the matter of:-

Vaibhav Gupta S/O Late Sh. Ved Raj Gupta, Resident of C3, Second Floor, Buttermere Estate, Summer Hill, Shimla.

..... Complainant.

Versus

Balbir Singh Verma (Builder) Prop. Verma Construction Co., Resident of House No. 4-B, Lane 7, Sector-1, New Shimla, Shimla-171009.

..... Respondent.

Present:- **: Sh. Umesh Ghosh, Ld. Advocate, for the Complainant along with complainant Vaibhav Gupta through WebEx.**
: Sh. Shakti Bhardwaj, Ld. Advocate, for the respondent/Promoter, through WebEx.

Date of Institution	**: 11-03-2026.**
Date of hearing arguments	**: 29-09-2026.**
Date of Pronouncement of Order	**: 03-11-2026.**

O R D E R

Coram : Chairperson and Member.

1. BRIEF FACTS OF THE COMPLAINT:-

The present complaint has been moved by Sh. Vaibhav Gupta S/O Late Sh. Ved Raj Gupta, Resident of C3, Second Floor, Buttermere Estate, Summer Hill, Shimla that he had booked a 3 BHK, Flat No 19 in Block A on Fourth Floor of Verma Apartments at Upper Malyana, Shimla having built up area of 1200 sq ft with Mr. Balbir Singh Verma (Builder) proprietor Verma Construction Co. on 11th July 2016 by depositing initial deposit of Rs 5 Lacs Rupees as per the agreement to sell executed on 11th July 2016. As per the said agreement, the Builder had to complete the flat and hand over the flat within 2 years plus 6 months of grace period from the date of signing of the agreement. The promoter vide supplementary agreement dated 30th July 2019 agreed to hand over the possession of the flat on or before 31st December 2020 with all the terms and conditions of the original agreement dated 11th July 2016. The complainant had filed complaint with the HIMACHAL PRADESH REAL ESTATE REGULATORY AUTHORITY on 29/04/2024 having complaint number HPRERA2022409/C. The complaint was heard by the Authority on different dates and subsequently on dated 10.07.2025 a compromise was entered between the parties and the said complaint was withdrawn by the complainant on 21.07.2025. It is alleged in the present complaint that the respondent has not honored the commitment made by him in the compromise/settlement deed dated 10.07.2025 as the covered parking space (Slot No.-1) has not been provided to the complainant by the respondent. It is also mentioned in the complaint that the respondent has delayed the possession of the said flat to the complainant and therefore he is liable to pay the interest for the delayed possession.

2. REPLY ON BEHALF OF THE RESPONDENT

The respondent has taken preliminary objections regarding the maintainability of the complaint in view of the compromise agreement dated 10.07.2025 entered between the parties. It is averred in the reply that the issues pertaining to the parking and lift have been settled with the complainant and therefore the present complaint is contrary to the express terms of compromise dated 10.07.2025. It is further submitted by the respondent in his reply that the parking space allotted to the complainant remains available and allotted in his favour, however, certain objections were raised by the competent Authority regarding the CGI Sheet, Roofing/covered shed erected over the setback area adjacent to Block-A and therefore the said roofing sheet structure was removed. It is further averred in the reply that complainant himself was present in the meeting of RWA held on 22.03.2026 and he had not raised any issue regarding the parking area in the said meeting, therefore, the complainant has acquiesced to the said action. Regarding the delay in possession, it is submitted in the reply that the said issue has been resolved with the complainant vide compromise agreement dated 10.07.2025. The respondent has prayed for dismissal of the complaint.

3. REJOINDER TO THE REPLY FILED BY THE RESPONDENT/PROMOTOR TO THE COMPLAINT FILED BY THE COMPLAINANT.

In response to the reply filed by the respondent, the complainant filed the detailed rejoinder, wherein the pleas taken by him in his complaint have been reiterated and reasserted and he has rebutted the para wise reply filed on behalf of the respondent. The complainant has again prayed for the relief as claimed in the complaint.

