BEFORE THE REAL ESTATE REGULATORY AUTHORITY

HIMACHAL PRADESH AT DHARAMSHALA

Complaint No.: HP RERA2025039/C

In the matter of:-

Sh. Yogendra Kumar Saini, 101, A-7, Indra Enclave, IGNOU Road, Neb Sarai, South Delhi, Delhi-110068.

.....Complainant

Versus

1. Smt. Ambika Kainthla, Himland Housing Pvt. Ltd., Solan-173211.
2. Sh. Pradeep Pathak, A 69, FFCC, IGNOU Road, South Delhi, Delhi-110068.
3. Himland Housing, K-5, B. K. Dutt Colony, New Delhi, Delhi-110003.
4. Sh. Arun Kainthala, Director Himland Housing Pvt. Ltd., K-5, B.K. Dutt Colony, Central Delhi, New Delhi, Delhi-110003.
5. Sh. Ashok Kumar, Director Himland Housing Pvt. Ltd., K-5, B.K. Dutt Colony, Central Delhi, New Delhi, Delhi-110003.

.....Respondents/Promoter

Present: **Sh. Vijay Lodha, Ld. Advocate, for the Complainant.**
Sh. Arvind Kumar Singh, Ld. Adv., for the Respondents.

Date of hearing : 18-07-2026.
Date of pronouncement of Order : 30.10.2026.

O R D E R

Coram: Chairperson and Member

1. **BRIEF FACTS OF THE COMPLAINT:** The present case pertains to the online complaint dated 12.10.2025 bearing complaint No. HPRERA2025039/C. As per the complaint, the Complainant booked the flat (A-105) in Himland Executive Residence in 2010 and made total payments of Rs.7.25 lacs on different dates via cheque as per details annexed with the complaint. It is submitted by the complainant that the he was told at the time of booking by directors (Ambika Kainthla & Her Husband Arun Kainthla, Pradeep Pathak and Vikram Singh) that project will be bankable and loan will be available in 3 months from the time of booking. It is also mentioned in the complaint that during the course of time, it was discovered that project did not have necessary approvals from the competent Authority. The project was already delayed beyond limits and the hard earned money of the complainant was stuck in the project without any status update and their directors and goons misbehaved with him many times and finally refused to give any money or possession of flat.

   It is also alleged in the complaint that Directors of the project had also taken Rs.18 lacs from the complainant on 1st Dec-2012 via RTGS (Account: 006806, IDB Bank) with false promises of making him a partner in the project and later on the complainant was offered two flats @Rs.14 lacs per flat, but neither the possession of two flats, as promised by the Directors of Himland Executive Residence, was handed over to the complainant nor the said amount of Rs.18,00,000/- was refunded to him.

   The complainant has made a prayer for the refund of the money taken by the respondents from the complainant, along with applicable interest.

2. **Reply by respondents:-** The respondents filed a detailed reply to the above mentioned complaint. The respondents have taken preliminary

objections regarding the concealing of the facts by the complainant about earlier complaints instituted by him before the Town & Country Department. Other preliminary objections regarding the bar of the present complaint being hit by principle of res-judicata and barred by the limitation have also been taken by the respondents.

The respondents have rebutted the claim of the complainant by putting forward reply on merits wherein it is submitted that the amount of Rs.7,25,000/- had already been adjusted/settled with the complainant. It is further submitted in the reply by the respondents that as per the communications made between the parties through **e-mails dated 25.04.2016, 04.10.2016, 09.12.2016, 15.06.2017, 18.07.2017 and 19.07.2017 (Copies of the print outs of the e-mails annexed with the reply as annexure R-1/4 Colly)** the flat in question has already been cancelled and the said fact was informed to the complainant vide e-mail dated 18.07.2017. The respondents have also annexed the copy of **legal notice dated 17.10.2017 (Annexure R-1/2)** sent by the complainant to the respondent. The respondents have further denied the claim of the complainant that any promise was ever made to the complainant to make him partner in the project or to offer him two flats at Rs.14,00,000/- per flat. Another defence taken by the respondents is that the complainant has personal relationship with respondent No.-5 and the settlement matter in question with him was duly acknowledged by the complainant vide e-mail dated 25.04.2016. The respondents have prayed for dismissal of the complaint, the same being devoid of any merits.

