

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

Complaint no. HPRERA2025003/C

In the matter of:-

1. Mr. Lal Chand Jangid, Son of Late Sh. Ganesh Narayan Jangid, Resident of Plot no. 238,239, Path no.1, Vijaybari, Teen Dukan, Dher Ka Balaji, Sikar Road, Jaipur, Rajasthan, 302012
2. Mr. Ramswaroop Jangid, Son of Late Sh. Ganesh Narayan Jangid, Resident of Plot no. 238,239, Path no.1, Vijaybari, Teen Dukan, Dher Ka Balaji, Sikar Road, Jaipur, Rajasthan, 302012
3. Mrs. Prem Devi Jangid, Wife of Sh. Lal Chand Jangid, Resident of Plot no. 238,239, Path no.1, Vijaybari, Teen Dukan, Dher Ka Balaji, Sikar Road, Jaipur, Rajasthan, 302012
4. Mrs. Geeta Devi Jangid, Wife of Shri Ramswaroop Jangid, Resident of Plot no. 238,239, Path no.1, Vijaybari, Teen Dukan, Dher Ka Balaji, Sikar Road, Jaipur, Rajasthan, 302012

.....Complainant(s)

Versus

Rajdeep & co. Infrastructure Private Limited having its registered office at H.No. 2694, Sector 22 C, Chandigarh- 160022 and Office at SCO-12, 1 Floor, Hollywood Plaza, VIP Road, Zirakpur, Punjab-140603 through its Managing Director Sh. Rajdeep Sharma

.....Respondent

Present: Sh. Ankit Totuka, Ld. Counsel for complainant
Sh. Shakti Bhardwaj vice Sh. Ravi Tanta, Ld. Counsel for respondent promoter

Date of hearing: 06.12.2025

Date of pronouncement of order: 31.01.2026

ORDER
CORAM: CHAIRPERSON AND MEMBER

1. FACTS OF CASE:

The brief facts of the case as transpires from the perusal of office record is that the Complainant has filed an online complaint dated 28.01.2025 before this Authority under "Form-M" bearing complaint No HPRERA2025003/C as per the HP Real Estate (Regulation and Development) Rules, 2017. As per the allegations leveled in the present complaint, it has been categorically stated that the complainant submitted that in the beginning of the year 2017, while on a visit to Shimla, they came across advertisements for sale of residential flats in the group housing project namely "Claridge's Residency Himalayas", situated at Upper Bharari, near Bharari Bazaar, Shimla, Himachal Pradesh. Being induced by the said advertisements, the Complainants visited the Respondent's site office at Shimla and expressed their interest in the proposed project. Thereafter, on 18.05.2017, the Respondent Company forwarded an email to the Complainants containing project details including site view, flat size and assured rental plans. The said communication highlighted various amenities such as car parking, power back-up, laundry and dry-cleaning services, ironing units, a clubhouse with gymnasium and an open-air terrace restaurant. The Respondent further advised the Complainants to immediately book a flat by paying the booking amount, stating that most of the flats in proposed Tower-B were already booked. Relying upon the said representation, the Complainants paid a booking amount of Rs. 1,51,000/- through NEFT on 29.06.2017 from the bank account of Ram Swaroop Jangid. Subsequently, the Complainants executed an

Application Form dated 08.07.2017 for booking of a 2-BHK flat bearing No. B-201, situated on the second floor of Tower-B, measuring 980 sq. ft., for a total consideration of Rs. 43,50,000/-, in their joint names. It was specifically mentioned therein that possession of the flat would be handed over at the earliest. The Respondent acknowledged receipt of the booking amount vide email dated 10.07.2017 and further called upon the Complainants to make additional payments of Rs. 9,36,500/- as per the payment plan. Repeated reminders were also sent by the Respondent vide email dated 11.07.2017. In pursuance of the said demands, the Complainants made further payments to the Respondent as detailed: From the account of Ram Swaroop Jangid: Rs. 5,00,000/- on 01.08.2017, Rs. 2,00,000/- on 06.09.2017. From the account of Lal Chand Jangid: Rs. 2,00,000/- on 06.09.2017, Rs. 36,500/- on 13.10.2017. Thus, a total amount of Rs. 10,87,500/- paid to the Respondent, i.e. Rs. 2,36,500/- was paid from the account of Complainant No.1 (Sh. Lal Chand Jangid) and Rs. 8,51,000/- from the account of Complainant No. 2 (Sh. Ramswaroop Jangid). The Respondent, after repeated follow-ups, issued receipts dated 08.09.2017 bearing Nos. 1224, 1225 and 1226 for amounts of Rs. 4,00,000/-, Rs. 5,00,000/- and Rs. 1,51,000/- respectively, all in the name of Complainant No.1. However, no receipt was issued for the amount of Rs. 36,500/- paid on 13.10.2017. The Complainants, being residents of the State of Rajasthan, were unable to visit Shimla frequently and therefore kept enquiring telephonically regarding the progress of construction and the likely date of possession. On every such occasion, the Respondent assured the Complainants that construction was progressing smoothly and that possession would be handed over by the year 2019. Despite such assurances, neither was