4. Arguments advanced on behalf of the complainant:-

Arguments in the case was heard on 29.09.2026. Ld. Counsel for the complainant as well as the complainant himself submitted that the complainant had booked a 3BHK flat no. 19, Block-A on 4th Floor of Verma Apartments at Malyana, Chotta Shimla and agreement to sale was executed on 11.07.2016. The said flat was to be handed over by the respondents to the complainant within a period of two and a half years from the date of the agreement. Thereafter, on dated 30.07.2019 another agreement was executed between the parties and the date of possession of the said flat was extended to 31st December, 2020. Thereafter, when the said possession was not handed to the complainant, the complaint was lodged before the Authority on 29.04.2024. During the course of the proceedings of the said case a settlement was arrived between the parties on 10th July, 2025 and pursuant to the said settlement the said complaint was withdrawn on 21.07.2025.

The present complaint was filed wherein the complainant has claimed relief:-

1. To reinstate the covered parking space (Slot No.-1) in its original condition, vesting full ownership and possession of the complainant.
2. To obtain necessary approval/sanctions from the concerned Authorities for the said parking space prior to any transfer of the project to the Residents Welfare Association (RWA).
3. Pay costs, damages and interest for the unlawful demolition and deprivation of use.
4. Compensation/interest for the delay in handing over the possession of the said flat.

Ld. Counsel for the complainant has argued that pursuant to the settlement dated 10.07.2025, sale deed pertaining to the said flat was executed on 10.07.2025 and the complainant was given the possession of the said flat. Regarding the issues mentioned in the complaint, the issue of the covered parking as committed by the respondent vide his original agreement dated 11.07.2016 and the sale deed dated 10.07.2025 has not been resolved by the respondent. It is submitted on behalf of the complainant that after the execution of the sale deed dated 10.07.2025 a covered parking space was allotted to the complainant by the respondent in the said residential project, but after some time its roof was demolished by the respondent. It is also submitted by the Ld. Counsel for the complainant that the parking space has not been provided by the respondent in the stilt area and the commitment made by the respondent vide the initial agreement dated 11.07.2016 as well as the settlement deed and sale deed dated 10.07.2025 has not been honored by him. It is argued on behalf of the complainant that either the respondent should provide a covered parking space to the complainant or in the absence of the same he should be compensated by the respondent.

5. <u>Arguments advanced on behalf of the respondent;</u>

The Ld. Counsel for the respondent has reiterated the submissions made in the reply filed on behalf of the respondent. It is submitted by the Ld. Counsel that the settlement deed dated 10.07.2025 entered between the parties has created fresh rights and liabilities of the parties and all the previous agreements between the parties have been superseded, in this regard. It is further averred by the Ld. Counsel that Clauses 3 to 6 of the said compromise agreement dated 10.07.2025 clearly mention that the issue pertaining to parking and lift have been

settled and the complainant is duly satisfied with the parking space provided in the covered space outside the parking floor. Regarding the compensation demanded by the complainant, Ld. Counsel for the respondent has submitted that the complainant never raised the abovementioned issues in the general body meeting of Verma Apartments, held on 22.03.2026. It is submitted that in the said meeting the complainant had also participated and in the said meeting issue of parking space was also discussed but complainant has not raised any point regarding the said parking space. It is also submitted that covered parking space has been provided to the complainant and there is no issue which remains to be resolved between the parties.

6. **ISSUES FOR DETERMINATION:-**

From the above mentioned pleadings, arguments and written submissions by the parties following points/issues emerge out for determination by this Authority:-

1. Whether the Authority has Jurisdiction to entertain and decide the present complaint?
2. Whether the complainant is entitled to have a covered parking space in the said residential project?
3. Whether the respondent has provided the covered parking space to the complainant in the said residential project?
4. Whether the complainant is entitled for compensation as claimed in the complaint?
5. Whether the respondent has violated the provisions of RERD Act and Rules made thereunder?
6. Relief.

7. **FINDINGS ON ISSUES**

ISSUE NO.-1: Jurisdiction of the Authority:-

Section 31 of RERD Act, 2016 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 obligations cast upon the promoters, the allottees and the real estate agents under this Act and the Rules and regulations made there 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 of 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 19 (4) of the Act provides as under:-

"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 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."

