

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Complaint No. HPRERA2025001/C

IN THE MATTER OF:-

Mr. Gaurav Kumar Rai, Son of Sh. Sachidanand Rai, Resident of House no. 218, Old Housing Board Colony, Phase II, Sai Road Baddi, Sitalpur, Distt. Solan (H.P.),173205

..... Complainant

Versus

M/s Omaxe Limited, Shop No.19-B, First Floor, Sohna Road, Gurgaon, Haryana-122103

..... Respondent

**Present:- Dr. Sandeep Sachdeva, Ld. Counsel for complainant
Sh. Shivank Singh Panta, Ld. Counsel for
Respondent/Promoter**

Final date of hearing: 24.03.2026

Date of pronouncement of order: 24.04.2026

Order

Coram: Chairperson and Member

1. FACTS OF THE CASE:-

The Complainant and the Respondent entered into an Agreement for Sale dated 08.12.2021 (Annexure-1) in respect of Flat No. PWD/JACARANDA-C/504, having super/carpet area of 779/439

square feet, situated on the 5th floor in the group housing project known as Omaxe, located at Baddi, District Solan (H.P.), bearing Registration No. RERAHPSOP9170007. The total sale consideration for the said Unit was fixed at Rs. 15,98,500/- (Rupees Fifteen Lakh Ninety Eight Thousand Five Hundred only), excluding GST, which was agreed to be paid in accordance with the payment schedule as stipulated under Schedule C-1 and C-2 of the Agreement for Sale. The Complainant has already paid a sum of Rs. 12,42,800/- (Rupees Twelve Lakh Forty Eight Thousand and Eight Hundred only) in terms of the agreed schedule and remains ready and willing to pay the remaining amount, the statement of account annexed as Annexure-2. It is pertinent to mention that the parties had also entered into a Tripartite Agreement with IDBI Bank for the purpose of availing loan facility; however, the Complainant is not in possession of the said Tripartite Agreement and requested that the Respondent be directed to produce the same. The Complainant had opted for a Construction Linked Payment Plan as provided under Schedule C-2 of the Agreement, whereby payments were to be made in proportion to the progress of construction. The Complainant has duly complied with the said payment plan, and no further demand has been raised by the Respondent due to the lack of progress in construction. It is stated that as per Clause 7.1 of the Agreement, the Respondent was to hand over possession of the Unit on or before 31.07.2022, except in cases of delay caused by Force Majeure events such as war, flood, drought, fire, cyclone, earthquake, or any other natural calamity affecting the development of the project. It is further submitted that more than two and a half years period has elapsed since the stipulated date of possession, and despite that the Respondent has failed to hand over

possession of the Unit and has not provided any definite timeline for the same. It is further submitted that the Unit is still under construction. The Complainant has, on several occasions, approached the Respondent verbally requesting completion of construction and delivery of possession; however, no effective steps have been taken by the Respondent. It is further submitted that even after nearly three years from the date of execution of Agreement, there has been little to no progress in the project, and the same continues to remain in an unfinished condition, thereby giving an impression that the Respondent has collected monies from the Complainant without ensuring the timely completion of the project. That time is the essence of the Agreement, and while the Complainant has duly fulfilled all his obligations by making timely payments, the Respondent has failed to discharge its contractual obligations, thereby causing undue harassment and misleading the Complainant. The Complainant does not intend to withdraw from the project and is, therefore, covered under the proviso to Clause 9.2(ii) of the Agreement, which provides that in case the allottee does not withdraw from the project, the promoter shall be liable to pay interest at the prescribed rate for every month of delay until handing over of possession, and such interest shall be paid within forty days of it becoming due. The inordinate delay in completion of the project and delivery of possession on the part of the Respondent has placed the Complainant in a financial and mental position. Such acts and omissions on the part of the Respondent constitute a clear breach of contractual and statutory obligations, thereby entitling the Complainant to interest for delay in possession under Section 18(1) of the Real Estate (Regulation and Development) Act, 2016, along with the relief of being put into

possession of the Unit. In view of the facts and circumstances of the present case, it is most respectfully prayed that the Authority may be pleased to hold the Respondent liable for the delay in completion of the project and delivery of possession of the Unit, and consequently award interest for the period of delay in favour of the Complainant in accordance with the applicable rules. It is further prayed that the Respondent be directed to complete the construction of the Unit and hand over possession of the same to the Complainant. It is also prayed that the Respondent be directed to put the Complainant in peaceful and lawful possession of the Unit.

