BEFORE THE REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH AT SHIMLA

Complaint no.HPRERA2023024/C

In the matter of:-

1 Mr. Rajesh Mohan son of Late Sh. H.S. Mohan, Resident of Plot no. 251, 3rd Floor, Sector-27, Golf Course Road, Gurgoan-122009 and also resident of-C-6/3, Aditi Apartment, D-Block, Janakpuri, New Delhi-110058

2 Mrs. Anjoo Mohan wife of Mr. Rajesh Mohan, Resident of Plot no. 251, 3rd Floor, Sector-27, Golf Course Road, Gurgoan-122009 and also resident of-C-6/3, Aditi Apartment, D-Block, Janakpuri, New Delhi-110058

..... Complainant(s)

Versus

M/s Rajdeep and company infrastructure Private Limited, office at SCO 12, First Floor, Hollywood Plaza, VIP Road Zirakpur 140603

..... Respondent

Present: Sh. Rajesh Mohan complainant
Sh. Rishi Kaushal, Ld. Counsel for respondent promoter

Final date of hearing. 22.12.2025

Date of pronouncement of order:11.02.2026

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Order
Coram: Chairperson and Member

1. FACTS OF THE CASE:

The respondent, M/s Rajdeep & Co., is the developer of a residential Bharari, Shimla, comprising approximately ten to twelve residential towers. The respondent has already handed over possession of two towers to various allottees, while the remaining towers are at different stages of construction. The said project is registered with the Himachal Pradesh Real Estate Regulatory Authority under Registration No. HPRERASHI2023066/P, valid up to 28.09.2026. The complainant booked a fully furnished residential unit bearing Apartment No. 302, Tower B-1, situated on the third floor, being a 1 BHK apartment having a super area of 650 square feet, along with one covered car parking in the said project. Towards the booking of the said unit, the complainant paid an initial amount of Rs. 51,000/- on 11.12.2019. Subsequently, the complainant paid a total amount of Rs. 31,25,000/- up to 30.05.2020, which constitutes approximately 80% of the total agreed sale consideration of Rs. 39,00,000/-. After receipt of the said amount, the respondent did not raise any further demand towards the balance sale consideration. As per the Sale Letter / Agreement for Sale dated 08.01.2020, particularly Clause 29 thereof, the respondent had agreed to hand over full and final possession of the said apartment on 30.06.2020. Further, Clause 30 of the said agreement for Sale specifically provides that in case the respondent fails to deliver possession of the apartment by 30.09.2020, the respondent shall be liable to pay penalty at the rate of Rs. 25,000/- per month with effect from 01.10.2020 till the actual handing over of possession. The possession agreed to be delivered was required to be complete in all respects, including power backup, one covered car

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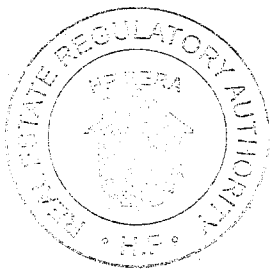
parking, an operational club house, lifts of reputed brand in working condition, an overhead water tank, No Objection Certificate from the Municipal Corporation, Shimla, permitting occupation of the flats, a valid completion certificate, No Objection Certificates for electricity, water supply, and sewerage connection, as well as a copy of the receipt confirming payment made to the Himachal Pradesh State Electricity Board for installation of a separate transformer for the said tower along with necessary wiring etc. Despite the lapse of the agreed period and payment of a substantial portion of the sale consideration, the respondent has neither initiated the process of registration of the apartment nor handed over physical possession of the unit to the complainant. The respondent has also failed to pay the penalty amount, which has accrued to Rs. 8,25,000/- for a delay of 33 months calculated from 01.10.2020 to 30.06.2023, as per the Clause 30 of the agreement for sale dated 08.01.2020. The complainant issued repeated reminders and communications to the respondent through email and registered post on 26.12.2020, 16.08.2022, 14.02.2023, and 03.06.2023, requesting compliance and information regarding the status of the project. However, the respondent neither replied to the said communications nor provided any update, despite the complainant having invested hard-earned savings with the intention of residing peacefully in the hills after retirement. It is further submitted that the actual area of the apartment has been substantially reduced and the flat does not conform to the size and layout as per the map supplied by the respondent at the time of booking, which constitutes a serious deficiency in service and violation of the agreed terms and conditions. In view of the aforesaid facts, the complainant seeks directions to the respondent to pay a