3. **Rejoinder by complainant:**-The complainant filed detailed rejoinder to the reply filed on behalf of the respondents. It is submitted by the complainant in his rejoinder that the preliminary objections as well as the submissions made to the complaint, in the reply are not tenable

and hence are liable to be rejected out rightly. It is submitted in the rejoinder that plea of res-judicata taken up by the respondent in the present case is wholly untenable, both in fact and in law. It is averred by the complainant that the proceedings before the TCP Authority were never adjudicated on merits and also that the TCP Authority is an Administrative/Regulatory Body and not a judicial or quasi-judicial Authority and as such, the findings, if any, by the TCP Authority on the complaint instituted by the present complainant cannot bar the present proceedings before this Authority. The complainant in his rejoinder has also rebutted the assertion of the respondents, made in their reply that the present complaint has been instituted beyond the period of limitation. It is mentioned in the rejoinder that cause of action in favour of the complainant is continuing because the respondents have neither offered the possession of the flat in question to the complainant nor the refund of the money paid by the complainant for the said purpose has been refunded to him. The complainant has further claimed in his rejoinder that the legal notice issued by him on dated 17.10.2017 further confirm the fact that the cause of action in favour of the complainant was continuing because of the inaction and default on the part of the respondents. It is mentioned in the rejoinder that the respondents by their own deliberate conduct have prolonged the dispute and have induced the complainant to reframe from initiating timely legal proceeding by extending false assurances of settlement, refund and resolution from time to time. The complainant has also rebutted the plea of the respondents that the dispute between the parties stood settled. It is further averred in the rejoinder that the respondents have not placed on record any valid settlement agreement between the parties as alleged in the reply and in the absence of the same no such claim of

settlement can be held to be tenable. The complainant has also mentioned in his rejoinder that the respondents have deliberately failed to disclose that no valid, lawful and legally enforceable builder-buyer agreement was ever executed with the complainant despite having received substantial amount from him over period of time. The complainant has further contradicted, in his rejoinder, the plea of the respondents that the matter between the parties was settled and amount of Rs.7,25,000/- was adjusted or otherwise accounted for by the respondents. The complainant has averred in his rejoinder that the respondents have indulged in a series of unfair trade practices and caused wrongful loss to the complainant because of fraud and misrepresentation practiced by the respondents and deficiency in services on behalf of the respondents. The complainant has made a prayer in his rejoinder to reject the reply filed by the respondents and allow the complaint by way of refund of Rs.25,25,000/- with interest from the dates of payment till realization under Section-18 of the RERA Act.

4. **Arguments advanced by the complainant:-**

a) In the present case, the final arguments were heard on 18.07.2026. Ld. Counsel for the complainant Sh. Vijay Lodha has submitted that the complainant has entered into an agreement for sale of Apartment No. A-105 in Himland Executive Residence, Solan and part payment as consideration amount for the purchase of the said flat was made by the complainant vide three cheques to Himland Housing Pvt. Limited. It is further submitted that the payment of Rs.7,25,000/- by the complainant to the respondents is duly proved on record by way of receipt No. 90 dated 08.05.2010 for the amount of Rs.3,50,000/-, receipt No. 91 dated 31.08.2010 for the amount of Rs.1,50,000/- and receipt No. 93 dated 28.02.2011 for

the amount of Rs.2,25,000/-, issued by the respondents. Ld. Counsel for the complainant has argued that the contentions of the respondents as reflected in their reply that the above mentioned amount have been settled between the parties is baseless and there is no record to prove the same. It is further argued that the mere production of certain e-mail between the parties does not discharge the respondents from their liability to make a refund of the amount so received by them from the complainant for the purchase of the said flat. The Ld. Counsel for the complainant has also disputed the claim of the respondents that the booking of the flat has been cancelled by the respondents and that the amount received by the respondents has been settled, as there is no such record/documentary evidence showing any cancellation of the booking of the flat or any settlement deed between the parties. So far as the claim of the respondents that the genesis of the present complaint is the family dispute between the complainant and the respondent No.-5 is also disputed by the Ld. Counsel for the complainant and he has submitted that the amount of Rs.7,25,000/- has been deposited with the Himland Housing Pvt. Limited and it has nothing to do with the alleged family dispute between the complainant and respondent No.-5. In response to the plea taken by the respondent that the present complaint is barred by the principle of res-judicata, it is argued on the behalf of the complainant that the complaint moved before the TCP Department was regarding the default made by the respondents in starting the project without obtaining the necessary approvals from the competent authorities and it had nothing to do with the claim of the refund of amount paid by the complainant to the respondents, which is the subject matter of the present complaint. Secondly, it is