the project completed nor was possession offered to the Complainants. The Respondent continued to give false assurances of handing over possession by mid-2019. When construction remained incomplete even by September 2019, the Complainants sent an email dated 21.09.2019 seeking refund of the amount paid, to which the respondent failed to respond. Thereafter, the Complainants issued legal notices dated 14.12.2019 and 31.01.2020, calling upon the Respondent to either hand over possession of the flat or refund the entire amount along with interest at the rate of 24% per annum. The Respondent failed to reply to the said notices. Thereafter, the Complainants continued to pursue the matter telephonically and through emails dated 30.09.2024 and 05.11.2024, once again seeking either possession or refund along with interest. However, the Respondent remained completely unresponsive. It is thus evident that more than seven years have elapsed since the Complainants booked the flat in question, despite having paid a substantial amount towards the sale consideration. The Complainants cannot be compelled to wait indefinitely and now seek immediate possession along with compensation for the delay. The Complainants are entitled to possession and compensation under Section 19(3) of the Real Estate (Regulation and Development) Act, 2016 read with the Himachal Pradesh RERA Rules, 2017. The Respondent had assured possession by the end of 2018, but even after lapse of seven years, has failed to hand over possession. The Complainants have lost faith in the Respondent and are willing to pay the balance consideration of Rs. 32,62,500/- simultaneously with handing over of possession. The Respondent has also violated Section 12 of the Act by inducing the Complainants to invest on the basis of misleading representations. No allotment letter or agreement for sale was ever executed. As per the

proviso to Section 12, the Complainants are entitled to refund along with interest if they choose to withdraw from the project. The Respondent has further violated Section 13(1) of the Act by accepting more than 10% of the sale consideration without executing an agreement for sale, thereby rendering itself liable for penalty under the Act and Rules. The prolonged delay has caused immense financial hardship, mental agony and harassment to the Complainants, entitling them to possession and compensation under the Act. A prima facie case is made out in favour of the Complainants. The balance of convenience also lies in their favour and denial of relief would cause irreparable loss. In view of the abovementioned facts and circumstances, the Respondent is liable to execute the Agreement for Sale, hand over possession, pay interest for delay on Rs. 10,87,500/- as prescribed under the Rules, and compensate the Complainants for such delay. The Respondent is also liable to be penalised under Section 61 of the Act for violation of Sections 12, 13, 18 and 19, and respondent be directed to pay litigation costs of Rs. 1,00,000/-.

2. REPLY FILED ON BEHALF OF THE RESPONDENT.

The Respondent has raised a preliminary submissions regarding the maintainability of the present complaint, contending that the allegations are vague, exaggerated and have been made without the peculiar factual and regulatory circumstances beyond its control. The Respondent has asserted that it has at all times acted in good faith, transparently and in accordance with law, and that no coercion, harassment was ever adopted against the Complainants. It is contended that the delay in completion of the project was neither deliberate nor intentional, but occurred due to circumstances squarely falling within the ambit of force majeure. The Respondent has stated

that the delay in completion of the project to three primary factors: (i) delay in obtaining regulatory approvals from local authorities including the Municipal Corporation, Shimla; (ii) restrictions imposed pursuant to orders of the Hon'ble National Green Tribunal, particularly in *Yogendra Mohan Sengupta v. Union of India*, which resulted in stoppage of processing of building maps and construction activities in Shimla; and (iii) the COVID-19 pandemic and nationwide lockdown beginning from March 2020, which led to complete stoppage of construction work, acute labour shortage and disruption of material supply chains. The Respondent further stated that, these circumstances were beyond his control and constitutes valid force majeure events under Section 6 of the Real Estate (Regulation and Development) Act, 2016. It was further stated that during the period when construction activities were stalled, no further payment demands were raised upon the Complainants. It was further stated that this conduct, demonstrates its bona fides of the respondent. The Respondent has admitted that the Complainants booked Flat No. B-201, Tower-B, admeasuring 980 sq. ft. in the project "Claridge's Residency Himalayas" and that certain payments were received under the Construction Linked Plan. However, the Respondent has categorically denied having assured possession by the end of 2018, stating that all timelines were tentative and expressly subject to approvals and unforeseen circumstances. The allegation of false assurance has been denied as baseless. The Respondent has also denied the allegation that no receipt was issued for the payment of Rs. 36,500/- and has placed on record the relevant receipt. The Respondent has denied any violation of Sections 12 and 13 of the RERA Act. It has been contended that the project was advertised based on sanctioned plans available at the relevant time and that no false or misleading