penalty amounting to Rs. 8,25,000/- for the delay of 33 months at the rate of Rs. 25,000/- per month in terms of Clause 30 of the agreement for Sale dated 08.01.2020 and to continue paying such compensation till actual handing over of possession. The complainant further seeks directions to ensure that the flat is delivered strictly in accordance with the approved map supplied at the time of booking, and in the event of any shortfall in area, a proportionate reduction in the total sale consideration be effected. The complainant also prays that the respondent be directed to immediately execute registration of the fully furnished apartment along with electricity and water connections, and that considering the substantial and unexplained delay, an additional heavy penalty be imposed upon the respondent.

2. REPLY ON BEHALF OF THE RESPONDENT:

At the outset, the answering respondents deem it appropriate to reproduce the object and purpose of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") to assist this Authority in adjudicating the present matter and in determining the scope of applicability of the Act in the present case. The object of the Act is 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, to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal, 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. It is submitted that the present complaint is not maintainable on multiple



grounds. Firstly, the present case does not fall within the ambit of the Act in view of Section 3(2) thereof, which provides that no registration of a real estate project shall be required where the area of land proposed to be developed does not exceed 500 square meters or the number of apartments proposed to be developed does not exceed eight, inclusive of all phases. In the present case, the size of the plot is less than 500 square meters and the number of units as per the approved plan is less than eight. The complaint has incorrectly mentioned that the unit of the complainant forms part of a block registered under RERA. It is humbly submitted that an earlier project, which was conceived much prior to the coming into force of the Act, was dropped at that time due to uncertainty arising from proceedings before the Hon'ble National Green Tribunal in O.A. No. 121/2014 titled Yogendra Mohan Sengupta vs. Union of India & Ors., decided on 16.11.2017. The said issue was subsequently clarified by the Town & Country Planning Department vide its clarifications dated 29.10.2018 and 24.10.2019. Thereafter, owing to the outbreak of COVID-19, progress came to a standstill. During this period, only a few plots under individual development, each having separate ownership, an area of less than 500 square meters, and less than eight units, were completed and possession thereof was handed over to respective buyers. Some buyers who opted out due to the unforeseen circumstances were settled by refund of their amounts to their satisfaction. The same was duly updated and submitted to this Authority vide letter dated 28.09.2022. The RERA Registration No. HPRERASHI2023066/P referred to in the complaint pertains to a new project registered in the year 2023 having a very small inventory, all consisting of 2 BHK units, the details of which are available online. In

the present case, development is on individual plots, each having an area less than 500 square meters, and therefore there was no requirement of registration under the Act. Consequently, this Authority lacks jurisdiction to entertain the present complaint. The respondent company entered into Joint Development Agreements, which are a recognized model under the Act, with individual landowners after the landowners obtained sanctioned plans from the competent authority. Thereafter, the respondent company undertook construction, development, and sale of independent units on plots owned by separate landowners, though the plots are adjoining to each other. The respondent further submitted that the complainant in the present case is seeking compensation/penalty under the agreement dated 08.01.2020. The relief sought is in the nature of compensation, which squarely falls within the ambit of Section 71 of the Act. Section 71 provides that for adjudging compensation under Sections 12, 14, 18, and 19, the Authority shall appoint, in consultation with the appropriate Government, one or more judicial officers who is or has been a District Judge as the adjudicating officer for holding an inquiry in the prescribed manner after giving the concerned parties an opportunity of being heard. The proviso further provides that matters relating to compensation pending before consumer fora may be withdrawn and filed before the adjudicating officer under the Act. The respondent further submitted that merely three months after the booking of the flat on 11.12.2019, the entire country went into lockdown in March 2020 due to the supervening event of the COVID-19 pandemic, resulting in complete stoppage of construction activities. In view of the circumstances, the Ministry of Housing and Urban Affairs issued advisories regarding extension of registration of real

