BEFORE THE REAL ESTATE REGULATORY AUTHORITY HIMACHAL PRADESH AT SHIMLA

Complaint no. HPRERA2025019/C

In the matter of:-

Smt. Namita Singh, Wife of Mr. Avinash Sharma, Resident of MIG-131, Hanuman Nagar, Near Majhi Park, Patrakar Nagar, PS- Patrakar Nagar Thana, Near Pani Tanki, Patna-800020

.... Complainant

Versus

M/s Rajdeep and Company Infrastructure Private Limited, office at SCO 12, First Floor, Hollywood Plaza, VIP Road Zirakpur, Mohali 140603.

.... Respondent

Present:- **Smt. Namita Singh complainant**
Ajay Sipahiya Ld. Counsels for respondent promoter M/s Rajdeep and Co.

Date of hearing: 09.06.2026

Date of pronouncement of order: 16.06.2026

Order

Coram: Chairperson and Member

1. **BRIEF FACTS OF THE COMPLAINT**

That the complainant booked a 2 BHK flat in the project known as "Mashobra Hills" being developed and marketed by the respondent on 05.06.2023 by paying a booking amount of Rs.21,000/-. The respondent promised the timely completion and possession. So, relying upon the representations and promises made by the respondent, the complainant invested substantial amounts towards the project and paid a total sum of approximately Rs.79,89,392/-. Out of the said amount, a sum of Rs.42,99,392/- was paid towards construction cost, including Rs.33,00,000/- financed through UCO Bank, Kufri Branch and further amounts of Rs.8,80,000/-, Rs.1,19,392/- and Rs.1,07,000/- paid directly to the respondent through RTGS. The complainant further submitted that she paid a sum of Rs.33,40,000/- towards furnishing and interior works to Bravo Furniture's and Interiors and Rajdeep & Co Hospitality LLP as directed by the respondent and also paid Rs.1,50,000/- towards documentation and preparation of documents for permission under Section 118 of HP Tenancy and Land Reforms Act,1972. Despite repeated requests, the respondent failed to issue receipts for payments made towards furnishing, interiors, and documentation charges. It is further pleaded by the complainant that at the time of booking and subsequent payments, the respondent assured the complainant that possession of the flat would be delivered on or before 30.12.2024 and further promised an assured return of 7% per annum on the investment amount till possession. But, the complainant has neither been handed over possession of the flat till date nor has any assured return or compensation been paid by the respondents. The project remains incomplete and the respondent has failed to honour their commitments. Because of the respondent's acts and omissions, the complainant has suffered severe financial hardship and has already paid approximately Rs.4,08,448/- towards loan interest/EMIs and continues to bear the financial burden of the housing loan. As per complainant, the conduct of the respondent amounts to misleading advertisements and false representations attracting the provisions of Section 12 of the RERA Act. The respondent induced the complainant to invest by making promises regarding possession and assured returns which have not been fulfilled. Therefore, the respondent has further violated Sections 11 and 13 of the RERA Act by failing to maintain transparency, failing to execute proper documentation, failing to issue receipts for substantial payments received, and by withholding information regarding the status and progress of the project. That despite repeated requests and follow-ups, the respondent has failed to refund the amount invested by the complainant or provide any satisfactory explanation regarding the delay in completion and delivery of the project. So, the complainant is entitled to seek refund of the entire amount paid along with interest, compensation, and other consequential reliefs under Sections 18 and 31 of the RERA Act, 2016.In view of the facts and circumstances stated above the complainant prayed to this Authority to refund the entire amount of approximately **Rs.79,89,392/-** paid by her to the respondent and to take criminal action against the respondent.

2. REPLY:-

The respondent has filed a detailed reply contesting the maintainability as well as the merits of the complaint. At the outset, the respondent has raised various preliminary objections and thereafter furnished a para-wise reply to the allegations made by the complainant. The first and foremost objection of the respondent is that the complaint deserves to be rejected at the threshold on account of suppression of material facts. According to the respondent, the complainant has deliberately concealed the execution of a fresh Agreement for Sale dated 23.12.2024 pertaining to the same unit. It is contended that the rights and obligations of the parties are now governed by this subsequent agreement, under which the date for handing over possession has been fixed as