argued that the said complaint has not been decided by TCP Department in the capacity of Judicial or quasi-judicial Authority and as such there is no question of applicability of principle of res-judicata to the present complaint. The Ld. Counsel for the complainant has also argued that since the cause of action in favour of the complainant is still continuing, therefore, the present is not barred by the law of limitation as alleged by the respondents. The arguments on behalf of the complainant were concluded with the contention that the amount of Rs.7,25,000/- as paid by the complainant to the respondents has not been disputed and that the plea of the respondents that the said amount has been settled by the respondents with the complainant, is not substantiated with any proof, therefore, the respondents are liable to refund the said amount along with applicable interest to the complainant, along with any other relief granted by the Authority as is deemed fit.

Apart from the above, it is also argued on behalf of the complainant that Director of Himland Executive Residences had also received Rs.18,00,000/- from the complainant on 1st December, 2012 through RTGS and it was promised by the respondents that the complainant would be made a partner in the project. Later on, the respondents offered that two flats @Rs.14,00,000/- each would be handed over to the complainant, but neither the complainant was made partner in the said project nor two flats were handed over to him nor the refund of the said amount to the complainant was made by the respondents. Thus, the complainant is entitled for the refund of Rs.18,00,000/- along with applicable interest from the respondents.

b) **Arguments on behalf of the respondents**:

Sh. Arvind Kumar Singh, Ld. Counsel for the respondents argued that the present complaint is the result of family dispute between the complainant and respondent No.-5 and that there have been many other transactions between the said family members. It is further argued by the Ld. Counsel for the respondents that the claim made by the complainant has already been settled between the parties and the present complaint deserves to be dismissed as the same is not based on facts. The Ld. Counsel for the respondents has further submitted that the written arguments filed on behalf of the respondents be considered as part and parcel of the oral arguments put forward on behalf of the respondents.

5. **WRITTEN ARGUMENTS/SUBMISSIONS ON BEHALF OF THE RESPONDENTS.**

i. That the Complainant filed a vague, misleading, false, baseless and concocted complaint dated 12.10.2025 to this Hon'ble Authority without any supporting affidavit and in the said complaint, the Complainant had concealed a number of material facts, such as he was relative/Jija of its then Director, Sh. Vikram Singh and Sh. Ashok Kumar, alleged contractor/now AR as well as Director of the Respondent Company w.e.f. 2022 and his complaint before the Hon'ble TCP, Shimla was disposed off way back in year 2017.

ii. That as per copy of attached "Apartment buyer Agreement", the complainant booked a Flat/Apartment No.A-105, 1st Floor in the project in year 2010 and paid an amount of Rs.7,25,000.00 vide Cheque during the period from 08.95.2010 to 28.02.2011 and its booking was automatically cancelled, as reflected in the e-mail dated 18.07.2017 [page No. 22 of WS].

iii. That the averments in the complaint regarding payment of Rs.18.00 Lakhs vide RTGS 01.12.2012 for purchasing said Flat are absolutely

false, baseless and concocted because as per copy of annexed Bank Statement, the said Amount of Rs.18.00 lakhs was sent from the Bank Account of Ms Geeta Rani, real younger sister of the said Sh. Vikram Singh & Sh. Ashok Kumar/R-5 and said amount was not given by her for purchasing any 'Flat' and this claim of the Respondent finds support from the fact that against the said amount of Rs. 18.00 lakhs, no receipt was issued by the Respondent Company in this regard.