estate projects and timelines of statutory compliances by invoking force majeure under the provisions of the Act. In exercise of powers under Sections 34 and 37 of the Act, Himachal Pradesh RERA invoked a force majeure period of six months from 25.03.2020 to 24.09.2020, which was duly published by the Department of Information and Public Relations, Government of Himachal Pradesh. The complaint further fails to disclose any cause of action against the answering respondents and does not raise any dispute as contemplated under the Act. The respondent disputes the correctness of the factual assertions made in the complaint, except to the limited extent specifically admitted. The booking of the apartment and receipt of the amount paid by the complainant are admitted as matters of record. However, it is specifically denied that any car parking was agreed to or offered, as the Agreement for Sale dated 08.01.2020 does not contain any express provision regarding parking. The respondent admitted the execution of the Agreement for Sale dated 08.01.2020 and submits that the said agreement itself provides for a grace period of three months and is subject to force majeure conditions. Any claim or demand beyond the express terms of the agreement is denied as being outside its scope. The respondent further submitted that the delay in delivery of possession has already been explained in the preliminary submissions and was occasioned due to circumstances beyond its control. It stated that the project was substantially complete and could have been delivered within 3 to 4 months period. The allegation that the respondent was not in communication with the complainant is denied. It is asserted that the respondent remained in touch with the complainant through telephonic conversations and personal meetings and kept him informed of the project status. The respondent

also denied any allegation regarding alteration of the flat layout and states that the sanctioned plan and layout form part of the duly executed agreement. On the basis of the above submissions, the respondent prays that the complaint, being misconceived, devoid of merit, and based on incorrect facts, be dismissed with costs.

3. REJOINDER FILED BY THE COMPLAINANT

The complainant submitted by way of filing the rejoinder that the respondent has taken the stand that the present case does not fall within the ambit of the Real Estate (Regulation and Development) Act, 2016. The said contention is wholly misconceived and contrary to settled findings of this Hon'ble Authority itself. In Complaint No. HPRERA/OFL/2020-21 titled Mrs. Anjali Bhatnagar and Mr. Rakesh Bhatnagar, decided by this Authority on 28.09.2022, it has been categorically held that the old cases pertaining to the project "Residency Himalayas" are also covered under the ambit of the RERA Act. The applicability of RERA to the said project has also been recognized in Radhika Sharma versus Rajdeep & Co., bearing Complaint No. RERAHPSHCTA06200023, which pertained to the same project. Further, in Renu Jain versus Rajdeep & Co., Complaint No. HPRERA/OFL-21-48, the respondent company settled the matter with the complainant therein, thereby admitting the jurisdiction of this Hon'ble Authority. It is settled law that ouster of jurisdiction must be expressly proved, and in the absence thereof, the Authority is required to rule in favour of jurisdiction. The respondent company must reconcile itself to the fact that the project "Residency Himalayas" is covered under RERA and ought not to repeatedly waste the valuable time of this Hon'ble Authority by raising jurisdictional objections that