2. REPLY TO THE COMPLAINT :-

The respondent by filing the detailed reply has submitted that the Respondent Company is a duly incorporated public limited company under the provisions of the Companies Act, 1956, having its registered office at Shop No. 19-B, First Floor, Omaxe Celebration Mall, Sohna Road, Gurgaon (Haryana), corporate office at 7, LSC, Kalkaji, New Delhi, and zonal office at 1st Floor, India Trade Tower, Baddi-Kurali Road, Mullanpur, New Chandigarh, District SAS Nagar, Punjab, and is the lawful owner of land admeasuring 15,742.25 square meters situated at Village Billanwali, Tehsil Baddi, District Solan (H.P.). The Respondent had obtained all requisite approvals, permissions, and sanctions from the competent authorities, including the Chief Town Planner, Himachal Pradesh, and the project namely "Omaxe" was duly registered with the Himachal Pradesh Real Estate Regulatory Authority on 21.11.2017 bearing Registration No. RERAHPSOP09170007. The Respondent has filed its reply to the complaint under Section 31 of the Real Estate (Regulation and

Development) Act, 2016 through its Authorized Representative, who is duly authorized and conversant with the facts of the case. It is stated that the Complainant had applied for allotment of a residential unit vide application dated 28.02.2021 and was allotted Flat No. PWD/JACARANDA-C/504, having super/carpet area of 779/439 sq. ft. on the 5th floor in Tower/Block JACARANDA-C, for a total sale consideration of Rs. 15,98,500/-, and the Agreement for sale dated 08.12.2021 was executed between the parties governing the terms and conditions, including the payment schedule. The Complainant, at the time of filling up the application form, had issued a cheque bearing No. 584262 dated 21.02.2021 for a sum of Rs. 1,00,000/- drawn on Corporation Bank (Union Bank of India) in favour of the respondent towards booking money for allotment of the residential flat, and a copy of the said cheque has been annexed as Annexure R-2. It is further submitted that the Respondent Company had shared the complete down payment plan with the Complainant, indicating the actual sale price of the allotted flat along with other charges under various heads, and the said payment schedule has been annexed as Annexure R-3. It is further submitted that the Respondent had raised a demand vide internal communication dated 04.03.2021 requiring the Complainant to make payment of the outstanding and admissible dues amounting to Rs. 61,903/- out of the total amount payable at the time of booking of the flat, in terms of the agreed payment schedule under the Agreement for sale, and the said communication also recorded that a sum of Rs. 94,059.41/- had already been paid by the Complainant and duly acknowledged by the Respondent Company. The receipt dated 28.02.2021 along with the demand letter dated 04.03.2021 has been annexed as Annexure R-4 (colly). Thereafter, in continuation of

the said demand, a reminder dated 03.04.2021 was issued to the Complainant informing him of an outstanding amount of Rs. 62,582/- towards the booking amount, followed by another communication dated 03.05.2021 whereby it was intimated that only Rs. 94,059.41/- had been received and a sum of Rs. 63,122.44/- remained outstanding as on that date in terms of the agreed payment plan. It is further submitted that after repeated communications, the Complainant paid the full first installment of Rs. 1,55,350/- as required at the time of booking of the said flat, which was duly received and acknowledged by the Respondent. However, as per the agreed payment schedule, the next installment of Rs. 1,15,807/- became due at the stage of commencement of construction, which remained unpaid, and accordingly a reminder dated 03.07.2021 was issued to the Complainant calling upon him to clear the outstanding amount, followed by another reminder dated 04.08.2021 reiterating the said demand. Upon receipt of the said amount, a receipt dated 19.08.2021 was issued in favour of the Complainant acknowledging payment in accordance with the construction-linked payment plan. It is further submitted that several reminders dated 03.09.2021, 05.10.2021, and 02.11.2021 were issued to the Complainant requesting adherence to the payment schedule; however, the Complainant failed to comply, thereby constituting a breach of contract. It is further submitted that the Complainant made a part payment on 11.11.2021, which was duly acknowledged by issuance of receipt dated 16.11.2021 for amount of Rs. 25,807/-. subsequently, a demand letter dated 04.09.2022 was issued to the Complainant for payment due at the stage of completion of plinth level in accordance with the construction-linked payment plan, followed by reminders dated

04.10.2022 and 04.11.2022 calling upon the Complainant to clear the outstanding dues, and further reminder dated 08.12.2022 was also issued in this regard. A further formal reminder dated 05.01.2023 was issued clearly informing the Complainant of the overdue amount and calling upon him to make immediate payment to avoid consequences including levy of interest and delay in possession. It is further submitted that the Respondent Company, in good faith, facilitated the sanction and disbursement of a home loan in favour of the Complainant and issued a No Objection Certificate to IDBI Bank Ltd. vide communication dated 18.01.2023, thereby enabling the Complainant to avail financial assistance for the purchase of the unit, and further called upon the Complainant to utilize the loan amount towards discharge of outstanding liabilities. It is submitted that a sum of Rs. 1,55,350/- was received from the Complainant on 19.01.2023 towards part payment, which was duly acknowledged by receipt dated 25.01.2023. Thereafter, a formal demand letter dated 08.04.2023 was issued to the Complainant demanding payment of Rs. 4,70,710.02/- towards outstanding dues along with detailed breakup and applicable interest, followed by reminders dated 06.05.2023 and 06.06.2023 calling upon the Complainant to clear the said dues. Despite repeated and documented communications, the Complainant failed to discharge his outstanding liabilities, compelling the Respondent to issue a final communication dated 27.06.2023 granting last opportunity to clear the dues and cautioning that failure to do so would result in consequences including cancellation of allotment. Thereafter, further reminders dated 13.07.2023, 04.08.2023, 15.09.2023, 19.12.2023, and 04.01.2024 were issued to provide additional opportunities to the Complainant to comply with his