iv. That is it respectfully submitted that as per e-mail dated 04.10.2016; 09.12.2016; 15.06.2017; 18.07.2017; and 19.07.2017 [already annexed with the Written Statement as Annexure R-1/4 (Colly)], the Complainant was having dealings with said Sh. Ashok Kumar/R-5 only on account of being his relative/Jija and as per e-mail dated 18.07.2017 [page No. 22 of the WS] by said Sh. Vikram Singh, the then Director, in his settlement/*hisab* with said Sh. Ashok Kumar, the Complainany had already included price of the 'Flat' and hence booking of his said 'Flat' was automatically cancelled.

v. That as far as amount of Rs.18.00 lakhs of said Ms Geeta Rani is concerned, a Sale Deed of Plot, admeasuring 205 Sq. meter, located at Tihri Visthapit Colony, Ranipur, Haridwas was executed in the name of said Ms Geeta Rani without taking any consideration from her. It is further specifically submitted that as per understanding between the Complainant, his wife, Smt Geeta Rani and the R-5, balance amount, if any, would be refunded to Complainant when the reconciliation of accounts between the parties took place and execution of requisite documents be executed and possession of said Plot would be given back to said Sh. Ashok Kumar/R-5. It is specifically submitted that the present complaint is nothing but misuse of the process of law to blackmail the Respondent No. 3

Company and its office bearers with malafide intention to settle his personal score/family matters with said Sh. Ashok Kumar. The present complaint dated 12.10.2025 is liable to be dismissed with heavy costs on this ground alone. A copy of the letter dated 13.10.2015 by said Smt. Geeta is enclosed as Annexure R-1/6.

vi. That the allegations averments of the Complainant in respect of his said claim of two Flats @Rs.14.00 lakhs and making him partner in the Project are without any substance or merit or documentary proof.

vii. That it is specifically submitted that the allegations/averments of the complainant regarding apology by Ms Ambika Kainthala/R-1/wife of Sh. Arun Kainthala/R-4 and giving two signed Cheques as collaterals are false, baseless, concocted and without any basis/substance or merit. It is specifically submitted that e-mail dated 19.07.2017 [page No. 23 of the WS] by said Sh. Vikram Singh, the then Director, the Complainant never shared any copy of collateral or signed Cheque for last two years.

viii. That it is specifically submitted that as per present complaint dated 12.10.2025, he had allegedly tried to resolve the matter by talking to Directors of the Company in year 2016/17. In this regard, it is specifically submitted that the Complainant lodged a complaint dated 20.09.2017 to TCP, Shimla which was disposed off [page Nos. 8 to 10 of the WS]. It is further specifically submitted that per documents annexed from Page Nos. 16 to 26 with the WS, the said 'Flat' of Complainant was cancelled in April, 2016 and the complainant is habitual in lodging false, baseless and concocted matters/issues before various Forums to harass and humiliate the Respondents and family members of said Sh. Ashok Kumar & Sh. Vikram Singh in society by taking advantages of his relationship with them/being their Jija. He did not hesitate to harass and humiliate even his wife/Smt.

Geeta Rani/younger sister of R-5 and Sh. Vikram Singh by threatening her for divorce and even abandoned her for a period of about nine months to black mail them to grab huge amount as well as property worth Crores despite having said Plot, admeasuring 205 Sq. Yards located in Haridwar with them since year 2012 and he never tried to give back said Plot and reconcile accounts. **A photographs, showing said dharna by the Complainant and his father Sh. Rattan Singh is being annexed herewith as Annexure R-1/7.**

ix. That it is specifically submitted that the Complainant is habitual in misusing the process of law and Forum hunting. He had earlier lodged a false, baseless and concocted complaint against Sh. Ashok Kumar at Income Tax Office at Civil Centre, Delhi in March, 2016, which was disposed off vide Order/letter dated 23.03.2016 after recording his statement on oath on 02.03.2016. **Copies of the said statement dated 02.03.2016 and Order dated 23.03.2016 are being annexed herewith as Annexure R-1/3 (Colly).**

x. That the Complainant had lodged a complaint before ROC, Delhi & Haryana, which was later on transferred to Ministry of Housing & Urban Poverty Alleviation, Nirman Bhawan, New Delhi, which was letter on disposed off. **Copies of letters dated 23.03.2016 & 10.08.2016 are being annexed herewith as Annexure R-1/9 (Colly).**

xi. That the Respondent No.4/Col. Arun Kainthala; the Respondent No. 5/Sh. Ashok Kumar and other well wishers tried repeatedly very hard to persuade the Complainant not to indulge in mudslinging and ruining the relationship with Respondent No.5 and his family members for his greedy, illegal and unjustified behavior, but all in vain. **Copies of relevant e-mails and letter are being annexed**

herewith for kind perusal of this Hon'ble Authority as Annexure R-1/10 (Colly).