Further Section 38 (1) of the Act says:-

"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 the obligations cast upon the promoters 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 Section 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 and interest under Section 18 of the Act whereas the compensation is to adjudged by the Adjudicating Officer under Section 71 of the Act ibid. Reverting to the facts of the case this Authority has jurisdiction to try the

present complaint as the flat in question i.e. flat no. 19, Block-A, 4th Floor, Malyana, Shimla, H.P. which is within the territorial jurisdiction of this Authority.

ISSUE No.-2 (Whether the complainant is entitled to have a covered parking space in the said residential project).

The present complaint has been filed as the commitments made by the promoter/respondent have not been fully honored by him. The foundational document vide which the complainant and the respondent entered into the transaction in question relates back to the agreement for sale dated 11.07.2016 vide which the complainant was allotted flat No.-19, Block-A, 4th Floor at Malyana, Shimla by the respondent. At page No.-4 of the said agreement, it is clearly mentioned that one covered car parking for each flat will be provided by the seller within the building as shown in the map. The Ld. Counsel for the respondent has tried to impress upon that since compromise deed dated 10.07.2025 was entered between the parties all the previous agreements between the parties were superseded and therefore, the agreement dated 11.07.2016 cannot be taken into account while deciding the rights and liabilities of the parties in the present complaint. The contention of Ld. Counsel for the respondent does not seem to be plausible for the reason that the compromise deed dated 10.07.2025 between the parties is not a fresh agreement for the sale/purchase of the said flat and it is also worth mentioning that the said compromise agreement dated 10.07.2025 does not contain detail of all the rights and liabilities of both the parties regarding the said transaction. Moreover, there is no clause in the compromise agreement dated 10.07.2025 that the initial agreement dated 11.07.2016 stands abrogated. The agreement dated 11.07.2016 between the parties is a detailed document wherein the rights and liabilities of the

parties have been elaborately mentioned. Thus, while deciding the present case, the agreement dated 11.07.2016 has to be taken into account. The said agreement clearly mentions that the covered parking space was to be provided to each flat owner by the promoter/respondent within the building as shown in the map. Therefore, after the complainant has made all the payments qua the said flat to the respondent and he has also been put in possession vide sale deed dated 10.07.2025, the complainant is entitled to have a covered parking space within the building as per the approved map, as per the commitment made by the promoter/respondent in the agreement for sale dated 11.07.2016.

ISSUE No.-3 (Whether the respondent has provided the covered parking space to the complainant in the said residential project?

The complaint mentions that at the time of entering into the agreement to sell the promoter had made a commitment to provide a dedicated covered parking space within the building, however upon the completion of the building, the parking floor lacked sufficient marked covered parking area to accommodate the vehicles of all flat owners. It is further averred in the complaint that pursuant to the settlement proceedings dated 10.07.2025 the promoter provided a covered parking space outside the building, identified as Slot No.-1 but after some time the roof of the said allotted covered parking space was demolished by the promoter. The Ld. Counsel for the respondent has submitted that certain objections were raised by the competent Authorities regarding the CGI Sheet, Roofing/Covered shed erected over the setback area adjacent to Block-A and therefore, the Roofing sheets over the said parking area were removed. It is also averred in the reply on behalf of the respondent that the parking allotment of the complainant have not been cancelled and the same is available as agreed

upon in the settlement deed as well as mentioned in the sale deed dated 10.07.2025. After the perusal of the record of the case, it is clear that the complainant has been allotted the parking space by the promoter/respondent outside the building adjacent to ground floor, Block-A. It comes out that the said parking space is not a stilt parking but in the common area of the said residential project. It is not out of place to mention here that no part of common area in a residential project can be allotted to any individual flat owner and therefore the parking space allotted by the respondent to the complainant in the common area is against the established norms and approved drawings. Otherwise also, the commitment made by the promoter/respondent vide agreement dated 11.07.2016 was for one covered car parking for each flat within the building as shown in the map. Meaning thereby the builder/respondent is under an obligation to provide one covered car parking to each flat owner in the said residential project strictly according to the map approved by the competent Authorities. Thus, the promoter/respondent has not provided the dedicated car parking space to the complainant as per the terms of the agreement dated 11.07.2016.