have already been conclusively settled. Moreover, the respondent has now itself obtained registration of the entire project under Himachal Pradesh RERA vide Registration No. HPRERASHI2023066/P, and therefore cannot be permitted to indulge in cherry-picking by contending that some flats are covered under RERA while others are not. At page 6 of their reply, the respondents have sought an extension of six months on account of the COVID-19 outbreak, which led to a brief lockdown of approximately six weeks, after which construction activities resumed across the country. Despite the lifting of restrictions, the respondent has failed to resume or complete construction even after a lapse of more than three years. Instead of focusing on early completion of the project, the respondent continues to raise excuses in an attempt to evade the rigour of the RERA Act. The complainant further submitted that from the aforesaid facts it is abundantly clear that the project falls under the purview of RERA, and the respondent has deliberately attempted to mislead this Authority. The complainant further submitted that an extra charges sheet duly signed by the authorized signatories of the respondent company and bearing its official seal is enclosed, wherein it is clearly stated at the very first point that the total cost of Rs. 39,00,000/- includes car parking, the said document is enclosed, wherein points 1 to 9 have been agreed upon by the respondent, confirming the final cost of Rs. 39,00,000/-. The respondent has admitted receipt of Rs. 31.25 lakhs from the complainant, which is not in dispute. As regards the issue of delay, the complainant has already granted a grace period of three months, as demanded by the respondent, and therefore the penalty has rightly been calculated from 01.10.2020 instead of 30.06.2020. The respondent has itself admitted that after 24.09.2020

there was no impediment preventing completion of the project. Accordingly, from 01.10.2020 till 01.09.2023, the respondent has incurred a penalty liability of Rs. 8.75 lakhs at the agreed rate of Rs. 25,000/- per month, which continues to accrue. The complainant expresses hope that good sense will prevail upon the respondent and that it will desist from harassing a senior citizen and hand over possession of the flat at the earliest. It is further submitted that despite repeated emails and registered letters sent by the complainant, the respondent has failed to reply to even a single communication. On one occasion, the complainant personally visited the registered office of the respondent, where he was offered refreshments and assurances by the office staff but was not permitted to meet Mr. Rajdeep Sharma and was ultimately turned away. The complainant further submits that the flat delivered is not in accordance with the map supplied at the time of booking. The map has been completely altered, and the carpet area of the flat has been reduced by approximately 100 square feet. The complainant respectfully prays that this Authority may direct verification of the altered map. The cost of the flat is liable to be reduced on a pro rata basis, and a heavy penalty deserves to be imposed upon the respondent for unilaterally altering the design of the flat. In view of the foregoing submissions, it is most respectfully prayed that this Authority may be pleased to direct that possession of the fully furnished flat, complete in all respects with working electricity and water connections, be handed over to the complainant at the earliest; that the penalty amount of Rs. 8.75 lakhs be paid immediately; and that pro rata reduction in the cost be ordered for the reduction in

carpet area along with imposition of a heavy penalty for alteration of the flat design.

4. ARGUMENTS/SUBMISSIONS OF THE COMPLAINANT

The complainant while arguing the matter has submitted that the respondents had proposed that if the complainant agreed not to claim interest before the RERA Authority, they would issue a conditional letter, and thereafter a mutual settlement agreement would be executed. However, despite such assurances, possession of the flat, which was agreed to be handed over in October 2024, was not given even after the year 2025 had elapsed, and the respondents continued to impose conditions. The complainant further submitted that he had addressed a letter dated 14th December, 2025 to the respondents, wherein in paragraph 10 it was clearly stated that electricity, water, and sewerage connections had not been installed in his flat. This was in clear violation of the order of this Hon'ble RERA Court dated 08.10.2024, which specifically directed the respondents to provide electricity, water, and sewerage connections in the flat. The complainant submitted that he had already waited for a considerable period and could not be made to wait indefinitely. He stated that he is 65 years old and requested that at least possession of the flat be ensured without further delay. He prayed that appropriate penalty be imposed upon the respondents along with issuance of clear directions for compliance with the order dated 08.10.2024 regarding electricity, water, and sewerage connections. The complainant further submitted that he had sent an email dated 14th December reiterating his demand for installation of electricity and water connections. He stated that as per the revised Agreement for Sale, possession of the flat was to be handed over in October 2024. However, as on 5th December