1. That the said complainant dated 12.10.2025 is not only very highly delayed/barred by limitation and hit by the principles of res-judicata but is also without any substance or merit and misuse of the process of law.
2. That the present complaint dated 12.10.2025 be dismissed with heavy cost on the following grounds amongst the others:-
    i. The present complaint is without any cause of action, substance/basis or merit/supporting affidavit and is hit by the Principles of Res-judicata;
    ii. The present complaint has been filed with ulterior motive to settle family matters, which are admittedly personal in nature and the same are beyond the domain of this Hon'ble Authority;
    iii. The present complaint has been filed with ulterior motive to extort money by misusing the process of law;
    iv. The present complaint is highly delayed/barred by limitation; and
    v. The Complainant can't be allowed to take advantages of his own misconduct/misbehavior/wrongs/forum hunting.
3. That the present complaint is otherwise also bad in law and hence is liable to be dismissed with heavy costs on this ground as well.

6. **SUPPLEMENTARY/ADDITIONAL SUBMISSIONS BY THE RESPONDENTS**

1. That oral arguments were heard on 18.07.2026 from both the sides by this Hon'ble Authority.
2. That as Total Hisab dated 01.05.2016 [annexed on Page No. 28 of the Reply/Written Statement], the Complainant/Sh. Yogender Kumar Saini had already cancelled Solan Flat and included cost in his Total Hisab

and intimated the Respondent vide e-mail dated 03.05.2016 [page No. 25 of the Reply/Written statement].

This fact was acknowledged by the Respondent Company vide e-mail dated 18.07.2017 [Page No. 22 of the Reply/Written Statement].

3. That as per said e-mail dated 03.05.2016, he is possession of a Plot at Haridwar, as acknowledged by Smt. Geeta W/o Sh. Yogender Kumar Saini in her letter dated 13.10.2015 [page No. 7 of the Written submissions dated 03.06.2016].
4. That in view of the aforesaid submissions/clarifications, it is crystal clear that the Complainant was left no claim in respect of any Flat of the Respondent Company way back in Year 2016 itself. As far as the refund of the amount is concerned, it is a family matter/dispute and would be settled on returning of Plot and execution of requisite documents by him & Smt. Geeta in this regard.
5. That the complainant be directed to place on record, order passed by TCP, Shimla on his Application/Complaint dated 16.09.2017.

7. **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 this Authority has jurisdiction to entertain and decide the present complaint?
2. Whether the present complaint is barred by principle of res-judicata?
3. Whether the present complaint is barred by limitation?
4. Whether a valid builder-buyer agreement/Agreement for Sale was entered into between the contesting parties?

5. Whether the complainant has made payment of Rs.7,25,000/- towards the purchase of flat No. 105-A to the respondent and whether any possession of the said flat was handed over by the respondents to the complainant or in the alternative, refund of the said amount was made by the respondents to the complainant?
6. Whether the complainant has made a payment of Rs.18 Lacs to the respondent for the purchase of two flats as alleged in the complaint?
7. Whether there is any violation of provisions of RERD Act, 2016 or Rules made thereunder?
8. Relief.

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. A-105 pertains to Himland Executive Residence, Solan, H.P. which is within the territorial jurisdiction of this Authority.

ISSUE No.-2:- Whether complaint is barred by principle of res-judicata?