representation was made. It has further been stated that the Application Form executed by the Complainants clearly contemplated that a formal Agreement for Sale would be executed upon progress of approvals. Acceptance of payments was strictly in accordance with the Construction Linked Plan and no coercion was exercised. The Respondent has justified the non-execution of the Agreement for Sale by stating that regulatory approvals and such delay constitutes a justifiable reason under law. It has been specifically pleaded that the amount collected from the Complainants was less than 25% of the total consideration and that no penal clause was ever enforced against them. With respect to the legal notices and emails issued by the Complainants, the Respondent has admitted receipt thereof but has denied the legality and tenability of the demand for refund along with interest at the rate of 24% per annum. It has been contended that such a claim is wholly untenable under law, particularly when the delay was on account of force majeure circumstances protected under Section 6 of the Act. The Respondent has further contended that the statutory rate of interest prescribed under Rule 15 of the Himachal Pradesh RERA Rules, i.e. SBI MCLR plus 2%, can apply only in cases where delay is attributable to the promoter, and not where construction was stalled due to force majeure events. The Respondent has denied the allegation that the Complainants are being made to wait indefinitely. It has been asserted that construction activities have resumed upon relaxation of restrictions and that the Respondent remains fully committed to completing the project. The Respondent has opposed the prayer seeking immediate execution of the Agreement for Sale, contending that such execution is contingent upon completion of statutory approvals. The Respondent has also opposed the grant of any interim relief, contending

that no irreparable loss would be caused to the Complainants as their investment remains secure and possession shall be offered upon completion of the project. It has been pleaded that grant of ex-parte relief would instead cause undue hardship to the Respondent. The Respondent has further opposed the prayer for immediate possession, compensation and penalty, contending that possession cannot be handed over until completion of the project and that no compensation or penalty is payable as the delay is attributable to force majeure circumstances. It has denied any violation of Sections 12, 13, 18 or 19 of the Act and has opposed imposition of penalty under Section 61. The Respondent has also opposed the claim for litigation costs of Rs. 1,00,000/-, is arbitrary and excessive, and has contended that the Complainants voluntarily booked the flat with knowledge of risks and have not suffered any loss attributable to any malafide conduct on the part of the Respondent. In view of the above, the Respondent has prayed for dismissal of the complaint as misconceived and not maintainable. In the alternative, the Respondent has sought extension of time for completion of the project under Section 6 of the RERA Act and rejection of the Complainants' claims for interest, compensation and penalty, along with such other orders as may be deemed fit in the interest of justice.

3. REJOINDER FILED ON BEHALF OF THE COMPLAINANT:

The Complainants have filed a rejoinder controverting the reply of the Respondent and have denied all averments contained therein, except those specifically admitted. It has been contended that the Respondent's reply is erroneous, misconceived and self-contradictory, and is an attempt to divert attention from the core issue of non-completion of the project and failure to hand over possession of the flat

despite receipt of substantial consideration. The Complainants have reiterated and reaffirmed all averments made in the original complaint. The Complainants have specifically assailed the Respondent's defence that the delay was caused due to the COVID-19 pandemic, regulatory approval delays and restrictions imposed by the National Green Tribunal. It has been contended that this plea is an afterthought and untenable, as the project was launched and substantial payments were collected during 2017-2018 and possession was assured by the year 2019, much prior to the outbreak of COVID-19 in 2020. It has further been submitted that even after the COVID-19 pandemic ended, more than three and a half years have elapsed, yet the Respondent has neither handed over possession of the flat nor refunded the amount paid by the Complainants with interest. The Complainants have also disputed the Respondent's assertion that possession timelines were merely tentative. It has been contended that the Respondent's own brochures, emails and verbal assurances indicated specific completion timelines, which constituted the inducement for the Complainants to invest. The Respondent is estopped from denying the commitment made to the complainants. The Complainants have brought on record that they booked Flat No. B-201, Second Floor, Tower-B, in the project titled "*Claridge's Residency Himalayas*", as reflected in the Application Form dated 08.07.2017. However, subsequent emails dated 10.07.2017 and 11.07.2017 issued by the Respondent referred to the project merely as "*Residency Himalayas*". The Complainants have stated that they were made to believe that both names referred to the same project, but it has now emerged that such interchange of project names was deliberate and calculated. It has been contended that the Respondent deliberately camouflaged the true identity of the project so as to mislead the buyers