ISSUE No.-4 (Whether the complainant is entitled for compensation as claimed in the complaint)

The complainant has raised the issue of compensation for delay as per Section-18 of RERD Act. The Ld. Counsel for the respondent has submitted that since the possession of the flat was not handed over to the complainant as per the timeline mentioned in the agreement for sale he is entitled for the compensation/interest for the period of said delay. The perusal of the record shows that although as per the original agreement dated 11.07.2016, the date of possession of the said flat was 2 years plus

6 months of grace period, but subsequently the parties entered into supplementary agreement vide which date of possession was extended and finally as per the compromise deed dated 10.07.2025 it was agreed upon between the parties to hand over the possession of the flat in question to the complainant and in the said flat there is a specific clause:

> ***"that due to the delay in handing over the possession of the flat within stipulated period provided in the agreement, the first party (Purchaser) has filed a case against second party (Seller/builder) before RERA but now both the parties have mutually agreed to compromise the case as the issues regarding the case have been settled amicably between the parties".***

Thus, the issue of delay in handing over the possession of the flat has already been resolved between the parties vide compromise dated 10.07.2025 and the complainant cannot be allowed to reopen the same. Regarding the compensation U/S 18 of RERD Act, the complainant can approach the appropriate Authority U/S 71 of the Act.

Issue no.5 Whether the respondent has violated the provisions of RERD Act and Rules made thereunder:

From the discussion, it has clearly been established that the respondent was bound to provide covered parking inside the building to the allottee as per agreement for sale dated 11.07.2016. However, the promoter subsequently provided the covered parking to the complainant in the open area i.e. in the setback area around the Block-A which is not permissible as per the provisions of the RERD Act/ Rules. Not only this, the promoter also executed the sale deed dated 10.07.2025 wherein also

the covered parking outside the building in the open area was included. The common areas are to be vested in the association of allottees and the promoters had no right to raise any construction beyond the approved parking resulting in earmarking the common space to any particular allottee. The promoter has thus violated the provision of Section 11 (4) (a) which reads as under:-

(4) The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder 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.

The promoter by raising construction and allocating the parking to the complainant in the common area has violated the provision of Section 14 (1) & (2) which provides as under:-

(1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities. (2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make— (i) any additions

and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person: Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to the allottee

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc. (ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building. Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

Further, it is also clear that promoter has violated the provisions of Section 11 (4) (f) which clearly provides as under:-

The promoter shall-

execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common

areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

Further, as per the provision of Section (17) (1) the promoter was mandated to execute registered sale deed in the favour of allottee along with un-divided proportionate share in the common areas of the association of allottees and also handover the possession of common areas to the association of allottees. However, the promoter not only executed the sale deed in the favour of the complainant going beyond the mandate of agreement for sale and also violated the provisions of Section 17 (1) of RERD Act which provides as under:-

17. (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

It is, thus, clearly established that promoter has violated provisions of Section 11 (4) (a) & (f) Section 14 and Section 17 (1) of RERD Act, and he is liable for the imposition of penalty under Section 61 of the RERD Act.

8. **RELIEF:-** Keeping in view the above mentioned facts, this Authority in exercise of power vested in under various provisions of the Act issues the following orders/directions:

i. The **Complaint is partly allowed** and the Respondent promoters are directed to provide dedicated covered parking space for the flat of the complainant, within the building as per the agreement for sale and as per the map approved by the competent Authority, within 60 days from the date of this Order.

ii. Non-compliance or any delay in compliance of the above directions shall further attract penalty under Section 63 of the Act (ibid), apart from any other action the Authority may take under the relevant provisions of the Act.

iii. The Authority, considering all facts of the case, deems it appropriate to impose a penalty of Rs. **2,00,000/-** under Section 61 of the RERD Act, 2016 for the violation of the provisions of Sections-11,14 and 17 of the Act by the respondent and the same 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, Main Branch Dharamshala, having IFSC Code. SBIN0000634, within a period of 60 days, from issuance of this order.

iv. The Complainant shall be at liberty to approach the Adjudicating Officer for compensation under Section 71 of the Act ibid.

(R.D. Dhiman)
CHAIRPERSON

(Vidur Mehta)
MEMBER