obligations; however, the Complainant continued to remain in default. It is reiterated that the Respondent has not received the entire sale consideration as per the agreed payment schedule and the Complainant has failed to make timely payments despite repeated reminders, thereby committing material breach of the Agreement, which disentitles him from seeking relief. It is further submitted that the Complainant had to be repeatedly reminded through various communications to clear the outstanding dues and had initially shown reluctance in making payments. It is further submitted that the Complainant himself has admitted that out of the total sale consideration of Rs. 15,98,500/-, he has paid only Rs. 12,42,800/-, thereby clearly acknowledging default, and without fulfilling his contractual obligations, the Complainant cannot allege non-performance on the part of the Respondent or claim reliefs such as possession, compensation, or interest. It is further submitted that the Complainant has failed to abide by the terms and conditions of the Agreement, particularly with respect to timely payment of installments, and despite repeated reminders and demand letters, has not cleared the outstanding dues, thereby committing breach of contractual as well as statutory obligations under Section 19(6) and 19(7) of the Real Estate (Regulation and Development) Act, 2016, which mandate timely payment and liability to pay interest on delayed payments. In view of the aforesaid facts and circumstances, it is respectfully prayed that the present complaint be dismissed with exemplary costs along with interest payable by the Complainant for default in payment, and that the Complainant be directed to bear the litigation expenses including counsel fees incurred by the Respondent, along with such other or further reliefs as this Hon'ble Authority may

deem fit and proper in the facts and circumstances of the present case.

3. REJOINDER TO THE REPLY :-

The present rejoinder has been filed by the Complainant to clarify and place on record the true and correct position with respect to the contentions raised by the Respondent in its reply to the complaint, and for the convenience of this Ld. Authority, the Complainant has confined the submissions to the relevant aspects without repeating facts already on record. It is submitted that, as admitted by the Respondent, the Complainant has paid an amount of Rs. 12,42,800/- (Rupees Twelve Lakh Forty-Eight Thousand and Eight Hundred only) in accordance with the agreed payment schedule and remains ready and willing to pay the remaining due amount, as reflected in the statement of account annexed with the complaint and rejoinder. It is submitted that the Respondent has failed to address the core issue involved in the present proceedings, namely, the delay in completion of construction and delivery of possession of the Unit along with the liability to pay interest. As per Clause 7.1 of the Agreement dated 08.12.2021, the Respondent was obligated to hand over possession of the Unit on or before 31.07.2022; however, even after more than three and a half years from the stipulated date, the Unit is still under construction and possession has not been delivered, nor has any explanation been furnished for such delay. The said delay is inordinate, unexplained, and in clear violation of the Agreement and falls within the ambit of Section 18 of the Real Estate (Regulation and Development) Act, 2016. It is further submitted that similar instances of delay by the Respondent have been adjudicated by this Ld. Authority in other matters, wherein relief has been granted to the

allottees. The Complainant has relied upon the judgment of the Hon'ble Supreme Court in Newtech Promoter and Developers Pvt. Ltd. vs. State of U.P. & Ors. (Civil Appeal Nos. 6745-6749 of 2021), wherein it has been held that the right of an allottee to seek refund or interest for delayed possession is an unqualified statutory right and is not dependent upon contingencies or contractual stipulations, and that where the allottee does not withdraw from the project, he is entitled to interest for every month of delay till handing over of possession. That the contention of the Respondent that the Complainant has committed breach of contract on account of delay in payment is erroneous and deserves to be rejected. It is submitted that the Complainant had opted for a Construction Linked Payment Plan, whereby payments were to be made in accordance with the progress of construction, and the Complainant has duly complied with the payment demands raised by the Respondent corresponding to the stages of construction. It is further submitted that the Complainant had obtained a home loan sanctioned on 03.09.2022 and the Respondent itself issued a No Objection Certificate to IDBI Bank Ltd. on 18.01.2023. The loan disbursements were made by the bank strictly in accordance with the progress of construction, which was verified through inspection, and therefore any delay in disbursement cannot be attributed to the Complainant but is directly linked to the lack of progress in construction by the Respondent. That from the sequence of demand letters and payments, it is evident that the Respondent itself was delayed in achieving construction milestones. the demand for completion of plinth level was raised on 04.09.2022, i.e., after the stipulated date of possession (31.07.2022), and subsequent demands for further stages were also raised belatedly. It is

