

**REAL ESTATE REGULATORY AUTHORITY  
HIMACHAL PRADESH**

**Complaint no. HPRERA2024020/C**

**In the matter of:-**

- 1 Mr. Gaurav Sharma son of Satyapal Sharma, resident of B-19, Adarsh Apartment, Plot no.-37, Sector-9, Rohini New Delhi-110085
- 2 Mr. Saurav Sharma son of Satyapal Sharma, resident of B-19, Adarsh Apartment, Plot no.-37, Sector-9, Rohini, New Delhi-110085  
..... Complainant(s)

**Versus**

M/S Rajdeep and Company Infrastructure Private Limited registered office at SCO 12, First Floor, Hollywood Plaza, VIP Road, Zirakpur, Chandigarh, Chandigarh, 140603

..... Respondent

**Present:-**

Sh. Gaurav Sharma complainant  
Sh. Ravi Tanta and Sh. Shakti Bhardwaj Ld. Counsels for the respondent/promoter M/s Rajdeep and co. Infrastructure Pvt. Ltd.

**Date of hearing:** 21.07.2025

**Date of Pronouncement of Order:** 18.08.2025

**Interim Order**

**Coram: Chairperson and Members**

1. An application has been filed by the respondent stating that there are serious disputed questions of fact and law which cannot be adjudicated summarily without affording the parties an opportunity to lead proper evidence. It was further submitted that determination of the respective rights and obligations under the agreement for sale, the breaches thereof, timeline extensions, payments made and due, are all disputed questions of fact. Furthermore, the effect of factors

such as the NGT order all require appreciation of evidence, including documentary and oral testimony, to reach a just and lawful conclusion. Therefore, in the interest of justice, it was prayed that proper issues be framed and parties be granted an opportunity to lead evidence. It was also submitted that any adjudication without this would cause grave prejudice to the respondent. The respondent/applicant has also proposed eight issues in the application.

2. A reply to this application has been filed by the complainants/non-applicants herein. It was submitted by the complainants/non-applicants that it is a delaying tactic and that the respondent, by way of filing this application, is trying to mislead this Authority. It was further submitted that the respondent had himself admitted that they were supposed to hand over the possession of Flat No. 301 in Tower-G, 3rd Floor, with an approximate area of 980 sq. feet, before 30.06.2020 as per the agreement for sale dated 14.05.2018. It was also submitted that as per rules, delayed possession attracts statutory interest and the Authority has ample powers to impose a penalty for delay in handing over possession. It was further submitted that even if the respondent is willing to offer some alternate flat in another block, he can do so only with the prior approval of HPRERA and with reasons recorded in writing for change of the flat. It was further submitted that it is the promoter/builder's duty to obtain necessary approval from NGT and also get the map approved by the Municipal Corporation, Shimla. Therefore, the delay in handing over possession is unjustified. It was also submitted that this Authority, vide its order dated 20.12.2024, directed the respondent not to demand any further payments from the complainants until substantial progress in construction work is made in the flat. With these primary and substantial averments, the complainants prayed that the respondent be directed to hand over

possession of the flat to the complainants at the earliest and that delayed possession interest and penalty be imposed.

3. This Authority has heard both parties and has also gone through the record. Although by way of passing this order, this Authority does not intend to conduct any mini-trial in the matter or pass any findings with respect to the main dispute which may prejudice the interest of any of the parties, it is necessary to address the respondent's application wherein it is stated that intricate questions of fact are involved and therefore parties should be permitted to lead oral and documentary evidence after framing of issues.
4. This Authority feels it necessary to prima facie discuss the documents placed on the record. There is a builder-buyer agreement wherein the total sale consideration, particulars of the flat, and the due date of possession have been duly mentioned. The document has been signed and relied upon by both parties, meaning thereby that it is an admitted document. Further, payment receipts have also been attached, along with subsequent emails. A copy of the allotment letter has also been filed with the reply. Additionally, certain other communications have been filed by the respondent. Therefore, it cannot be said that sufficient evidence in the form of documents is not on record.
5. This Authority, in terms of the mandate given to it under the RERD Act as well as the judgment of the Hon'ble Supreme Court in **M/s Newtech Promoter and Developers Private Limited vs. State of U.P. and Others**, Civil Appeal Nos. 6745-6749 of 2021 decided on 11th November 2021, read with the preamble of the Act, holds as follows:

*"75. The legislature in its wisdom has made a specific provision delineating power to be exercised by the regulatory authority/ adjudicating officer. "Refund of the amount" and "compensation" are two distinct components which the allottee or the person*