The respondent vide his reply/written statement has taken a preliminary objection that the present complaint is liable to be dismissed being hit by the principal of res-judicata. The respondent has submitted that the complainant had instituted/filed a similar complaint No. TCP/201680 dated 16.09.2017 before the Town & Country Planner, Shimla and the same has been disposed of, therefore, the present complaint is hit by principal of res-judicata. Per contra, the complainant has submitted in his rejoinder as well as oral arguments that the plea of res-judicata taken up by the respondent is misconceived as the said complaint before the TCP Authority was never adjudicated on merits nor was there any final determination of rights and liabilities of the parties. It is further contended by the complainant that the TCP Authority is not a judicial or quasi-judicial Authority and the present complaint has been instituted under a special statutory regime, i.e. RERA under the Real Estate

(Regulation & Development) Act, 2016 and any proceeding before the TCP Authority cannot bar the present proceedings before this Authority.

Before granting a <u>decree of Res-Judicata</u> following conditions should be satisfied first:-

1. There must be two suits one former (previously decided) suit and the other subsequent suit.
2. Parties of the former and subsequent suit or the parties under whom they or any of them claim should be the same.
3. The subject matter of the subsequent suit should be identical or related to the former suit either actually or constructively.
4. The case must be finally decided between the parties.
5. The former suit should be decided by the court of competent jurisdictions.
6. Parties in the former as well as in subsequent suit must have litigated under the same title.

Reverting to the facts of the case, the only document placed on record regarding the said complaint before TCP Authority is a copy of application No. TCP/201680 dated 16.09.2017 filed by the complainant through e-Samadhan portal (which is basically grievance redressal portal) wherein it is contended that the Himland Housing Pvt. Limited has started construction of flat without proper approval and license in 2006 and flats have been booked with many buyers between 2006 to 2011. The prayer in the said application has also been to initiate an investigation into the affairs of Himland Housing Pvt. Limited. The Annexure enclosed with the said copy of the complaint is regarding the summary disposal of the said complaint by the TCP Department and there is no document on record that any adjudication of the said complaint was made by the TCP Department or any rights and liabilities

of the parties were determined by the TCP Department. It is worthwhile to mention here that during the proceedings of the present case communication was made by the Authority with the Director, Town and Country Planning, Shimla, to provide the certified copy of order/record in the said complaint but no such record was ever provided by the TCP Department. Thus, the contention of the respondent that the present complaint is barred in terms of principles of res-judicata does not seem to be tenable as none of the above mentioned criteria, for the operation of res-judicata, are met in the present case. Also, the present complaint is for the refund of the money paid by the complainant to the respondent to buy a flat in Himland Executive Residency, Solan and no such prayer has been made by the complainant in the above mentioned complaint to the TCP Department. Therefore, there is no question of subsequent complaint (present complaint) on the same subject matter between the same parties. For this reason also, the operation of principle of res-judicata is not applicable in the present case.

ISSUE No.-3:- Whether complaint is barred by limitation?

The respondent vide his reply/written statement has taken a preliminary objection that the present complaint is liable to be dismissed being barred by Limitation. However, the complainant vide his written rejoinder as well as oral submissions has submitted that the plea of limitation taken up by the respondent is not tenable as per facts and law. It is contended on behalf of the complainant that since the respondent has failed to deliver the possession of the flat in question or in the alternative, the refund of the payment made by the complainant has also not been made by the respondent till date, therefore, the cause of action in favour of the complainant is a continuous one and thus there is no bar of limitation as alleged by the respondent. Going by the record and facts of the case the payment of Rs.7,25,000/- made by the complainant

to the respondent (Himland Housing Pvt. Limited) for the purchase of flat No. A-105 in Himland Executive Residency, Solan, is not disputed by the respondents and it is not the case of the respondents that the offer for the possession of the said flat has ever been made by the respondent to the complainant. There is no document on record that the respondent has refunded the said amount to the complainant. Thus, the contention of the complainant that the cause of action in his favour is still continuing seems to be plausible and the plea of limitation taken up by the respondent is not tenable as the same is without any merits.

ISSUE NO.-4:- Whether a valid builder-buyer agreement entered between the parties?