31.12.2027. The respondent alleges that despite the existence of the later agreement, the complainant has chosen to rely only upon the earlier Agreement for Sale dated 21.07.2023, which allegedly stipulated possession by 30.12.2024, thereby creating a false impression of delay. The respondent submits that once a fresh agreement has been voluntarily executed between the parties, the complainant cannot ignore the later contractual arrangement and seek to revive the earlier timeline. It is further argued that the complainant has failed to approach the Authority with clean hands and, therefore, the complaint is liable to be dismissed on the ground of concealment of material facts alone. The respondent has further objected that the complaint is vague, omnibus, self-contradictory, misleading and legally misconceived. It is submitted that the complaint itself contains unfilled places and appears to have been prepared from a borrowed template without proper verification. The respondent points out that different figures have been mentioned in different parts of the complaint, including Rs.78,11,000/-, approximately Rs.79 lakhs, and Rs.79,89,392/-, without any reconciliation or explanation. According to the respondent, the complainant has failed to specify how these figures have been calculated, against whom they are recoverable, and under which contractual or statutory provision they are claimed. It is contended that a complaint under the Real Estate (Regulation and Development) Act cannot be based upon uncertain and fluctuating figures and, therefore, deserves dismissal. The respondent has also contended that the complaint suffers from material inconsistencies and uncertainty regarding the very foundation of the claim. It is argued that while the complainant alleges payment of Rs.78,11,000/- to the respondent company, elsewhere she claims an investment of approximately Rs.79,89,392/- including loan amounts, furnishing expenses, documentation charges and other costs. The respondent submits that the complainant has improperly clubbed together amounts paid under different heads and to different entities without identifying which sums were actually paid to the respondent. According to the respondent, the complaint seeks to recover construction costs, furnishing expenses, loan liabilities, interest burdens, opportunity losses and compensation in a single composite claim, which is legally impermissible and incapable of adjudication. The respondent reiterates that the complaint is vitiated by suppression of the later Agreement for Sale dated 23.12.2024. It is submitted that the complainant has consciously omitted the existence of the later agreement while continuing to rely upon the earlier possession date. According to the respondent, such selective disclosure amounts to suppression of material facts and disentitles the complainant from claiming any equitable or statutory relief. Another objection raised by the respondent is that the complaint improperly combines distinct contractual arrangements and legal relationships into one proceeding. The respondent submits that the Agreement for Sale dated 23.12.2024 relates only to Flat No.102 and records a total sale consideration of Rs.45,27,857/-. However, the complainant has sought to include furnishing and interior payments amounting to Rs.33,40,000/-, documentation charges of Rs.1,50,000/-, loan-related liabilities and other claims within the same refund request. According to the respondent, the Interior Designing and Furnishing Agreement constitutes a separate contract and cannot be treated as part of the Agreement for Sale. The respondent further points out that certain payments were allegedly made to entities such as Bravo Furniture's and Interiors and Rajdeep and Co Hospitality LLP, which are separate legal entities. Therefore, the respondent contends that distinct contractual obligations cannot be merged into one composite statutory complaint. The respondent has specifically denied liability regarding the alleged payment of Rs.1,50,000/- towards documentation charges or Section 118-related formalities. It is contended that no such amount forms part of the sale consideration under either the earlier or the subsequent Agreement for Sale. The respondent denies having received any such amount and submits that any expenditure incurred by the complainant in connection with obtaining statutory approvals cannot automatically become recoverable from the respondent. It is further argued that the complainant has failed to disclose the status of permission under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. According to the respondent, unless the requisite permission is obtained, the transfer process cannot lawfully be completed, and therefore no cause of action regarding possession or refund can arise. The respondent has also challenged the complainant's reliance upon the housing loan obtained from UCO Bank. It is submitted that the complainant has failed to place on record the complete loan agreement, disbursement records, financing arrangements and other relevant documents. According to the respondent, the burden of EMI payments and interest obligations arises from the complainant's independent contractual arrangement with the bank and cannot automatically be fastened upon the respondent. It is therefore argued that the claim relating to loan liabilities is incomplete and legally untenable. The respondent has further pleaded that the complaint is bad for non-joinder of necessary and proper parties. It is submitted that since the complainant relies upon a loan from UCO Bank and alleges payments to Bravo Furniture's and Interiors and Rajdeep and Co Hospitality LLP, those entities ought to have been impleaded as parties. The respondent contends that no effective adjudication can take place regarding such transactions in the absence of the concerned entities and that no liability can be imposed upon the respondent in respect of payments allegedly made to third parties. The respondent has objected to the relief clause as being legally misconceived and beyond the jurisdiction of the Authority. According to the respondent, the complainant seeks refund, compensation, penalties, investigation, blacklisting and other punitive actions through a single composite prayer. It is argued that such reliefs arise from different statutory provisions and involve distinct causes of action. The respondent submits that the complaint attempts to convert the proceedings into a roving inquiry concerning multiple transactions and entities, which is contrary to the statutory scheme of the Act. A specific objection has also been raised regarding the claim for compensation. The respondent contends that compensation under Sections 12, 14, 18 and 19 of the Real Estate (Regulation and Development) Act is required to be adjudicated by the Adjudicating Officer under Section 71 and not by the Authority. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of U.P. & Others,*** wherein the distinction between the powers of the Authority and those of the Adjudicating Officer has been explained. Accordingly, the respondent submits that the compensation claim is not maintainable before the present forum. The respondent has finally alleged that the complainant has not approached the Authority with clean hands and full disclosure. It is contended that the complainant has concealed the later Agreement for Sale dated 23.12.2024, failed to disclose the complete status of Section 118 permission in Himachal Pradesh Tenancy and Land Reforms Act, 1972, omitted details regarding various entities to whom payments were allegedly made, and withheld the complete financing records relating to the housing loan. According to the respondent, such suppression of material facts disentitles the complainant from any discretionary or equitable relief. On merits, the respondent has stated that the averments relating to the particulars of the complainant and respondent are matters of record and require no reply. Regarding jurisdiction, the respondent reiterates that the complaint is premature and not maintainable because the operative Agreement for Sale dated 23.12.2024 fixes the possession date as 31.12.2027. It is further submitted that the complaint improperly combines separate contractual claims and seeks compensation which lies within the jurisdiction of the Adjudicating Officer. With respect to the factual allegations, the respondent admits that Flat No.102 in the project "Mashobra Hills" was allotted to the complainant but denies that the booking was induced by any false assurances. It is argued that no particulars of the alleged representations have been pleaded and that any oral or promotional statements cannot override the written Agreement for Sale. The respondent disputes the payment details pleaded by the complainant and contends that the payment narrative is inconsistent, unsupported and numerically defective. It is reiterated that the complainant has concealed the fresh Agreement for Sale dated 23.12.2024 and that the alleged payments have not been correlated with contractual milestones or demands. The respondent further denies the allegations relating to promised possession and assured returns. It is submitted that possession is contractually due only on 31.12.2027 under the fresh Agreement for Sale and therefore no delay has occurred. The respondent also denies the existence of any enforceable obligation to pay assured returns at the rate of 7% per annum and contends that promotional material cannot constitute contractual terms unless specifically incorporated into the agreement. The respondent similarly denies liability for the complainant's alleged financial burden, including EMI payments, interest liability and opportunity losses. It is argued that these are consequences of the complainant's own financing decisions and cannot be recovered from the respondent. The allegations regarding statutory and regulatory violations are also denied. The respondent contends that the complainant has invoked Sections 12, 13 and 19 of the Act without providing specific particulars of any violation. It is submitted that the complaint lacks details of any false representation, statutory breach or actionable misconduct attributable to the respondent. The respondent has also denied the complainant's entitlement to refund, compensation, penalties, investigation or blacklisting of entities. It is argued that the reliefs claimed are vague, legally unsustainable and beyond the scope of the present proceedings. The respondent has prayed for dismissal of the complaint in limine on the grounds that it is vague, composite, premature, legally misconceived and based upon suppression of material facts. The respondent has further sought a declaration that the parties are governed by the Agreement for Sale dated 23.12.2024 and that the agreed date of possession is 31.12.2027. The respondent has also prayed for rejection of the complaint on grounds of concealment, non-maintainability, non-joinder of parties, lack of jurisdiction regarding compensation claims, and non-compliance with statutory requirements under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972.