2025, possession had still not been lawfully completed, and the respondents were imposing conditions for handing over possession despite having received the entire sale consideration. The complainant submitted that the agreed date of possession as per the revised/latest agreement was 31st October 2024 and that the entire year 2025 had passed without compliance. He further submitted that as per the order of this Hon'ble RERA Court dated 08.10.2024, electricity, water, and sewerage connections were to be provided, which had not been done till date. The complainant clarified that the revised agreement was accepted voluntarily and without any coercion. However, despite voluntary acceptance, the respondents failed to hand over possession within the agreed time. He further submitted that the flat remained incomplete, balconies had not been constructed, and lifts had not been installed. These deficiencies were specifically enumerated by him in paragraph 10 of his written communication. The complainant submitted that possession was handed over on 02.08.2025; however, the same was incomplete and illegal as the sale deed had not been executed, balconies had not been constructed, lifts had not been installed, the designated parking space had been encroached upon, and a flat had been constructed in an area earmarked for parking. He submitted that as per the RERA Court's own report, the said area was meant for parking and no construction of flats was permissible therein. The complainant further submitted that despite clear directions of this RERA Court dated 08.10.2024, electricity, water, and sewerage connections had still not been provided, making the flat uninhabitable. He requested that strict directions be issued to the respondents to provide these essential services immediately, without which occupation of the flat was impossible. The complainant further

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submitted that no completion certificate had been obtained for the project and that the respondents had not obtained completion certificates for any of the flats constructed by them. He stated that this was the reason he had earlier requested possession even without completion, as he had retired five years ago and urgently required accommodation. The complainant submitted that possession had been handed over in writing and that he had been given the keys of the flat. He further submitted that this Hon'ble Authority had already recorded in its proceedings that possession had been handed over to him. The complainant further submitted that if none of the flats constructed by the respondents had obtained completion certificates, then all such flats were illegal. He requested that per-day penalty be imposed upon the respondents for failure to obtain the completion certificate. The complainant stated that his immediate concerns were execution and registration of the sale deed, issuance of completion certificate, installation of electricity, water, and sewerage connections, construction of balconies, installation of lifts, removal of illegal construction over designated parking spaces, demolition of such illegal flats, and provision of promised club facilities. The complainant lastly submitted that as per the map supplied and signed at the time of booking, the flat included a balcony. The said map, bearing signatures, formed part of the agreement, and therefore non-construction of the balcony amounted to violation of the agreed terms.

5. WRITTEN ARGUMENTS/ SUBMISSIONS ON BEHALF OF THE RESPONDENT

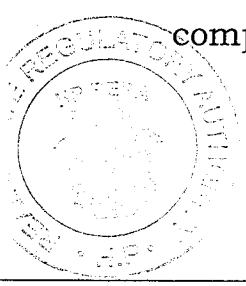
The Respondent submitted their written arguments as the complainant initially booked a residential unit with the Respondents during the years 2019–2020 under an Agreement dated 08.01.2020.

The development in question was never conceived as a large group housing project but was always intended to be a small-scale, plot-based development undertaken through a Joint Development model with individual landowners. Each plot involved in the development is less than 500 square meters in area, and the total number of residential units is fewer than eight. This factual position has been consistently pleaded by the Respondents and remains undisputed on record. Due to multiple supervening circumstances, including regulatory uncertainty arising from environmental litigation and thereafter the unprecedented COVID-19 pandemic, coupled with force majeure extensions officially recognized by Himachal Pradesh RERA, the project timelines were affected. However, the delay was not attributable to any willful lapse or negligence on the part of the Respondents. With a view to amicably resolving the grievance of the complainant, the parties entered into a Mutual Settlement Agreement dated 02.08.2024, pursuant to which the complainant agreed to accept an alternative and improved unit. In furtherance of the said settlement, a fresh Agreement for Sale dated 01.08.2024 was executed between the parties. Thereafter, pursuant to the directions of this Authority, the Respondents facilitated inspection of the unit on 31.07.2025, following which the complainant expressed satisfaction and voluntarily took possession on 02.08.2025. The said development was duly communicated to this Authority on 03.08.2025 along with supporting documents and photographs. The Respondents further initiated steps towards execution of the sale deed and sought a short extension of time on account of incessant rains and the unavailability of the approved valuer, circumstances wholly beyond their control. It is respectfully submitted that throughout the proceedings, the