and later take inconsistent stands before this Authority. The Complainants have further placed material on record to show that *Claridge's Residency Himalayas*, situated at Upper Bharari, Near Bharari Bazaar, Shimla, is a registrable project within the meaning of Section 3 of the Real Estate (Regulation and Development) Act, 2016, as it is a residential project constructed on a plot exceeding 500 square metres and comprises more than eight apartments. As per the Respondent's own brochure and publicly available material, the project consists of four towers with four floors each, comprising approximately 43 units, thereby mandating registration under RERA. Photographs, brochures and internet snapshots have been relied upon to establish the scale of construction and number of units in the project. It has been contended that whether the project was registered or not is immaterial, as the statutory applicability of RERA flows from the nature and size of the project. The Complainants have further drawn attention to disclosures made by the Respondent itself on the Himachal Pradesh RERA portal while registering another project titled "*Residency Himalayas*". In the column relating to "Details of Past Projects", the Respondent has declared "*Claridge's Residency*" bearing registration number RERAHSPHP02200071, describing it as a project situated at Upper Bharari, Shimla, with three towers completed and possession given, and one tower under construction. This disclosure, conclusively establishes that *Claridge's Residency Himalayas* belongs to the Respondent. It has been noted that the Respondent, in its reply, has not disputed the applicability of RERA to *Claridge's Residency Himalayas* and has not pleaded that the project was exempt from registration. The sole defence taken is that delay occurred due to force majeure circumstances. The Complainants have contended that the

deliberate interchange of project names in communications amounts to unfair trade practice, in violation of the RERA provisions. It is further stated that such conduct disentitles the Respondent from taking advantage of its own wrongful acts and attracts appropriate action under Sections 59 and 61 of the Act. The Complainants have further relied upon an earlier decision of this Authority in *Sh. Narinder Bhardwaj v. M/s Rajdeep & Company Infra Pvt. Ltd.*, Consumer Complaint No. HP/RERAOFL-2020-03(B), arising out of the same project "*Claridge's Residency Himalayas*". In the said case, the Authority, vide order dated 17.12.2020, directed refund of Rs. 67,00,016/- along with interest at SBI MCLR plus 2%, upon finding unreasonable delay and failure to deliver possession. It has been pointed out that in the said order, this Authority had recorded that the promoter had applied for registration of *Claridge's Residency* under Section 3 of the Act and that the application remained pending due to non-removal of deficiencies. This finding constitutes a clear acknowledgment that the project was registrable under RERA and that non-registration was due to the Respondent's own failure to comply with statutory requirements. On the basis of the submissions and documents placed on record, the Complainants have contended that the Respondent has failed to complete the project within a reasonable time, has failed to hand over possession, and has indulged in misrepresentation and unfair trade practices. The Complainants have sought refund of the amount of Rs. 10,87,500/- along with interest at the rate prescribed under Rule 15 of the Himachal Pradesh RERA Rules from the respective dates of payment till actual refund. The Complainants have further prayed for a declaration that the Respondent has violated its statutory obligations under the RERA Act,

for imposition of appropriate penalty under the relevant provisions of the Act, and for award of costs including expenses incurred towards correspondence, legal notices and litigation.

4. ARGUMENTS ADVANCED ON BEHALF OF THE COMPLAINANT

The Ld. Counsel for the Complainant submitted that the Respondent has admittedly received a total sum of Rs. 10,87,500/- from the Complainants pursuant to the Application Form executed between the parties. It was argued that despite receipt of substantial consideration as early as the year 2017, neither an Agreement for sale has been executed in favour of the Complainants till date nor has any concrete step been taken by the Respondent towards handing over possession of the booked flat. It was further argued that the Complainants have made payments strictly in terms of the demands raised by the Respondent through emails and communications. The receipt of the entire amount of Rs. 10,87,500/- is not disputed by the Respondent, as the same admitted in his reply. Copies of all receipts and ledger accounts have been placed on record. The only receipt not initially issued, namely for Rs. 36,500/-, has also now been produced by the Respondent itself along with its reply. Learned Counsel submitted that the flat booked by the Complainants is Flat No. B-201, measuring 980 sq. ft., situated on the Second Floor, Tower-B, in the project *Claridge's Residency Himalayas*, for a total consideration of Rs. 43,50,000/-. The receipts issued by the Respondent itself clearly mention the flat details, thereby establishing the allotment and identification of the unit beyond doubt. It was argued that the Respondent has violated Sections 12 and 13 of the Real Estate (Regulation and Development) Act, 2016 by collecting substantial amounts from the Complainants without executing an Agreement for sale and by retaining the said amount for more than eight