*aggrieved is entitled to claim if the promoter has not been able to hand over possession with a nature of enquiry and mechanism provided under the Act. So far as the claim with respect to refund of amount on demand under Section 18(1) and 19(4) of the Act is concerned, it vests within the jurisdiction of the regulatory authority. Section 71 carves out the jurisdiction of the adjudicating officer to adjudge compensation under Sections 12, 14, 18 and 19 after holding enquiry under Section 71(3) of the Act keeping in view the broad contours referred to under Section 72 of the Act.*

*“76. The submission made by learned counsel for the appellants that the proviso under Section 71(1) empowers the adjudicating officer to examine the complaints made under Sections 12, 14, 18 and 19 pending before the Consumer Disputes Redressal Forum/Commission is in different context and it was one time mechanism to provide a window to the consumers whose composite claims are pending before the Consumer Forum/Commission to avail the benevolent provision of the Act 2016 for the reason that under the Consumer Protection Act, there is no distinction as to whether the complaint is for refund of the amount or for compensation as defined under Section 71(1) of the Act, but after the Act 2016 has come into force, if any person aggrieved wants to make complaint for refund against the promoter or real estate agent other than compensation, it is to be lodged to the regulatory authority and for adjudging compensation to the adjudicating officer, and the delineation has been made to expedite the process of adjudication invoked by the person aggrieved when a complaint has been made under Section 31 of the Act to be adjudicated either by the authority /adjudicating officer as per the procedure prescribed under the Act.*

*“77. The further submission made by the learned counsel for the appellants is that the return of the amount adversely impacts the promoter and such a question can be looked into by the adjudicating officer in the better prospective. The submission has no foundation for the reason that the legislative intention and mandate is clear that Section 18(1) is an indefeasible right of the allottee to get a return of the amount on demand if the promoter is unable to handover possession in terms of the agreement for sale or failed to complete the project by the date specified and the justification which the promoter wants to tender as his defence as to why the withdrawal of the amount under the scheme of the Act may not be justified appears to be insignificant and the regulatory Authority with **summary nature of scrutiny of undisputed facts may determine the refund of the amount** which the allottee has deposited, while seeking withdrawal from the project, with interest, that too has been prescribed under the Act, as in the instant case, the State of Uttar Pradesh has prescribed MCLR+1% leaving no discretion to the authority and can also claim compensation as per the procedure prescribed under Section 71(3) read with Section 72 of the Act.*

*“84. So far as submission in respect of the expeditious disposal of the application before the adjudicating officer, as referred to under sub-section (2) of Section 71 is concerned, it pre-supposes that the adjudicatory mechanism provided under Section 71(3) of the Act has to be disposed of within 60 days. **It is expected by the regulatory authority to dispose of the application expeditiously and not to restrain the mandate of 60 days as referred to under Section 71(3) of the Act.***

*“85. The provisions of which a detailed reference has been made, if we go with the literal rule of interpretation that when the words of the statute are clear, plain and unambiguous, the*

*Courts are bound to give effect to that meaning regardless of its consequence. It leaves no manner of doubt and it is always advisable to interpret the legislative wisdom in the literary sense as being intended by the legislature and the Courts are not supposed to embark upon an inquiry and find out a solution in substituting the legislative wisdom which is always to be avoided.*

*“86.From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that , in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”*

This Authority is of the considered view that the proceedings under this Act cannot be made to continue indefinitely, and as per Para 84 of the judgment quoted above, the Hon'ble Supreme Court has stated that

the Regulatory Authority shall dispose of complaints/applications filed before it as expeditiously as possible. The preamble of the Act, which has established this Authority for a speedy redressal mechanism, reads as under:

*An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.*

**Section 35. Powers of Authority call for information, conduct investigation-**

*(1) Where the Authority considers it expedient to do so, on a complaint or suomotu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.*

*(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under subsection (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—*

- (i) *the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;*
- (ii) *summoning and enforcing the attendance of persons and examining them on oath;*
- (iii) *issuing commissions for the examination of witnesses or documents;*
- (iv) *any other matter which may be prescribed*

**Section 38 of the Act deals with Powers of the Authority-**

- 1) *The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.*
- 2) *The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.*
- 3) *Where an issue is raised relating to agreement, action, omission, practice or procedure that—*
  - (a) *has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or*
  - (b) *has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may suomotu, make reference in respect of such issue to the Competition Commission of India.*

The Hon'ble Supreme Court in Union of India  
Vs. T.R. Varma MANU/SC/0121/1957; AIR1957SC882 has held that



“14. Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law.”