Respondents have acted bona fide, transparently, and in due compliance with the directions of this Authority, while consistently maintaining their legal objection regarding the maintainability of the complaint. Further, it was stated that the present complaint is not maintainable and is liable to be dismissed at the threshold, as it does not fall within the jurisdictional ambit of the Real Estate (Regulation and Development) Act, 2016. Section 3(2) of the Act provides a clear statutory exemption from the requirement of registration where the area of land proposed to be developed does not exceed 500 square meters or where the number of apartments proposed to be developed does not exceed eight, inclusive of all phases. In the present case, it is an admitted and undisputed position that the development undertaken by the Respondents is a small-scale, plot-based development wherein the land area is below 500 square meters and the number of residential units is less than eight. The development therefore squarely falls within the exemption contemplated under Section 3(2) of the Act. Consequently, the statutory requirement of registration is not attracted, and the development remains outside the regulatory framework of the RERA Act. Further, recent and consistent judicial Once a development is exempted under Section 3(2), the substantive and penal provisions of the Act, which are intrinsically linked to the concept of a registered project, cannot be invoked or enforced. In such circumstances, this Authority lacks inherent jurisdiction to entertain, adjudicate, or issue directions in the nature of a RERA complaint. It is a settled principle of law that jurisdiction cannot be conferred by consent, acquiescence, or participation. Mere appearance before this Authority or compliance with its directions cannot amount to waiver of a statutory exemption expressly granted

by the legislature. Compliance undertaken without prejudice and in the spirit of cooperation cannot be construed as acceptance of jurisdiction where none exists in law. It was further stated that the pronouncements by various Real Estate Regulatory Authorities and Real Estate Appellate Tribunals have categorically held that projects exempt under Section 3(2) of the Act cannot be subjected to regulatory, adjudicatory, or penal provisions of the Act. Disputes arising out of such exempt projects lie outside the domain of RERA, and any remedy, if available, must be pursued before the appropriate forum in accordance with law. On this ground alone, the present complaint deserves dismissal at the threshold. It was further stated that the respondent has honoured the intervention and directions of this Authority throughout the proceedings with the sole objective of resolving the grievance raised by the complainant and bringing finality to the dispute. The offering and handing over of possession was undertaken pursuant to the directions of this Authority. The complainant was afforded inspection, expressed satisfaction, and thereafter voluntarily accepted possession. The said facts were promptly placed before this Authority along with supporting material. At no stage were the rights or interests of the complainant compromised. The Respondents further proceeded with due diligence towards execution of the sale deed, engaged the necessary professionals, and coordinated with concerned authorities. A limited extension of time was sought solely due to unavoidable circumstances such as weather conditions and logistical constraints. In doing so, the Respondents incurred additional financial and administrative burden only to ensure compliance with the directions of this Authority and to avoid inconvenience to the complainant. It is respectfully submitted

that all actions taken by the Respondents were bona fide, voluntary, and in good faith and were never intended to prejudice their legal rights or contentions. Such conduct reflects respect for the legal process and willingness to abide by the guidance of this Authority. On the contrary, the conduct of the Respondents demonstrates fairness, transparency, and a responsible approach towards dispute resolution, and therefore no adverse inference is warranted. The Respondents further submit that the provisions of the RERA Act relied upon in the impugned order are wholly inapplicable to the facts of the present case. Section 4(2)(c) of the Act pertains to declaration of timelines at the stage of registration of a real estate project and applies only to projects mandatorily required to be registered. Since the present development was never required to be registered, the obligation under Section 4(2)(c) does not arise. Similarly, Section 11(4) of the Act enumerates duties of a registered promoter, including obtaining completion or occupation certificates and execution of conveyance deeds. These duties are triggered only upon registration of the project. Notwithstanding the absence of statutory compulsion, the Respondents voluntarily initiated steps towards compliance pursuant to the directions of this Authority. Such voluntary compliance cannot be used to draw any adverse inference. The reliance placed on Sections 14(1) and 14(2) is equally misconceived. These provisions apply to registered projects involving multiple allottees where unilateral alterations may prejudice collective rights. The present development consists of individual units governed by separate agreements. Any change in unit number or floor was effected pursuant to a mutual settlement with the express consent of the complainant and to his benefit. No unilateral alteration affecting