further submitted that the last demand dated 04.01.2024 pertained to casting of the fifth-floor slab, which clearly demonstrates that the project is still far from completion. It is submitted that the Complainant has cleared all dues raised up to that stage and no further demand has been raised thereafter due to lack of progress in construction, and the Complainant continues to remain ready and willing to make further payments as per the Agreement. It is further submitted that even if there was any delay in payment on part of the Complainant, the Respondent had the remedy to charge interest under Section 19 of the Act, and such delay does not disentitle the Complainant from seeking possession and interest for delay in possession, particularly when the Agreement between the parties continues to subsist and the Complainant has paid a substantial portion of the sale consideration. It is also submitted that no independent proceedings have been initiated by the Respondent alleging breach by the Complainant. It is further submitted that the Respondent has made contradictory statements in its reply, particularly with regard to payment of booking amount, which stands admitted in its own pleadings, and therefore such contentions are false and misleading. It is reiterated that the Complainant has fulfilled his obligations by making payments in accordance with the construction-linked plan and remains ready and willing to pay the balance amount. It is further brought to the notice of this Ld. Authority that during the pendency of the present proceedings, the Respondent has allegedly stopped or slowed down the construction of the Unit, thereby prejudicing the rights and interests of the Complainant. Despite this, the Respondent has not disputed the entitlement of the Complainant to possession of the Unit. The

Complainant is ready and willing to pay the remaining amount along with any applicable interest, subject to completion of construction and delivery of possession. In view of the aforesaid facts and circumstances, it is submitted that the Complainant is entitled to delivery of possession of the Unit along with interest for delay in possession and all consequential reliefs. The contentions raised by the Respondent in its prayer are liable to be rejected. It is further submitted that the Complainant remains willing to explore the possibility of an amicable settlement with the Respondent, without prejudice to his rights and contentions.

4. ARGUMENTS ON BEHALF OF THE COMPLAINANT

It is submitted that the present written arguments shall be read as part and parcel of the Complaint and Rejoinder already filed by the Complainant in the present proceedings. It is submitted that the Complainant and the Respondent had entered into an Agreement for Sale dated 08.12.2021 (Annexure-1 of the Complaint) in respect of Flat No. PWD/JACARANDA-C/504 in the group housing project known as Omaxe, situated at Baddi, District Solan (H.P.), bearing Registration No. RERAHPSOP9170007. It is further submitted that it is an admitted position that the Complainant has paid an amount of Rs. 12,42,800/- (Rupees Twelve Lakh Forty-Eight Thousand and Eight Hundred only) in accordance with the payment schedule and remains ready and willing to pay the remaining due amount and take possession of the Unit, as reflected in the statement of payment annexed as Annexure-A. It is submitted that the Respondent has failed to address the core issue involved in the present proceedings, namely, the delay in completion of construction and delivery of

possession of the Unit along with liability to pay interest. As per Clause 7.1 of the Agreement dated 08.12.2021, the Respondent was obligated to hand over possession of the Unit on or before 31.07.2022; however, even after more than three and a half years from the stipulated date, the Unit is still under construction and possession has not been delivered, nor has any explanation been furnished for such delay. The delay is inordinate, unexplained, and in clear violation of the Agreement and falls squarely within the ambit of Section 18 of the Real Estate (Regulation and Development) Act, 2016. It is further submitted that similar instances of delay by the Respondent have been adjudicated by this Ld. Authority in other cases wherein relief has been granted to allottees. The Hon'ble Supreme Court in *Newtech Promoter and Developers Pvt. Ltd. vs. State of U.P. & Ors.* (Civil Appeal Nos. 6745-6749 of 2021) has categorically held that the right of an allottee to seek refund or interest for delayed possession is an unqualified statutory right, not dependent upon contingencies or contractual stipulations, and that where the allottee does not intend to withdraw from the project, he is entitled to interest for every month of delay till handing over of possession. It is further submitted that the Complainant had opted for a Construction Linked Payment Plan under the Agreement, whereby payments were to be made in accordance with the progress of construction, and the Complainant has duly made payments as demanded by the Respondent up to the respective stages of construction. It is submitted that the Complainant had availed a home loan sanctioned on 03.09.2022 and the Respondent issued a No Objection Certificate to IDBI Bank Ltd. on 18.01.2023. The disbursement of loan amounts was made by the bank in accordance