6. These principles were further fortified by the Hon'ble Supreme Court in **Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Ors.** MANU/SC/0501/1971; AIR1972SC330 and it was held that the law requires that tribunals even though they may be judicial in character, the Evidence Act has no application to the enquires conducted by them. The law requires that principles of natural justice shall be observed in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that procedure followed was not in accordance with law.
7. Further in **Naresh Govind Vaze vs Govt. of Maharashtra (2008)1SCC 514** it was held by the Hon'ble Apex Court that Evidence Act is not applicable to departmental enquiries. This fact was further upheld in **Roop Singh Negi vs Govt of Maharashtra (2009)2 SCC 570**.
8. In **Municipal Corpn. of Delhi vs Jagan Nath Ashok Kumar (1987) 4 SCC 2316** it was held that Evidence is not applicable to arbitration proceedings.
9. The judgment of the Hon'ble National Consumer Commission reported in 2002 (3) CLT 516 in cases titled as **Con Décor** rep. by its

**Managing Director vs Smritikana Ghose** and another it was held that


“We would, therefore hold that **cross examination of witness or a party before forum under the Consumer Protection Act is not a rule.** It is only an exception. When reputation of a person like a medical practitioner in the case of alleged medical negligence is involved, he will have a right to cross examine any person alleging professional negligence against him. When it is merely a question as to veracity of the statement of the witness, cross examination cannot be permitted. **In that case to contradict a party can certainly file his own affidavit or of any other witness. If cross examination of a person is to be permitted in every case under the Consumer Protection Act, the whole object of this Act would be lost and there would hardly be any difference in proceedings before a forum under the Act and a civil court.** Many disputes involving high stakes and huge values are decided in writ jurisdiction by the High courts and Supreme Court merely on the basis of affidavits. It, therefore, does not appeal to reason that when Consumer Protection Act permits evidence to be led by means of affidavits, right of cross examination must be resorted to in every case. A forum under Consumer Protection Act must exercise extreme caution in permitting cross examination.”

10. Further the proceedings before the National Consumer Commission are although judicial proceedings, but at the same time it is not a civil court within the meaning of the provisions of the Code of Civil Procedure. It may have all the trappings of the Civil Court but yet it cannot be called a civil court. [ **See Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd. [1950 SCR 459]** and **Nahar Industries Ltd. v. Hong Kong & Shanghai Banking Corporation etc.**


(Civil Appeal arising out of SLP (C) No. 24715 of 2008 etc decided on 29th July, 2009)].

11. The law laid down in the judgments cited above makes it clear that the Evidence Act has no application to enquiries conducted by tribunals, forums, or other quasi-judicial Authorities, even though they may be judicial in character. Such tribunals must observe principles of natural justice, and their decisions cannot be impeached on the ground that the procedure followed was not as per that in civil courts. Further, cross-examination is an exception, not the rule. If cross-examination is permitted routinely under the RERD Act, the entire purpose of the Act would be defeated.
12. As already discussed, the inter se liability between the parties is well-defined and spelled out from the documents on record. There are no disputed questions of fact that necessitate leading oral evidence or examination to test the veracity of facts as prayed for by the respondent. Permitting such examination would derail the proceedings, which are already fixed for arguments. If the Authority allows examination of witnesses routinely, as in civil courts, the object of the Act—speedy adjudication—will be lost. While the Authority is duty-bound to observe principles of natural justice under Section 38(2) of the Act, the application of the Evidence Act depends on the statutory framework of the RERD Act, which does not provide for its application at every stage. Although the Authority is empowered under Section 35 to summon and examine witnesses, this depends on the nature and circumstances of the case. In the present case, the Authority does not find it necessary to permit witness examination and finds no disputed questions of fact involved.
13. The issues proposed by the respondent, including locus standi, non-delivery of possession, applicability of force majeure, payment obligations under the agreement for sale, entitlement of the

complainants to compensation/penalty for delay, execution of a new builder-buyer agreement, and offering of an alternate flat—all can be decided based on the documents already on record. Therefore, this Authority is of the considered view that no disputed questions of fact are involved, and the case can be adjudicated on the basis of available documents. This application of the respondent is dismissed.

  
(Amrit Kashyap)  
**MEMBER**

  
(R.D. Dhiman)  
**CHAIRPERSON**

  
(Vidur Mehta)  
**MEMBER**