From the perusal of the record, it is clear that the complaint application No.CTA1020250003 was filed before the Authority along with the copy of Apartment Buyer's Agreement. The perusal of the said Agreement reveals that it was signed by only on behalf of Developer and there was no signatures of the Apartment Buyer on the said copy of the Agreement. The essential details, like, the date of the Agreement, the name of both the parties entering into Agreement, the area of the flat in question, the description of the land on which the said flat was to be built, the cost of the said flat, etc. are not mentioned in the copy of the Agreement attached with the complaint. The complainant was directed to place on record the duly executed agreement for sale of the flat in question. The complainant subsequently placed on record a copy of agreement, which although bears signatures of both the Apartment Buyer and the Developer on each page of the agreement but the concluding page of the said agreement does not contain signatures of the developer/respondent, and the essential details as mentioned above are missing in the said copy of the agreement placed on record by the complainant. No other copy of builder-buyer Agreement/Apartment Buyer Agreement/Agreement for

sale has been placed on record by either of the parties. The copy of the agreement attached with the complaint as well as the copy of the agreement subsequently filed by the complainant cannot be treated as a valid agreement as the same does not bear even the date when it was executed nor does it mention the name of the parties between whom the same was entered (other essential details as enumerated above are also not mentioned therein) and the said copies have not been signed by both the parties, as mentioned above. Thus, the only conclusion which can be drawn is that there was no valid agreement between the complainant and the respondent regarding the purchase of flat No. A-105 by the complainant from the respondent.

ISSUE NO.-5:-Whether possession of flat handed over to the complainant or refund made by the respondents?

Regarding the question whether the complainant has made payment of Rs.7,25,000/- towards the purchase of flat No.A-105 in Himland Executive Residence, Solan to the respondent in 2010 and whether in pursuance to that the respondents have delivered the possession of the said flat to the complainant or in the alternative the said amount was refunded by the respondents to the complainant, the documents placed on record are of much essence. The complaint is annexed with three receipts (Totaling Rs.7,25,000/-) issued in favour of the complainant by the respondent No.-1, acknowledging the receipt of said amount from the complainant starting from 08.05.2010 to 28.02.2011. It is pertinent to mention here that in all these three receipts there is a clear mention that the said amount has been paid by the complainant on account of flat no. A-105 Himland Executive Residency, Solan. Thus the record annexed with the complaint substantiates the claim of the complainant that the amount of Rs.7,25,000/- was paid by the complainant to book the flat No. A-105 in Himland Executive Residence, Solan in 2010-2011.

The reply/written statement filed on behalf of respondents nowhere disputes the payment of Rs.7,25,000/- by the complainant to the respondents. The defence taken by the respondents is that the booking of the said flat by the complaint with the respondent company was already cancelled and the said amount of Rs.7,25,000/- has been already adjusted/settled. Thus, there is no doubt about the fact that an amount of Rs.7,25,000/- was paid by the complainant to the respondent for the booking of the above mentioned flat. So far as the question of delivery of the possession of the said flat by the respondent to the complainant is concerned, there are no contesting claims by both the parties as it has been contended by both the parties that no such possession was ever handed to the complainant. It is not out of place to mention here that during the proceedings of the case the Authority had directed to conduct a site inspection and vide site inspection report dated 22.04.2026 it was reflected in the said report that during the inspection it was observed that the structure is in a dilapidated and deteriorated condition. Moreover, the stand taken by the respondents is that booking of the said flat was already cancelled. Therefore, even if the contention of the respondents is believed to be true there is no question of handing over the possession of a flat, the booking of which had already been cancelled. However, the respondents have not placed on record any such document which may suggest that the booking of the said flat was cancelled. The only documents the respondents have relied upon are the print outs of the e-mails exchanged between the parties. It is not out of place to mention here that the e-mails enumerated in the written statement of the respondents and copies of print outs thereof annexed with the reply appear to be concerning private/personal dealings between the parties and none of the said e-mails has any reference to the flat No. A-105 booked by the complainant in Himland Executive Residence, Solan.

There is no document, viz., cancellation of the flat in question by the respondent or any notice served upon the complainant by the respondents regarding the cancellation of the said flat, placed on record. Therefore, the contention of the complainant that there is no valid cancellation of the flat as alleged by the respondents seems to be tenable and the defence taken by the respondents qua the cancellation of the flat finds no merit as per the available record.