allottee rights has been carried out. Allegations based solely on a municipal report, without any notice or adjudication by the competent authority, cannot form the basis for invoking Section 14 of the Act. Section 17(1) of the Act, which mandates execution of conveyance deeds and handing over of possession, applies only to registered projects. In the present case, steps towards execution of the sale deed were taken pursuant to directions of this Authority, and a limited extension of time was sought due to bona fide and unavoidable circumstances, demonstrating diligence rather than default. As regards Section 19 of the Act, which enumerates rights and duties of allottees, the same presupposes a registered project framework. Even otherwise, the Respondents have fully honoured the complainant's rights by granting inspection, facilitating possession upon satisfaction, and maintaining continuous communication. No surviving grievance exists on facts. It is further submitted that the penalty provisions under the Real Estate (Regulation and Development) Act, 2016 are attracted only when the Act is applicable and where there is a wilful, deliberate, or contumacious violation. In the present case, the applicability of the Act itself is disputed and, in any event, there is no deliberate or intentional default on the part of the Respondents. The Respondents have acted throughout in a transparent, bona fide, and cooperative manner. It is a settled principle of law that penal provisions are to be strictly construed and no penalty can be imposed in the absence of clear statutory applicability and culpable conduct. In view of the above facts and legal position, it is respectfully submitted that the complaint is not maintainable under the RERA Act; that the provisions relied upon in the impugned order are inapplicable to the present case; that the

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Respondents have duly complied with all directions of this Authority in a bona fide and cooperative manner; and that no adverse inference or penal action is warranted against the respondent.

6. THE DEVELOPMENTS DURING COURT PROCEEDINGS WHICH ARE MATERIAL IN THE CASE

During the pendency of the present proceedings, several material developments took places which have a direct bearing on the adjudication of the complaint and the reliefs claimed by the complainant. During the course of proceedings, the parties explored the possibility of an amicable settlement. Pursuant thereto, a Mutual Settlement Agreement dated 02.08.2024 and a subsequent Agreement for Sale dated 01.08.2024 were placed on record. As per the said settlement, the complainant agreed to accept an alternative unit 101, 2BHK, First Floor in Tower- B1 on the assurance of the respondent that possession would be handed over on 31st October, 2024 and that the flat would be complete in all respects. However, despite the settlement being recorded, the respondent failed to adhere to the agreed timeline and possession was not handed over on 31st October 2024. Even thereafter, possession was purportedly handed over on 02.08.2025, but admittedly without execution of the sale deed, without obtaining completion certificate, and without providing essential services such as electricity, water, and sewerage connections. In view of the persistent grievances raised by the complainant, this Authority directed spot inspection of the project site through the concerned authorities. Accordingly, a site inspection was conducted on 12.07.2024 in the presence of both parties along with officials of the Municipal Corporation, Shimla. The inspection report