3. REJOINDER:-

The Complainant has filed the rejoinder to the reply filed by the respondent in which complainant submits that the complaint has been instituted against the Respondent for violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 and for failure to discharge the contractual as well as statutory obligations owed to the Complainant. The complaint seeks appropriate reliefs on account of the Respondent's acts of omission and commission, which have adversely affected the rights and interests of the Complainant. It is submitted by the complainant that despite the complaint having remained pending before this Hon'ble Authority for a considerable period, the Respondent has failed to file its reply within the prescribed time under the Real Estate (Regulation and Development) Act, 2016. Such failure on the part of the Respondent demonstrates negligence, lack of diligence, and a deliberate attempt to delay the adjudication of the matter. The Complainant further submits that during the hearing held on 27.02.2026, the learned counsel appearing on behalf of the Respondent sought additional time for filing the reply along with the requisite Power of Attorney. The said request was strongly opposed by the Complainant on the ground that the Respondent had already been afforded sufficient opportunity and that the request for further time was merely a tactic adopted to prolong and delay the proceedings. It is further submitted that after considering the submissions advanced by both parties, this Hon'ble Authority was pleased to grant two weeks' time to the Respondent as a last and final opportunity to file its reply along with the Power of Attorney. The Complainant further submits that the conduct of the Respondent throughout the proceedings clearly reflects a deliberate attempt to evade his legal responsibilities and to obstruct the expeditious disposal of the present complaint. The repeated delays and failure to comply with procedural requirements demonstrate a lack of bona fides on the part of the Respondent. It is further submitted that the Respondent has failed to honour the commitments, representations, and assurances made to the

Complainant with respect to the property in question. As a result of such failure, the Complainant has suffered substantial financial loss, inconvenience, hardship, and mental agony. The Complainant also submits in the rejoinder that the acts and omissions of the Respondent are in clear violation of the provisions, spirit, and objectives of the Real Estate (Regulation and Development) Act, 2016, which has been enacted with the object of ensuring transparency, accountability, and protection of the interests of allottee/complainant in real estate projects. The Complainant further reserves the right to file additional submissions, documents, or pleadings, if necessary, upon receipt of the Respondent's reply or in the event any new facts emerge during the course of the proceedings before this Hon'ble Authority.