with the progress of construction, which was verified through inspection, and therefore any delay in disbursement cannot be attributed to the Complainant but is directly linked to the lack of progress in construction by the Respondent. The Complainant has also cleared all payments raised prior to the loan agreement along with applicable interest, if any, and remains ready and willing to pay any further due amount. It is submitted that even if there was any delay in payment on part of the Complainant, the Respondent had the remedy to levy interest under Section 19 of the Act, and such delay does not disentitle the Complainant from seeking possession and interest for delay in possession, particularly when the Agreement is still subsisting and the Complainant has substantially complied with his obligations. It is further submitted that no independent proceedings have been initiated by the Respondent alleging breach on the part of the Complainant. That a perusal of the demand letters reveals that the Respondent itself was delayed in achieving construction milestones. The demand for completion of plinth level was raised on 04.09.2022, i.e., after the stipulated date of possession (31.07.2022), and subsequent demands were also raised belatedly. It is further submitted that the last demand dated 04.01.2024 pertained to casting of the fifth-floor slab, which clearly indicates that the project is far from completion. It is submitted that the Complainant has cleared all dues raised up to that stage and no further demand has been raised thereafter due to lack of progress in construction, and the Complainant continues to remain ready and willing to make further payments as per the Agreement. It is further submitted that the Respondent has made contradictory statements regarding payment of the booking amount, as in one part of its pleadings it

denies receipt of the same, whereas in another part it admits that the booking amount has been paid by the Complainant. It is submitted that the Complainant has in fact paid the entire booking amount along with all statutory dues, and such contradictory stand of the Respondent deserves to be viewed seriously. It is further submitted that the condition sought to be imposed by the Respondent requiring the Complainant to enter into a separate maintenance agreement has no basis in the Agreement dated 08.12.2021, and there is no clause making delivery of possession or payment of interest conditional upon execution of such separate agreement. The right of the Complainant to seek possession and interest for delay is a statutory right under the Act and cannot be made subject to any extraneous condition. The Complainant reserves the right not to enter into any such agreement which may prejudice his rights and submits that refusal to sign such agreement cannot be construed as non-compliance with the Agreement. It is also brought to the notice of this Ld. Authority that during the pendency of the present proceedings, the Respondent has allegedly stopped construction of the Unit, thereby prejudicing the interests of the Complainant. It is submitted that the Respondent has not disputed the entitlement of the Complainant to possession of the Unit, and the Complainant is ready and willing to pay the remaining amount along with applicable interest, if any, upon completion of construction. In view of the aforesaid facts and circumstances, the submissions and pleadings of the Respondent are liable to be rejected, and the Complainant is entitled to delivery of possession of the Unit along with interest for delay in possession and all consequential reliefs as sought in the Complaint.

5. ARGUMENTS ON BEHALF OF THE RESPONDENT

The Complainant had applied for allotment of a residential apartment in the project "Omaxe" vide application No. PWD/1207 dated 28.02.2021 and was subsequently allotted Flat No. PWD/JACARANDA-C/504, having super/carpet area of 779/439 sq. ft., situated on the 5th floor in Tower/Block JACARANDA-C, for a total sale consideration of Rs. 15,98,500/- (Rupees Fifteen Lakhs Ninety Eight Thousand and Five Hundred only), and an Agreement for sale dated 08.12.2021 was executed between the parties outlining the terms and conditions, including the agreed payment schedule. It is further submitted that the Complainant initially issued a cheque bearing No. 584262 dated 21.02.2021 for a sum of Rs. 1,00,000/- drawn on Corporation Bank (Union Bank of India) towards booking of the said flat, and thereafter the Respondent shared the complete down payment plan with the Complainant under the Construction Linked Payment Plan opted by him. That the Respondent raised a demand vide communication dated 04.03.2021 requiring the Complainant to pay the balance booking amount of Rs. 61,903/- in accordance with the agreed payment schedule, followed by reminder letters dated 03.04.2021 and 03.05.2021 calling upon the Complainant to clear the outstanding dues. It is submitted that after due deliberations, the Complainant paid the first installment of Rs. 1,55,350/-; however, the next installment of Rs. 1,15,807/- payable at the stage of commencement of construction remained unpaid, which led to issuance of further reminders dated 03.07.2021 and 04.08.2021, and upon receipt of the said amount, an acknowledgment receipt dated 19.08.2021 was issued. That thereafter, several reminders dated 03.09.2021, 05.10.2021, and 02.11.2021 were issued to ensure