years without delivering possession or refunding the same. Learned Counsel further submitted that the last payment was made on 13.10.2017 and thereafter, despite repeated follow-ups, legal notices and emails, nothing has moved forward. Even after directions of this Hon'ble Authority dated 25th August requiring the promoter to remain present, more than four months have elapsed and the Respondent has failed to demonstrate any progress whatsoever. It was contended that the repeated requests by the Respondent's counsel for time on the ground of "seeking instructions" are nothing but dilatory tactics intended to delay the proceedings. The Respondent has been represented through counsel who has filed vakalatnama and is expected to argue the matter. Seeking instructions for more than one year at the final stage of the proceedings is unjustified, particularly when the Complainants' money has been blocked since 2017 and the year 2026 is about to commence. Learned Counsel submitted that the Complainants are still willing to perform their part of the contract and are ready to pay the balance sale consideration simultaneously with handing over of possession. However, if the Respondent is not in a position to hand over possession immediately, then the Respondent must be directed to refund the entire amount of Rs. 10,87,500/- along with interest, compensation and costs. It was finally submitted that the Respondent has been sitting over the Complainants' money for more than eight years without delivering possession, without executing an Agreement for sale and without any lawful justification. Therefore, the Respondent is liable to be penalised for non-compliance of the provisions of the RERA Act, as specifically prayed for in the complaint.

5. ARGUMENTS ADVANCED ON BEHALF OF THE RESPONDENT L

Ld. Counsel for the Respondent submitted during the course of proceedings that the Authority had raised a query regarding the rejection of the registration application. It was argued that the issues relating to registration of the project and the company were under consideration and were being processed. Learned Counsel submitted that he intends to file either written arguments or make oral submissions after obtaining necessary approvals and instructions from the respondent. It was argued that certain proposed submissions require confirmation and approval from the respondent before being placed on record. It was further submitted that the Respondent is open to reconciliation and resolution of the dispute. However, learned Counsel stated that he is unable to take any final decision or make binding submissions at this stage due to lack of instructions from the respondent. The Learned Counsel submitted that the respondent is presently behind bars, due to which instructions could not be obtained despite efforts made over the past two weeks. In view of this circumstance, it was requested that the present submissions may not be treated as concluding arguments. It was also submitted that the Respondent's right to file written arguments should not be closed and a further period of one week may be granted to file written submissions.

6. 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 violated Sections 12 and 13 of the RERD Act?

- c) Whether the Respondent can lawfully invoke force majeure under Section 6 of the RERD Act?
- d) Whether the Complainants are entitled to refund with interest under Section 18 of the RERD Act ?
- e) Other issues and imposition of penalties.
- f) Relief.

7. DISCUSSION AND FINDINGS ON EACH ISSUE: -

a. Whether this Authority has the jurisdiction to adjudicate the present complaint?

The Respondent has raised a preliminary objection regarding the maintainability of the present complaint, contending inter alia that the project was subject to regulatory approvals, that delay occurred due to circumstances beyond its control, and that therefore the complaint deserves to be dismissed.

At the outset, this Authority deems it appropriate to observe that the relevant provisions of the Act, contained under Section 31, is required to be referred to which 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 (ibid) and Rule 23 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017. At the outset, it is relevant to point out that the respondent has not disputed the fact that the complainants were not the allottee of the aforesaid flat and as such it is appropriate to consider the fact as to who is aggrieved person as per Section 31 of the Act. Though, the term, aggrieved person, has not specifically been defined under the Act, yet, the term "Person" has been defined in Section 2(zg) which includes an

individual (relevant for our purpose) and further the allottee as Section 2(d) which has been referred as under:

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

If these terms that is allottee as well as an individual are read together in conjunction with the section 31, it can be well concluded that the complainants fall within the purview of aggrieved person. Further, the proviso to Section 18 of the RERD Act, 2016 prescribes that in case allottee (herein, the complainants) does not intend to withdraw from the project then, promoter shall pay interest for every month of delay till the handing over of possession of the flat to the complainant at such rate as may be prescribed. As such, as per proviso of Section 18, interest is to be calculated for every month of delay till the possession is handed over to the complainant. Thus, the moment due date for handing over possession is over, the claim of interest for delay of every month is accrued to the complainant as per Section 18 of RERD Act, 2016. Right to claim interest is a statutory right once it is accrued and it lasts till the possession is handed over. Further, in the case of Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors MANU/SC/1056/2021, it was held by the Hon'ble Supreme Court in para 86 of the judgment as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory

authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, " it is the regulatory authority which has the power to examine and determine the outcome of a complaint"

Thus, from the reading of the above provisions of the Act as well as law laid down by the Hon'ble Supreme Court, it is amply clear that the Authority has power to adjudicate various matters, including refund and interest, and interest on delayed possession under Section 18 of the Act and imposition of penalty under the Act whereas the compensation is to be adjudged by the Adjudicating Officer under Section 71 of the Act *ibid*.

The maintainability of a complaint is determined not merely by whether the project is registered, but also by the nature and size of the project. In the present case, the material placed on record, including brochures, emails, application form and admissions of the Respondent, clearly establish that the project titled "Claridge's Residency Himalayas":

- is a group housing residential project;
- consists of multiple towers and more than eight residential units;
and
- is constructed on land exceeding 500 square metres.

Such a project squarely falls within the mandatory ambit of Section 3 of the Act, which requires compulsory registration. It is well settled that the promoter cannot take advantage of its own failure to register the project. This Authority further observes that the Respondent has not

claimed that the project is exempt from registration under Section 3(2) of the Act. It is evident from the record that the Respondent had applied for registration of the project, however, the said application was rejected with certain observations. Despite the same, the Respondent has not further applied for registration and the project remains unregistered with HP-RERA till date under Section 3(2) of the Act. On the contrary, the Respondent has sought to justify the delay on the ground of force majeure, thereby impliedly admitting the applicability of the Act to the project in question. The contention of the Respondent that delay occurred due to regulatory approvals, NGT restrictions or COVID-19 pandemic pertains to the merits of the case and not to the maintainability of the complaint. This Authority also takes note that the Respondent has admittedly:

- accepted substantial amounts from the Complainants;
- failed to execute an Agreement for Sale;
- failed to hand over possession even after lapse of more than seven years.

Once money is accepted from an allottee and statutory obligations under the Act are fulfilled, the allottee's right to approach this Authority cannot be curtailed by raising objections. The Act is a beneficial legislation enacted to protect the interests of homebuyers.

In view of the above, this Authority holds that the present complaint is maintainable before this Authority. Accordingly, Issue No. (i) is decided in favour of the Complainants and against the Respondent.

b) Whether the Respondent violated Sections 12 and 13 of the Act?

Section 12 of the Real Estate (Regulation and Development) Act, 2016 places a clear duty/obligation upon the promoter that all

advertisements, brochures, emails and representations made to buyers must be true and correct. If a buyer invests money on the basis of such representations and the same are not fulfilled, the promoter becomes liable under the Act. The section 12 of the Act provides as under:

“Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.”

In the present case, the material placed on record, including brochures, emails, application form and admissions of the Respondent, clearly establish that the project titled “Claridge’s Residency Himalayas”:

- is a group housing residential project;
- consists of multiple towers and more than eight residential units;
- and
- is constructed on land exceeding 500 square meters.

The record shows that the Respondent advertised and represented that the project “Claridge’s Residency Himalayas” would be completed within a reasonable time and that possession would be handed over by the middle of year 2019. On the basis of these assurances, the Complainants booked the flat and paid a substantial amount in the

year 2017. However, from the perusal of emails and receipts for the money received by promoter, it is clear that all the receipts and emails have been issued in the name of 'Residency Himalayas' and not in the name of Claridges Residency Himalayas. Thus, the promoter has not only misrepresented facts in the advertisement and application form but the complainant was induced for booking the flat by incorrect and false statement. Further, despite assurances, the Respondent failed to complete the project and failed to hand over possession even after lapse of more than seven years. Such conduct clearly establishes that the representations made at the time of booking were not based on the factual realities and was an attempt to mislead the complainant, thereby violating the provisions of Section 12 of the Act.

Further, Section 13(1) of the Act specifically provides that a promoter shall not accept more than 10% of the sale consideration without first entering into a written Agreement for Sale with the allottee. Section 13 (1) of the Act provides as under:

"13. (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."