4. ARGUMENTS BY COMPLAINANT:-

The complainant submitted that the Respondent has admitted the allotment and receipt of substantial consideration made by complainant to the respondent for purchase of Flat No. 102 in the Mashobra Hills Project. The execution of agreements between the parties are not disputed. The Complainant has paid substantial amounts towards the flat, furnishing, documentation, and other project-related charges on the basis of representations made by the Respondent. The complaint discloses a clear cause of action under RERA as the Complainant made payment in the project on the basis of assurances regarding possession and promised returns. Despite receiving huge sums from the Complainant, the Respondent has failed to deliver possession within the period originally represented and has also failed to provide the assured returns. It is further submitted that Execution of the Agreement dated 23.12.2024 does not absolve the Respondent of liability. The Respondent's entire defence is based upon a subsequent Agreement for Sale dated 23.12.2024 extending possession up to 31.12.2027. The said agreement was executed after substantial delay had already occurred and after the Complainant had made payment of considerable amounts. The Respondent has also failed to explain the delay in project completion. Mere reliance upon a revised possession date is not sufficient. The Respondent has not placed any material to establish that the project is progressing in accordance with law or that possession shall actually be delivered by the revised date. The continuous delay itself constitutes deficiency and unfair practice. Complainant submitted that Misrepresentation and inducement are evident from the record as the respondent has failed to handover the possession despite making him payment of approximately Rs.80,00,000/- (Rupees Eighty Lakhs) .Payments for furnishing, interiors, and allied services were demanded as part of the overall project transaction. She further submitted that another agreement dated 25.07.2023 was executed because the respondent assured her that same was needed in order to lower the levy of stamp duty.The various entities referred to by the Respondent are closely connected with the project and were introduced by the Respondent itself. The allottee cannot be prejudiced because the promoter routed payments through different concerns. The Respondent cannot retain the Complainant's money for years and thereafter raise technical objections regarding statutory permissions under section 118 of the H.P Tenancy and Land Reforms Act, 1972 to avoid refund or accountability. The allegation of suppression is baseless and the subsequent agreement relied upon by the Respondent does not extinguish the statutory rights available to the allottee under RERA. The Respondent has not disputed the financial hardship suffered by the Complainant. The Complainant continues to bear substantial

EMI liabilities and interest burdens while neither possession nor promised returns have been received. The Respondent has enjoyed the benefit of the Complainant's money without corresponding performance of its obligations. The complainant also submitted that RERA is a beneficial legislation intended to protect homebuyers and the provisions of the Act must be interpreted in favour of complainants. The Technical objections regarding pleadings, calculations, or maintainability cannot defeat the substantive rights of a genuine allottee who has invested her life savings in the project. Hence, complainant submitted that respondent may be directed to refund the entire amount paid by the Complainant together with interest as prescribed under the RERA Act.

5. **ARGUMENTS OF THE RESPONDENT**:-

The Counsel for the respondent submitted that the present complaint is liable to be dismissed as being premature, misconceived, and based upon suppression of material facts. The complainant has deliberately concealed the most material document governing the relationship between the parties, namely the Agreement for Sale dated 23.12.2024, which was voluntarily executed subsequent to the earlier agreement relied upon in the complaint. Under the said agreement, the parties mutually agreed that possession of Flat No. 102 shall be delivered on or before 31.12.2027. Having consciously entered into the subsequent agreement, the complainant cannot selectively rely upon the earlier agreement and seek to create an artificial cause of action based upon the possession date contained therein. The complaint, therefore, lacks bona fides and deserves rejection on the ground of concealment alone. It is further submitted that the complaint is vague, self-contradictory, and unsupported by proper particulars. Different amounts have been claimed by the complainant at different places, including Rs.78,11,000/-, approximately Rs.79 lakhs, and Rs.79,89,392/-, without furnishing any reconciliation or documentary explanation. The complainant has failed to clearly identify which amounts were actually paid to the respondent and which amounts were allegedly paid to third parties. Such uncertain and fluctuating claims cannot form the basis of a statutory proceeding under the Real Estate (Regulation and Development) Act, 2016. The respondent also submits that the complaint improperly combines several distinct transactions and contractual arrangements into a single composite claim. The Agreement for Sale executed between the parties pertains only to the sale of Flat No.102 for a consideration recorded therein. However, the complainant has sought refund not only of the sale consideration but also of furnishing and interior expenses, documentation charges, loan liabilities, EMI payments, interest burdens, and other alleged losses. These claims arise from separate contracts and separate legal relationships and cannot be adjudicated collectively in the present proceedings. It is further submitted by the Counsel for the respondent that substantial amounts alleged by the complainant were paid to entities such as Bravo Furniture's and Interiors and Rajdeep & Co. Hospitality LLP, which are separate legal entities and not parties to the present proceedings. No liability can be imposed upon the respondent in respect of transactions involving third parties who have not been impleaded. The complaint is therefore bad for non-joinder of necessary and proper parties, and no effective adjudication can be undertaken in their absence. The respondent further submits that no delay in handing over possession has occurred. The operative and binding Agreement for Sale dated 23.12.2024 specifically stipulates the possession date as