compliance with the payment schedule, and the Complainant made a further payment on 11.11.2021, which was duly acknowledged by receipt dated 16.11.2021. Subsequently, a demand letter dated 04.09.2022 was issued for payment due at the stage of completion of plinth level, followed by reminders dated 04.10.2022, 04.11.2022, and 08.12.2022 calling upon the Complainant to clear the outstanding dues, and a further reminder dated 05.01.2023 was also issued for payment of overdue installments. That the Respondent extended cooperation in facilitating the sanction and disbursal of a home loan in favour of the Complainant vide communication dated 18.01.2023 and called upon the Complainant to utilize the loan amount towards discharge of outstanding liabilities. It is submitted that a sum of Rs. 1,55,350/- was received from the Complainant on 19.01.2023 towards part payment, and thereafter a demand letter dated 08.04.2023 was issued demanding Rs. 4,70,710.02/- as outstanding dues, followed by reminders dated 06.05.2023 and 06.06.2023 requiring payment of the said amount. That despite repeated communications and reminders, the Complainant allegedly failed to clear the outstanding dues, compelling the Respondent to issue a final communication dated 27.06.2023 calling upon the Complainant to discharge the pending liabilities failing which cancellation of allotment could be effected. Thereafter, further reminders dated 13.07.2023, 04.08.2023, 15.09.2023, 19.12.2023, and 04.01.2024 were issued to provide additional opportunities to the Complainant to comply with his financial obligations. It is submitted that as per the agreed payment schedule, the Respondent is yet to receive the full sale consideration of the Unit, and the Complainant has failed to make timely payments despite repeated reminders, which constitutes a material breach of the

Agreement for sale. It is further submitted that the Complainant himself has admitted having paid only Rs. 12,42,800/- out of the total consideration of Rs. 15,98,500/-, thereby acknowledging his default, and such non-compliance disentitles him from seeking relief before this Hon'ble Authority. That the Complainant has further failed to comply with the statutory obligations prescribed under Section 19 of the Real Estate (Regulation and Development) Act, 2016, particularly Sections 19(6) and 19(7), which mandate timely payment of dues and liability to pay interest on delayed payments. It is submitted that the Complainant has not paid the agreed installments within the stipulated time and has remained in continuous default despite multiple notices, thereby reflecting willful non-compliance and breach of contractual obligations. That in view of the provisions of Section 2(za)(i) of the Act, the rate of interest chargeable from the allottee in case of default is equal to the rate of interest payable by the promoter, and therefore the Complainant is liable to pay interest on delayed payments. It is further submitted that the Complainant has not adhered to the terms of the Agreement and has shown inconsistencies in discharging his financial obligations, thereby violating the agreed payment plan. That the Complainant has committed persistent default in payment of installments and has failed to pay the entire sale consideration in terms of the Agreement, thereby attracting liability under Section 19(6) and 19(7) of the Act. It is submitted that time is the essence of the Agreement, and in case of delay in payment, the Respondent is entitled to charge interest in accordance with law. That the Respondent has expressed its willingness to hand over possession of the Unit to the Complainant, subject to clearance of all outstanding dues along with applicable interest and compliance with contractual

obligations, including execution of a maintenance agreement. It is further submitted that the Respondent is presently not in a position to execute the conveyance deed in favour of the Complainant on account of non-payment of dues and also in view of the doctrine of lis pendens, as the subject matter is involved in pending proceedings. In view of the aforesaid facts and circumstances, the Respondent has prayed that the present complaint be dismissed with exemplary costs along with interest payable by the Complainant for default in payment, and further prayed that the Complainant be directed to bear the costs of litigation, including counsel fees, along with such other or further reliefs as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the case.

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

- (i) Whether the Respondent has failed to hand over possession of the Unit within the stipulated time as per the Agreement for Sale dated 08.12.2021, and whether such delay is unjustified and attributable to the Respondent?
- (ii) Whether the Complainant is entitled to delivery of possession of the Unit along with interest for delay in possession under Section 18(1) of the Real Estate (Regulation and Development) Act, 2016?
- (iii) Other Issues and directions including imposition of Penalty?

7. DISCUSSION AND FINDINGS ON EACH ISSUE: -

- (i) **Whether the Respondent has failed to hand over possession of the Unit within the stipulated time as per the Agreement**

for Sale dated 08.12.2021, and whether such delay is unjustified and attributable to the Respondent?

Upon careful consideration of the pleadings, documents placed on record, and submissions advanced by both parties, this Authority proceeds to decide the present issue as under:

It is an admitted and undisputed position on record that the Complainant and the Respondent entered into an Agreement for Sale dated 08.12.2021 in respect of Unit/Flat No. PWD/JACARANDA-C/504 in the project in question. As per Clause 7.1 of the said Agreement, the Respondent/Promoter had to hand over possession of the said Unit to the Complainant on 31.07.2022, subject only to exceptions in the nature of Force Majeure events. Further, under Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, it is the statutory obligation of the promoter to be responsible for all obligations, responsibilities and functions under the provisions of the Act as per the Agreement for Sale, including the duty to complete the project and hand over possession of the unit to the allottee within the stipulated time.

From the material placed on record, it stands established that the said stipulated date of possession has long expired. Even as on the date of filing of the present complaint and adjudication of the complaint, the possession of the Unit has not been handed over to the Complainant. The record further reflects that the Unit is still under construction and no definite timeline for completion has been provided by the Respondent. The Complainant has specifically pleaded that more than two and a half to three years have elapsed since the due date of possession and that there has been no progress in construction. This

assertion finds support from the sequence of demand letters placed on record, wherein even the installment at stage of plinth level was demanded only on 04.09.2022, i.e., after the contractual date of possession had already lapsed. Further, the last demand dated 04.01.2024 pertains to casting of the fifth-floor slab, clearly demonstrating that the project is far from completion.