In the present case, it is undisputed that:

- the total sale consideration of the flat was Rs. 43,50,000/-
 - The Respondent accepted Rs. 10,87,500/- from the Complainants
- No Agreement for Sale has been executed till date.

Thus, the Respondent accepted more than the permissible limit of 10% of the sale consideration without executing an Agreement for Sale, which is a clear violation of Section 13(1) of the Act. The

explanation tendered in the reply by the Respondent that the Agreement for Sale could not be executed due to delay in approvals. Obtaining approvals and complying with legal requirements is the responsibility of the promoter and cannot be used to defeat the statutory rights of the allottees/complainants. Non-execution of the Agreement for Sale for such a long period has caused serious hardship to the Complainants, as they were left without clarity regarding possession, timelines or their legal rights. In view of the above facts , this Authority holds that the Respondent has clearly violated Sections 12 and 13(1) of the Act.

c) Whether the Respondent can lawfully invoke force majeure under Section 6 of the RERD Act?

Section 6 of the Real Estate (Regulation and Development) Act, 2016 permits extension of time for completion of a project only in cases where the delay is caused due to force majeure events, such as war, flood, drought, fire, cyclone, earthquake or other natural calamities affecting the regular development of the project. The provision is an exception and must therefore be strictly construed. Section 6 of the act provides as under:

“The registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority: Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year: Provided further

that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation.— For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project."

The burden to prove the existence of a force majeure event and its direct impact on the project lies entirely upon the promoter. The promoter must place on record clear and cogent material to show that the delay was beyond his control and that it exercised due diligence. In the present case, the Respondent has attempted to invoke force majeure by relying upon three grounds, namely:

- (i) delay in regulatory approvals;
- (ii) orders passed by the Hon'ble National Green Tribunal in case of Yogender Mohan Sen Gupta Versus Union of India; and
- (iii) the COVID-19 pandemic

As per the regulatory approvals and NGT-related issues, the Respondent has failed to produce any documentary evidence such as copies of orders, directions or communications from the concerned authorities to show that construction was legally prohibited or that the project was required to be stopped. Mere reference to proceedings before the Hon'ble NGT or general regulatory difficulties, without proof, cannot constitute force majeure. It is further observed that the Hon'ble National Green Tribunal has never imposed a ban on the construction of already approved projects. However, the directions issued by the Hon'ble NGT required regulatory compliance, which is the responsibility of the promoter. Such compliance-related issues

cannot be treated as force majeure events under Section 6 of the Act. In terms of the plea of delay due to the COVID-19 pandemic, it is observed that the Complainants made payments in the year 2017 and possession was assured much before the outbreak of COVID-19 in 2020. Even after the situation returned to normal and construction activities resumed, the Respondent failed to complete the project or offer possession. The Respondent has also failed to demonstrate that any formal application for extension of time under Section 6 of the Act was filed before the Authority, as required under the provisions of the RERD Act. In the absence of any cogent or documentary evidence, this Authority is of the considered view that the Respondent has failed to establish that the delay in completion of the project or handing over of possession was caused due to circumstances beyond his control. Accordingly, the Respondent is not entitled to the benefit of Section 6 of the Act, and the plea of force majeure is hereby rejected.

d) Whether the Complainants are entitled to refund with interest under Section 18 of the RERD Act?

Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 provides that where a promoter fails to complete the project or is unable to give possession of the apartment in accordance with the terms of the agreement, the allottee has a statutory right to seek appropriate relief under the Act. In the instant case, the Complainants initially approached this Authority seeking possession of the apartment along with compensation for delay and specifically expressed their willingness to pay the balance sale consideration at the time of handing over possession. This clearly shows that the Complainants were always ready and willing to perform their part of

the contract. However, during the course of proceedings, and particularly in the rejoinder, the Complainants sought refund of the amount paid along with interest, stating that due to prolonged and unexplained delay of more than seven years, they have lost faith in the Respondent and cannot be compelled to wait indefinitely. It is a well settled law that an allottee cannot be forced to continue in a project where there is an unreasonable delay in completion. The right to seek refund under Section 18 is a statutory right. The Section 18(1) of the Act clearly provides that if promoter fails to complete or give possession of an apartment in accordance with the terms of the agreement for sale or as the case may be, the complainant will be entitled for refund 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 or is unable to give possession of the apartment. In the present case, the Respondent has failed to hand over possession within a reasonable period. No Agreement for Sale has been executed, and the project remains incomplete even after several years. Such prolonged delay clearly attracts the provisions of Section 18 of the Act.