31.12.2027. Since the said date has not yet arrived, the complainant has no accrued right to seek refund under Section 18 of the Act on the ground of delayed possession. The complaint has thus been filed prematurely and is liable to be dismissed on this ground alone.The allegations regarding assured returns at the rate of 7% per annum are specifically denied by the respondent. The complainant has failed to place on record any contractual clause, agreement, undertaking, or legally enforceable document whereby the respondent agreed to provide such assured returns. Mere allegations regarding promotional statements or oral assurances cannot override the terms of the written agreement executed between the parties. In the absence of any contractual stipulation, the claim is wholly untenable. The respondent further submits that the complainant has failed to establish any violation of Sections 12, 13, or 19 of the Real Estate (Regulation and Development) Act, 2016. No specific particulars of any false representation, misleading advertisement, concealment of information, or statutory breach have been pleaded or proved. Bald and general allegations unsupported by evidence cannot constitute a valid cause of action under the Act. The claim regarding EMI payments, housing loan interest, and alleged financial hardship is equally unsustainable. The housing loan was obtained by the complainant through an independent contractual arrangement with UCO Bank, and any liability arising therefrom remains solely between the complainant and the lending institution. The respondent cannot be held liable for the complainant's financing decisions or the consequences thereof. It is further submitted that the complainant has failed to disclose the complete status of permission under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. The transfer of property in favour of a non-agriculturist is subject to statutory approvals, and unless the requisite permission is obtained, the process of transfer and conveyance cannot be lawfully completed. The complainant's omission to place complete facts before this Authority further demonstrates lack of full and frank disclosure. The respondent also submits that the prayer seeking compensation is not maintainable before this Authority. In view of Section 71 of the Real Estate (Regulation and Development) Act, 2016 and the law laid down by the Hon'ble Supreme Court in M/s Newtech Promoters & Developers Pvt. Ltd. vs. State of U.P. & Others, claims for compensation under Sections 12, 14, 18 and 19 are required to be adjudicated by the Adjudicating Officer and not by the Regulatory Authority. Consequently, the compensation-related reliefs sought in the present complaint are beyond the jurisdiction of this forum. The respondent further submits that the rejoinder filed by the complainant does not rebut any of the substantive objections raised in the reply. The rejoinder merely contains allegations regarding delay in filing the reply and the conduct of the respondent during the proceedings. Such procedural allegations neither cure the defects in the complaint nor answer the respondent's specific contentions regarding the subsequent Agreement for Sale, non-joinder of parties, absence of delay, lack of jurisdiction, and suppression of material facts. Hence, in view of the foregoing facts and submissions, it is submitted by the Counsel for the respondent that the present complaint be dismissed as premature, vague, composite, legally misconceived, and based upon suppression of material facts.

6. ISSUES FOR DETERMINATION

Having heard the learned counsel for the parties, perused the pleadings, documents placed on record, the rival submissions advanced by both sides and the provisions of the Real Estate

(Regulation and Development) Act, 2016(hereinafter referred to as "RERA Act"), the following issues arise for determination:

i. Whether the complaint is maintainable in its present form?
ii. Whether the Agreement for Sale dated 23.12.2024 is binding upon the parties and whether the complaint is premature in view of the possession date of 31.12.2027?
iii. Whether the respondent made false representations regarding possession and assured returns and thereby violated the provisions of the RERA Act?
iv. Whether the complainant is entitled to refund of the amount paid and, if so, to what extent?
v. Whether the complainant is entitled to interest, compensation and other consequential reliefs under the RERA Act?
vi. Relief.

7. **FINDINGS AND REASONING**:-

ISSUE NO. (i)

Whether the complaint is maintainable in its present form?

The respondent has challenged the maintainability of the complaint on several grounds, namely: (i) suppression of material facts, (ii) vagueness and inconsistency in the claim amount, (iii) non-joinder of parties, (iv) inclusion of furnishing and allied payments and (v) want of jurisdiction regarding compensation.The primary objection of the respondent is that the complainant has suppressed the Agreement for Sale dated **23.12.2024**. However, mere non-disclosure of a subsequent agreement does not ipso facto render a complaint under RERA non-maintainable. The maintainability of a complaint has to be tested on the existence of a cause of action and the statutory rights conferred upon an allottee under the Act.

At the outset, it is necessary to observe that the Real Estate (Regulation and Development) Act, 2016 is a welfare legislation enacted with the object of protecting the interests of homebuyers and ensuring transparency and accountability in the real estate sector. The provisions of the Act are required to be interpreted in a manner which advances the object of the legislation rather than defeats it. It is a settled principle that once the relevant material is available before the adjudicating forum, the dispute must be decided on merits rather than on technicalities. Section 18 of the The Real Estate (Regulation & Development Act, 2016 is reproduced as under:

18. **Return of amount and compensation.-.** *(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub section shall not be barred by limitation provided under any law for the time being in force.
(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

The promoter/ respondent has acted in the violation of the provisions of the act hence the complainant is entitled for refund of amount paid by her to the respondent.