The defence taken by the Respondent is primarily that there was delay on the part of the Complainant in making payments as per the agreed schedule. However, it is evident from the record that the Complainant had opted for a Construction Linked Payment Plan, under which payments were to be made in proportion to the progress of construction. The Complainant has already paid a substantial amount of Rs. 12,42,800/- out of the total sale consideration of Rs. 15,98,500/- and has consistently expressed readiness and willingness to pay the remaining amount. It is pertinent to note that under the construction-linked payment plan, payments are to be made according to the progress of construction. The record clearly indicates that there was delay in achieving such milestones on the part of respondent, as demands were raised belatedly and even after the stipulated possession date. Therefore, any delay in payment cannot be seen separately and is directly linked to the delay in construction caused by the Respondent. Further, the Respondent has not placed on record any material to demonstrate that the delay in construction was on account of any Force Majeure event as contemplated under Clause 7.1 of the Agreement. In the absence of any such justification, the delay remains unexplained and

unjustified. It is also pertinent to note that despite repeated verbally communications and requests by the Complainant for completion of construction and delivery of possession, the Respondent has failed to take effective steps or provide any firm timeline, thereby causing continued uncertainty and hardship to the Complainant.

In view of the aforesaid discussion, this Authority is of the considered opinion that:

The Respondent has failed to hand over possession of Unit No. PWD/JACARANDA-C/504 within the stipulated time as per the Agreement for Sale dated 08.12.2021 and in violation of its statutory obligation under Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. Further, the delay is substantial, inordinate, and continues even as on date. Further, the Respondent has failed to justify such delay on any legally sustainable ground, including Force Majeure and the delay is clearly attributable to the Respondent and not to the Complainant. Accordingly, Issue No. 1 is decided in favour of the Complainant and against the Respondent.

(ii) Whether the Complainant is entitled to delivery of possession of the Unit along with interest for delay in possession under Section 18(1) of the Real Estate (Regulation and Development) Act, 2016?

This Authority has already, while deciding Issue No. 1, conclusively held that the Respondent has failed to hand over possession of Unit No. PWD/JACARANDA-C/504 within the stipulated time i.e. 31.07.2022 as per the Agreement for Sale

dated 08.12.2021, and that such delay is inordinate, unjustified, and solely attributable to the Respondent.

In view of the aforesaid finding, the entitlement of the Complainant is required to be examined in light of the statutory framework governing the rights of allottees, particularly under Section 18(1) of the Real Estate (Regulation and Development) Act, 2016. The said provision unequivocally provides that where a promoter fails to complete or is unable to give possession of an apartment in accordance with the terms of the Agreement for Sale, the allottee shall be entitled to claim interest for every month of delay till the handing over of possession, in cases where the allottee does not intend to withdraw from the project.

Section 18 (1) of the RERD Act, reproduced as under:-

“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.”

In the present case, it is an admitted and undisputed position on record that the Complainant does not intend to withdraw

from the project and has consistently expressed his readiness and willingness to continue with the allotment and take possession of the Unit. This position is also in consonance with Clause 9.2(ii) of the Agreement, which specifically provides that in such circumstances, the promoter shall be liable to pay interest for every month of delay until handing over of possession. It is further evident from the record that the Complainant has already paid a substantial portion of the total sale consideration, i.e., Rs. 12,42,800/- out of Rs. 15,98,500/-, and has consistently remained ready and willing to pay the balance amount in accordance with the terms of the Agreement. The payments made by the Complainant are also in conformity with the Construction Linked Payment Plan, wherein payments are required to be made in accordance with the progress of construction.

The defence raised by the Respondent that the Complainant is not entitled to relief on account of alleged delay in payment does not merit acceptance. Even if it is assumed that there was any delay in payment on part of the Complainant, the Respondent had an appropriate remedy under Section 19(7) of the Act to levy interest on such delayed payments. However, such alleged delay cannot be construed to defeat the statutory right of the Complainant to seek possession along with interest for delay, particularly when the Agreement between the parties continues to subsist and the delay in construction has already been held to be attributable to the Respondent. It is also pertinent to note that the Respondent has failed to place on record any material to demonstrate that the delay in handing over possession was

occasioned due to any Force Majeure circumstances or reasons beyond its control, as contemplated under the Agreement. In the absence of any such justification, the Respondent cannot evade its statutory obligations and liability under Section 18 of the Act. Further, the Hon'ble Supreme Court in **Newtech Promoter and Developers Pvt. Ltd. vs. State of U.P. & Ors. (Civil Appeal Nos. 6745-6749 of 2021)** has categorically held that the right of an allottee to seek refund or interest for delayed possession is an unqualified and absolute statutory right. The said judgment further clarifies that where the allottee does not withdraw from the project, he is entitled to interest for every month of delay till handing over of possession. The Hon'ble Supreme Court in para 22 to 25 of the judgment are reproduced as under:

“22. If we take a conjoint reading of subsections (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 hand over possession of the apartment to the Complainant in accordance with the terms of the Agreement for Sale. Thus, once the delay in handing over possession is established, as in the present case, the entitlement of the allottee to claim interest becomes automatic and enforceable in law. In view of the aforesaid facts, statutory provisions, and settled legal position, this Authority is of the considered opinion that:

- The Complainant, having chosen not to withdraw from the project, is entitled to delivery of possession of Unit No. PWD/JACARANDA-C/504;
- The Complainant is further entitled to interest for every month of delay,
- Such entitlement flows both from the statutory mandate under Section 18(1) of the Act as well as the contractual obligation under Clause 9.2(ii) of the Agreement; and

- The Respondent is under a statutory as well as contractual obligation to complete the construction of the Unit, hand over possession to the Complainant, and pay interest for the period of delay.

Accordingly, Issue No. 2 is decided in favour of the Complainant and against the Respondent.

(iii) Other Issues and directions including imposition of Penalty?

Upon consideration of the pleadings, material on record, and the findings already recorded on Issue Nos. 1 and 2, it is clearly established that the Respondent has failed to complete the construction and hand over possession of Unit No. PWD/JACARANDA-C/504 within the stipulated time as per the Agreement for Sale dated 08.12.2021. The delay is inordinate, remains unexplained, and is solely attributable to the Respondent. In these circumstances, it is necessary to examine whether the conduct of the Respondent also attracts further consequences under the provisions of the Real Estate (Regulation and Development) Act, 2016, particularly with regard to imposition of penalty and issuance of appropriate directions. As per Section 11(4)(a) of the Act, the promoter is under a statutory obligation to perform its duties and responsibilities in accordance with the Act, the rules and regulations made thereunder, and the Agreement for Sale. The failure of the Respondent to adhere to the agreed timeline, along with continued delay even after more than three years from the committed date of possession, amounts to a clear violation of these obligations.

It is further observed from the record that the registration of the project expired on 20.10.2020. Thereafter, the promoter applied for extension in offline mode, which was granted for one year vide letter dated 03.08.2021. Subsequently, the promoter again applied for extension, which was granted for a further period of three years through online mode. It is noted that the extended registration expired on 21.10.2024. Thereafter, the application for further extension was returned to the promoter with observations vide communication dated 19.05.2025. The matter is presently under consideration before the TCP Wing of this Authority.

The above facts show a continued lack of compliance on the part of the Respondent, which further strengthens the findings regarding delay in handing over possession. It is further noted that the Complainant has not sought refund and is willing to continue with the project and take possession of the Unit. The main relief sought is possession along with interest for delay, which has already been dealt with under Issue No. 2. However, the conduct of the Respondent/Promoter reflects a lack of seriousness in fulfilling its contractual and statutory obligations. Therefore, this Authority is of the view that the Respondent/Promoter is liable to be penalised under Section 61 of the Act for failure to comply with its obligations under Section 11 of the Act.

Accordingly, the TCP Wing of this Authority is directed to follow up the matter pertaining to the extension of registration of the project in question with due diligence and to take appropriate

necessary action strictly in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules framed thereunder.

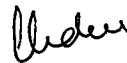
8. RELIEF: Keeping in view the above findings, this Authority, in exercise of power vested in it, under various provisions of the Act, Rules and Regulations made thereunder, issues the following orders/directions:

- a. The Complaint is hereby allowed.
- b. The Respondent is directed to pay interest for delayed possession to the Complainant at the State Bank of India highest Marginal Cost of Lending Rate (MCLR) plus 2%, as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017. The present highest MCLR of SBI is 8.80%; hence, the applicable rate of interest shall be 8.80% + 2%, i.e., 10.80% per annum on the amount paid by the Complainant, i.e., Rs. 12,42,800/-, for every month of delay from the due date of possession i.e., 31.07.2022 till the date when a valid offer of possession is made.
- c. That considering all facts of the case the respondent is held liable under Section 61 of the Act to a penalty of Rs. 3 Lakhs for contravention of the provision of the Section 11(4)(a) of the RERD Act.
- d. That the penalty imposed shall be deposited in the bank account of this Authority, operative in the name of "Himachal Pradesh Real Estate Regulatory Authority Fund" bearing account no."39624498226", in State Bank of India, HP Secretariat Branch, Shimla, having IFSC Code SBIN0050204, within a period of 60 days from the passing of this order.

- 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)**