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."

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."

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"

The proviso to Section 18(1) deals with a situation where the allottee does not wish to withdraw from the project. In such a case, the allottee is entitled to receive interest for every month of delay till the date of handing over possession. Thus, the Act clearly gives the choice to the allottee either to seek refund under Section 18(1)(a) or to continue with the project and claim interest for delay under the proviso to Section 18(1). In the present case, it is evident that the Respondent has failed to complete the project and failed to hand over possession of the apartment to the Complainants in accordance with the terms and assurances made at the time of booking. Initially, the Complainants sought possession, however, during the course of proceedings, and particularly in the rejoinder, they later opted to withdraw from the project and sought refund. Once the Complainants have exercised their right to withdraw, they are clearly entitled to refund of the amount paid along with interest as provided under Section 18(1)(a) read with Section 19(4) of the Act. It is also significant

to note that the Respondent has not disputed the amount paid by the Complainants, which stands admitted on record. As per Section 18 of the Act read with Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017, the rate of interest payable by the promoter to the allottee shall be the highest Marginal Cost of Lending Rate (MCLR) of the State Bank of India plus two percent.

e) Other issues and imposition of penalties.

At the outset, this Authority observes that Section 3(1) of the Real Estate (Regulation and Development) Act, 2016 clearly provides that no promoter shall advertise, market, book, sell or offer for sale any apartment, plot or building in a real estate project without first registering the project with the Real Estate Regulatory Authority. In the present case, it stands established on record that the Respondent promoter marketed and booked apartments in the name of Claridge Residency Himalaya and accepted amount from the Complainants without having a valid registration of the project with HP-RERA, which constitutes a clear violation of Section 3 of the Act. Although the Respondent had earlier applied for registration, the application was rejected with observations, and thereafter no fresh application for registration was made. Consequently, the project continues to remain unregistered till date. The Authority observed that there is a clear violation of Section 3 of the Act (ibid), therefore, Suo moto proceedings are directed to be initiated, separately against the promoter/respondent and the TCP Wing of this Authority is directed to issue fresh Notice calling for explaining the circumstances as to why the promoter/respondent be not penalized for violation of Section 3 of the

Act (ibid). Further, this Authority is of considered view that the version of the respondent pertaining to the violation of Section 3 be taken on record to adhere to the principle of natural justice.

This Authority further observed that at the time of booking, the Respondent received a booking amount of Rs. 1,51,000/- and merely issued an application form dated 08.07.2017. No allotment letter was issued at that stage. Such conduct violates Section 11(3) of the Act, which obligates the promoter to issue the allotment letter to the allottee upon receipt of the booking amount. The failure of the respondent to execute an Agreement for Sale, failure to provide an allotment letter, and failure to deliver possession within a reasonable time clearly establish a violation of the statutory obligations under the Act. The Authority is of firm view that the respondent/promoter must be held liable and penalized under Section 61 of the RERD Act, in view of Section 34 (f) and 37 of the RERD Act which empowers the Authority to ensure the compliance of the obligations cast upon the promoter and for their failure to fulfil the obligations as promoter as prescribed in Section 11 (3), 12, 13 and Section 18 of the Act (ibid). It is also observed that the Authority also has power to impose penalties and interest under Section 38 (1) of the RERD Act.

f) 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 promoter is directed to refund Rs. 10,87,500/ 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 8.80 % hence the rate of interest would be 8.80 %+2 % i.e. 10.80%. It is clarified that the interest payments mode i.e. Rs 10,87,000/- shall accrue from the dates as mentioned below:-

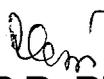
- i. On Rs. 1,51,000/- from 29.06.2017
- ii. On Rs. 5,00,000/- from 01.08.2017
- iii. On Rs. 4,00,000/- from 06.09.2017
- iv. On Rs. 36,500/- from 13.10.2017

till date the amount and interest thereon is refunded.

- c) The refund along with interest is to be paid by the respondent promoter to the Complainants within 60 days from the date of passing of this order.
- d) That in view of Section 61 of the Act which prescribes the maximum penalty that could be imposed for the contravention of any other provision of the Act other than Section 3 and 4, as five percent of the total cost of the project. The Authority, considering all facts of the case, deems appropriate to impose a penalty of Rs. 15 Lakh for contravention of the provisions of the Act especially Section 11(3), 12, 13(1) and 18 of the RERD Act. 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*.


R.D. DHIMAN
(CHAIRPERSON))


VIDUR MEHTA
(MEMBER)