The record reveals that the respondent has admitted:

- allotment of Flat No. 102 in the project "Mashobra Hills",
- receipt of substantial amounts from the complainant,
- execution of agreements between the parties; and
- existence of the allottee-promoter relationship.

Thus, the status of the complainant as an allottee and the respondent as promoter is undisputed.

The Hon'ble Supreme Court in **M/s Newtech Promoters & Developers Pvt. Ltd. v. State of U.P. & Others** has held that the provisions of RERA are beneficial in nature and are intended to protect homebuyers against arbitrary conduct of promoters. It is held by the Hon'ble Supreme Court that *"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 under the Act possesses wide powers to examine violations of statutory obligations by promoters and to grant reliefs contemplated under the Act. The Act is intended to provide an effective remedy to allottees and technical objections should not ordinarily frustrate substantive rights.

Similarly, the Hon'ble Supreme Court in **Imperia Structures Ltd. v. Anil Patni** held that remedies under RERA are in addition to and not in derogation of other remedies and that the legislative intent is to provide effective redressal to homebuyers. *It is observed by the Hon'ble Supreme Court that:- "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 objection regarding variation in figures is likewise not fatal. The pleadings clearly disclose the broad composition of the amounts claimed, namely construction payments, furnishing charges, documentation charges and other project-related payments. Any discrepancy in computation is a matter of adjudication and evidence; it does not extinguish the underlying cause of action.

The plea of non-joinder is also devoid of merit. The complainant's specific case is that payments to Bravo Furniture's and Interiors and Rajdeep & Co Hospitality LLP were made at the instance and direction of the respondent as part of the composite transaction relating to the flat. The respondent has not produced any material demonstrating that these entities acted independently of the project or that the complainant voluntarily entered into unrelated transactions. The perusal of records revealed that Sh. Rajdeep Sharma is related to the aforesaid organizations as Managing Director, Partner or Director, which clearly demonstrate that the payment has been received for the respondent in one context or other. The record makes it amply clear that Sh. Rajdeep Sharma is the Director of the respondent company and the names of his organisations are in the name of Rajdeep. Hence, it can be easily inferred that the payments have been made to the respondent company, which are owned by Sh. Rajdeep Sharma. It is trite principle of law that no one can hold the money of others unconditionally for unlimited time. The record suggests that complainant has made payment of money to the respondent, to which she is legally entitled. RERA being a beneficial legislation, procedural technicalities cannot override substantive rights. Accordingly, this Authority holds that the complaint discloses a valid cause of action under Sections 11 and 18 of the RERA Act and is maintainable.

Hence, issue No. I is answered in favour of the complainant.

ISSUE NO. (ii)

Whether the Agreement for Sale dated 23.12.2024 is binding upon the parties and whether the complaint is premature in view of the possession date of 31.12.2027?

This issue constitutes the central defence of the respondent. The respondent contends that the parties executed a fresh Agreement for Sale dated 23.12.2024 whereby possession was extended till 31.12.2027 and, therefore, no delay has occurred. The argument cannot be accepted for several reasons.

Firstly, by the time the subsequent agreement was executed on 23.12.2024, the complainant had already invested a substantial amount in the project and had altered her financial position based upon the original representations made by the respondent.

Secondly, the respondent has not produced any convincing explanation as to why the possession schedule was extended by almost three years.

Thirdly, there is no material demonstrating that the extension was a result of free and informed bargaining between parties having equal negotiating power.

The Hon'ble Supreme Court in **Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan** held that one-sided and unfair contractual clauses imposed by builders upon homebuyers cannot bind the allottee and such clauses are liable to be disregarded where they operate oppressively. The Court observed that purchasers often have no real bargaining power and are compelled to accept standard-form contracts drafted by promoters. It has been observed by the Hon'ble Supreme Court in para 9 of the judgement that *" We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the Respondent – Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest."*

In the present case, the complainant had already paid substantial amounts and had become financially committed to the project. Under such circumstances, the subsequent extension cannot extinguish statutory rights already accrued under the RERA Act. Further, Section 18 of the Act creates a statutory obligation independent of contractual stipulations. The promoter cannot defeat statutory protections merely by obtaining a subsequent agreement extending possession indefinitely. The Hon'ble Supreme Court in Newtech Promoters (supra) emphasized that rights conferred under Section 18 are statutory and cannot be diluted by contractual arrangements.