So far as the question of refund of the amount of Rs.7,25,000/- by the respondents to the complainant is concerned, there is no document on record which shows that any such refund was ever made by the respondents to the complainant. The complainant has specifically claimed that the amount of Rs.7,25,000/- paid by him towards the booking of flat No. A-105 in Himland Executive Residence, Solan was never refunded to him by the respondents nor the possession of the said flat was ever offered to him by the respondents. The plea taken by the respondents that the said amount of Rs.7,25,000/- has already been adjusted/settled by the respondents with the complainant is without any support of material documents placed on record. The respondents have relied upon the e-mails exchanged between the parties and they have also placed on record the print outs of the same, but as mentioned here in above the said e-mails make no reference to the flat No. A-105 Himland Executive Residence, Solan and therefore the same cannot be treated as evidence so as to substantiate the claim of the respondents that the amount of Rs.7,25,000/- has already been adjusted/settled with the complainant. The Ld. Counsel for the complainant has vehemently argued that there is no valid settlement as alleged by the respondent and that the assertion of the respondents that the present transaction pertains to the family disputes between the complainant and respondent No. 5 is without any legal proof. The

arguments put forward on behalf of the respondents as well as the assertions made in the reply/written statement that the present matter is only a family dispute is not supported by any reliable evidence. Thus, the question whether the refund of the abovementioned amount has been made by the respondents to the complainant is liable to be answered in favour of the complainant as the respondents have failed to prove that any refund of the said amount was ever made by them to the complainant.

ISSUE NO.-6:- Whether complainant is entitled to refund of Rs.18,00,000/- as claimed in the complaint?

Regarding the question whether the complainant has made payment of Rs.18,00,000/- to the respondents for the purchase of two flats, the complainant has mentioned in his complaint that on 1st December, 2012 an amount of Rs.18,00,000/- was paid by him through RTGS (A/c No. 006806, IDB Bank) to the respondents and the Directors of Himland had made false promises of making the complainant as a partner in the project and later changed the stand to offer him two flats @ Rs. 14,00,000/- per flat. The submissions made in the complaint, simpliciter, mean that there were some financial transactions between the complainant and the respondent. However, this Authority can take up a matter only when a builder-buyer transaction has taken place and any of the parties seems to be aggrieved from the action/inaction/conduct of the other party. The contention of the complainant qua the alleged payment of Rs.18,00,000/- to the respondents does not relate to any agreement between the parties for the sale/purchase of any flat as there is no reference as to which flat was to be sold and in which project the same was located. Therefore, any money transaction without having any reference to promoter and

allottee, in terms of RERD Act, can not be looked into by this Authority as the same would be beyond the purview of this Authority.

ISSUE NO.-7:- Whether there is any other violation of provision of RERD Act,2016?

Regarding the question whether there is any violation of provisions of the RERD Act, 2016 or Rules made thereunder, it is pertinent to mention here that the respondents have received the amount of Rs.7,25,000/- from the complainant without entering into valid written agreement for sale with the complainant. As clearly determine under issue no. 4 (supra), valid agreement for sale was not supplied by any of the parties and the agreement for sale submitted was not properly executed, lacked necessary details, was not signed by both the parties, was not registered and the same is non-est, therefore, the violation of Section-13 of RERD Act, 2016 and Rule 17 of the HP RERA Rules, 2017, has been made by the respondents and thus, they are liable for the penalty U/S 61 of the 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 refund a sum of Rs. 7,25,000/- along with interest at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules, 2017. The present highest MCLR of SBI is 8.85% hence the rate of interest would be 8.85 %+2% i.e. 10.85%. It is clarified that the interest shall be payable from the dates on which different payments were made by the Complainant to the respondent.

ii. The refund along with interest is to be paid by the respondent promoter to the Complainant within 60 days from the date of this order.

iii. Non-compliance or any delay in compliance of the above directions shall further attract penalty and interest on the ordered amount of refund under Section 63 and Section 38 of the Act ibid, apart from any other action of the Authority may take under Section 40 or other relevant provisions of the Act.

iv. The Authority, considering all facts of the case, deems 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 Section-13 of the Act and Rule 17 of HP RERA Rules, 2017 by the respondents within stipulated period of sixty days, to be deposited in the bank account of this Authority, operative in the name of "Himachal RERA 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.

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

vi. 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