Moreover, the respondent has failed to establish that construction progress justified such extension or that possession is likely to be delivered within the revised timeline The material on record reveals continuing uncertainty regarding completion of the project. The Authority has perused both the agreements dated 21st July, 2023 and 23rd December, 2024. The perusal of first agreement dated 21.07.2023 shows that this agreement has been signed by both the parties. For first party the complainant has signed the agreement whereas for second party it signed by Mr. Rajdeep Sharma. While perusing the subsequent agreement dated 23rd December, 2024 this Authority observe that this agreement has been signed only by the complainant as first party whereas the place for signing the second party is blank which is showing the name of Mr. Rajdeep Sharma as second party since, the second agreement is not signed by both the parties it cannot be presume that the subsequent agreement is valid. This Authority is of the view that in order for an agreement to be valid it should be proposed by one party and accepted by another, which is possible if it is signed by both the parties. Every place and page of subsequent agreement deed is not signed on behalf of the second party by anyone. In both the agreements the authorized signatory for second party is shown as Mr. Rajdeep Sharma. In both the agreements, M/s Rajdeep and Co. Infrastructure Private Limited is referred as the "Promoter" which are having Sh. Rajdeep Sharma as the authorized signatory. Surprisingly there is one more subsequent agreement dated 23rd December, 2024 which has been annexed with the reply by the respondent, which is signed by both the parties and duly attested. The same copy is also annexed by the complainant with her rejoinder by referring the same to be forged. One can see with naked eyes that in both the agreements annexed by the complainant and respondent the signatures of complainant are different. Hence, there is force in the arguments advanced by the complainant that her signatures are scanned on the subsequent agreement placed on record by the respondent. In this subsequent agreement signature of one Sh. Manu Chawla are appearing for Sh. Rajdeep Sharma as Promoter Authorised Signatory. After perusing the main agreement dated 21st July, 2023, another agreement for Interior Designing and Furnishing dated 25th July, 2023 and subsequent agreement dated 23rd December, 2024, the Authority is of the considered view that agreements dated 25th July, 2023 and 234r December, 2024 have been prepared by the respondent with ulterior motive by exercising his position as dominant party.

The Authority takes note of the submission made by the complainant in the regard to execution of furnishing agreement dated 25.7.23 wherein she says that this agreement was inseparable part of the agreement for sale dated 21st July, 2023. Further, the perusal of this agreement dated 25.7.23 reveals that no new item of furnishings etc. are mentioned therein beyond what contained in schedule D of agreement of sale dated 21.7.23. In fact, the Schedule D is much more comprehensive than the, so called agreement for furnishing dated 25th July, 2023. Accordingly, there was justification and requirement for entering into this agreement. It only gives credence to the submissions made by the complainant in regard to the same being and arrangement assured by the promoter in order to lower the levy of stamp duty by artificially keeping the total sale price in agreement for sale for lower than the actual agreed price. Accordingly, the Authority comes to the conclusion that both agreements dated 21st July, 2023 and 25th July, 2023 have to be read together.

The project is registered with the HP RERA on 04.03.2022 under registration HPRERASHI2022001/P. The Authority perused the project registration certificate HPRERASHI2022001/P having issue date as

04.03.2022 which is valid upto 04.03.2027, which is granted to M/S RAJDEEP AND CO. INFRASTRUCTURE PVT. LTD. THROGUH SH. RAJDEEP SHARMA (MD) AND KRISHAN CHAND ZINTA. The perusal of reply filed to the complaint and the affidavit annexed with it shows that same has been filed by Sh. Rajdeep Sharma being authorized signatory. It is clear on the face of the record that Sh. Rajdeep Sharma the authorized signatory is also the Managing Director of the respondent/ promoter M/S RAJDEEP AND CO. INFRASTRUCTURE PVT. LTD. This aspect cannot lose be ignored that when the project registration is valid upto 04.03.2027 as per HPRERA, the date of possession as 31.12.2027 mentioned in the subsequent agreement is not at all possible because the date of possession is beyond the validity of registration. When the subsequent agreement is not signed by second party this Authority is of the considered view that the initial agreements dated 21st July, 2023 and dated 25th July, 2023 are enforceable and the subsequent agreement seems to have been executed with ulterior motives to defeat the rights created in the original Agreement for sale. The perusal of both the agreements reveals that at serial no. 28 there is reference of NOTICES. In the first agreement the name and address of both the parties is mentioned whereas, in subsequent agreement dated 23.12.24 only the name & address of allottee is shown and there is no place/space for the name & address of the promoter. Both the agreements are also not in accordance with form-L, agreement for sale of the Real Estate Regulatory Authority Himachal Pradesh Shimla prescribed in Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 as the para no. 10 relating to CONVEYANCE OF THE SAID APARTMENT is missing.

Consequently, the Authority is of the considered view that the Agreement dated 23.12.2024 cannot be used as a shield to defeat the complainant's statutory rights under RERA.

Issue No. II is decided against the respondent.

ISSUE NO. (iii)

Whether the respondent made false representations regarding possession and assured returns and thereby violated the provisions of the RERA Act?

The complainant has specifically pleaded that she was induced to invest on the basis of representations regarding timely possession and assurance of returns at the rate of 7% per annum until possession. The respondent has merely denied these assertions.

On the basis of pleadings, no explanation has been furnished by the respondent as to why possession timelines underwent drastic alteration. The respondent has also not produced any evidence demonstrating that the complainant was informed at the inception that date of possession would extend until 2027.

Section 12 of the RERA Act imposes liability upon a promoter for false statements, misleading representations and incorrect information relied upon by an allottee.The facts of the present case demonstrate that substantial investments were obtained from the complainant on representations regarding possession and project completion. The subsequent inability to honour those commitments coupled with unexplained delay constitutes misleading conduct on the part of respondent. Section 11 of The Real Estate (Regulation & Development) Act, 2016 is reproduced as under:

11. **Functions and duties of promoter.**- *(1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed*

project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing, including—

(a) details of the registration granted by the Authority;

(b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;

(c) quarterly up-to-date the list of number of garages booked;

(d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;

(e) quarterly up-to-date status of the project; and

(f) such other information and documents as may be specified by the regulations made by the Authority.

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—

(a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;

(b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

(4) The promoter shall—

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

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same,

under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project): Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage

or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

(5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

The conduct of the respondent in accepting substantial payments while failing to complete the project within the represented period amounts to deficiency and unfair trade practice. Meaning thereby that the promoter has failed to discharge his duties and functions toward the allottee.

Accordingly, the Authority holds that the respondent has violated the spirit and object of Sections 11 and 12 of the RERA Act.

Issue No. III is answered in favour of the complainant.

ISSUE NO. (iv)

Whether the complainant is entitled to refund of the amount paid and, if so, to what extent?

Section 18(1)(a) of the RERA Act provides that where the promoter fails to complete or is unable to give possession in accordance with the terms of the agreement, the allottee is entitled to withdraw from the project and receive refund of the amount paid together with interest.

The provision reads as a beneficial statutory remedy and must receive liberal interpretation.The Hon'ble Supreme Court in Newtech Promoters (supra) held that the allottee's right to seek refund under Section 18 is an unqualified statutory right once circumstances contemplated under the provision are established.

In the present case:

- substantial payments have been admitted,
- possession has not been delivered,
- the project remains incomplete,
- the respondent has failed to justify the delay,
- confidence in timely completion stands worn away.

The Authority is satisfied that the complainant cannot be compelled to wait indefinitely for possession. The respondent has sought to segregate furnishing payments, documentation charges and allied expenditures. However, the evidence on record shows that these payments formed part of the overall transaction induced by the respondent in connection with acquisition of the unit. A promoter cannot avoid liability by routing components of the transaction through related concerns. Accordingly, the complainant is entitled to refund of the entire amount proved to have been paid by her in connection with acquisition, furnishing, documentation and allied project-related obligations.

The amount shall include:

- **Rs.42,99,392/- paid towards construction cost and including documentation charges (Rs, 1,50,000/-),**
- **Rs.33,40,000/- paid towards furnishing/interior works,**
- **Rs, 21,000/- paid as booking amount.**
- **Total Rs.78,10,392/-.**

Issue No. IV is decided in favour of the complainant.

ISSUE NO. (v)

Whether the complainant is entitled to interest, compensation and other consequential reliefs under the RERA Act?

The Authority has come to the conclusion that the complainant is entitled to refund and interest as per Section 18 of the RERD Act, 2016. As per Rule 15 of the Himachal Pradesh RERA Rules, 2017 prescribe the applicable rate of interest linked to SBI highest Marginal Cost of Lending Rate (MCLR) plus two percent. The complainant has been deprived of the use of her money for a considerable period while simultaneously servicing housing loan liabilities. The respondent enjoyed the benefit of the funds without corresponding performance. Therefore, interest must be awarded from the respective dates of deposits until actual realization. Regarding compensation for mental agony, harassment and consequential loss, the respondent is correct to the limited extent that compensation under Sections 11, 12, 14 and 18 is adjudicated by the Adjudicating Officer under Section 71.Accordingly, while refund and statutory interest is being granted by this Authority, liberty shall remain with the complainant to seek separate compensation before the competent Adjudicating Officer.

Issue No. V is partly decided in favour of the complainant.

vii. RELIEF:

In view of the findings recorded on the foregoing issues, the complaint succeeds and is allowed in the following terms:

a. The complaint is hereby allowed.
b. The respondent is directed to refund to the complainant the entire amount received in relation to Flat No.102 in the project "Mashobra Hills", including all project-related payments proved on record, amounting to approximately **Rs.78,10,392/-** (Rupees Seventy Eight Lakhs Ten Thousand Three Hundred Ninety Two Only) along with interest from the date of payments made by the complainant to the respondent at the SBI highest marginal cost of lending rate plus 2 % as prescribed under Rule 15 of the Himachal 29 Pradesh Real Estate (Regulation & Development) Rules, 2017 till the actual date of payment by the promoter. The present highest MCLR of SBI is 8.80 % hence the rate of interest would be 8.80 %+2 % i.e. 10.80%. The refund along with accrued interest shall be paid within 60 days from the date of this order.
c. In case of non-payment, the promoter shall be liable to be proceeded against under Section 40 of the RERD Act 2016 read with Rule 22 of the HP RERD Rules 2017.
d. The complainant shall be at liberty to institute appropriate proceedings before the Adjudicating Officer under Section 71 of the RERA Act for compensation.

(R. D Dhiman)
Chairperson

(Vidur Mehta)
Member