submitted to this Authority categorically recorded that the construction carried out at site was not in accordance with the Revised House Plan approved by the Municipal Corporation, Shimla. It was observed that the parking approved on the third floor had been converted into a residential floor by raising outer and inner walls and by carrying out plumbing and electrical works, and that parking was instead being provided at the ground floor, which was contrary to the sanctioned plan. The said report was supported by photographs annexed thereto. Subsequently, further directions of this Authority, another site inspection was conducted by the Municipal Corporation, Shimla through the Assistant Planner/ Architect Planner, and a detailed report dated 18.10.2025 was submitted to this Authority. The said report records that the site was inspected on 08.10.2025 at 11:30 AM in the presence of concerned officials to ascertain the factual position of the building. As per the said report, it was found that Smt. Sakshi Rajdeep had constructed a four-storey building with parking and an attic floor at site, which is not in accordance with the approved sanction plan. It was specifically stated that although parking was approved on the third floor as per the sanctioned plan, the applicant/respondent had changed the status of parking to the ground floor. The approach to the parking floor was provided by fabricating a steel structure ramp having a very steep gradient, and it was further stated that maneuvering of vehicles at the said location was practically impossible. It was also stated that the steel ramp had been constructed outside the plot boundary. The report further records that the approved roof had been converted into a habitable attic floor by the applicant/respondent. It was also observed that while only four dwelling units were approved, the applicant had

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constructed eight dwelling units at site, and that the top two dwelling units had been converted into duplex units with attic floors. It was further stated that till date no revised or completion plan has been approved by the Municipal Corporation, Shimla. The report also records that the land area of proposed site is 236.32 sq. mt. and eight no. dwelling units constructed. Hence the building of Smt. Sakshi Rajdeep not comes in preview of Regulatory Estate Regulation Act. However, there are three other buildings of Smt. Meena, Sh. Deepak and Smt. Suchitra constructed below the said building. The building of Smt. Meena is under construction near about 12 to 15 mtrs away from building of Smt. Shakshi Rajdeep. An undeveloped road also exists between these buildings. The building of Smt. Suchitra and Sh. Deepak also constructed below about 60 to 70 mtrs away from building of Smt. Shakshi Rajdeep. As per revenue record these are separate properties.

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

(i) Whether the agreement for sale dated 08.01.2020 executed for the project "Residency Himalayas" is binding upon the respondent, and whether the respondent after executing and acting upon the said agreement, can deny the applicability of RERD Act and the maintainability of the complaint by invoking section 3 of the RERD Act?

(ii) Whether the respondent failed to handover the possession of the apartment with in stipulated period under the agreement for sale dated 08.01.2020 and under the revised agreement for sale executed pursuant to settlement, and whether such failure

amounts to delayed possession and breach of contractual obligations?

(iii) Whether the possession handed over to the complainant without execution of sale deed, without completion certificate and without providing basic amenities, can be treated as lawful and valid possession?

(iv) Whether the construction raised by the respondent is in violation of the sanctioned plans, including conversion of approved parking area into residential units, construction of additional dwelling units, alteration of layout, and use of roof/attic as habitable space?

(v) Other issues and imposition of penalties?

(vi) Reliefs.

8. DISCUSSION AND FINDINGS ON EACH ISSUE: -

(i) Whether the agreement for sale dated 08.01.2020 executed for the project "Residency Himalayas" is binding upon the respondent, and whether the respondent after executing and acting upon the said agreement, can deny the applicability of RERD Act and the maintainability of the complaint by invoking section 3 of the RERD Act?

The respondent has raised a preliminary objection regarding the maintainability of the present complaint by contending that the project does not fall within the provision of Section 3(2) of the Real Estate (Regulation and Development) Act, 2016, on the ground that the land area is less than 500 square meters and the number of apartments does not exceed eight, and therefore registration under

RERA was not required. At the outset, it is necessary to examine the scope of Section 3 of the RERD Act.

"3. (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act: Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act: Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation. *—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.*

In the present case, the record reveals that the respondent/ promoter executed an Agreement for Sale dated 08.01.2020 in favour of the complainant in the name of the project "Residency Himalayas". The said Agreement for Sale clearly shows the description of the project, i.e. apartment/ unit bearing no. 302, Third Floor having super built up area 650 sq. ft. in the Tower B-1 with total consideration amount of Rs. 39,00,000/-, and the possession of the said unit was to be delivered on 30th June, 2020. The respondent not only executed the said Agreement but also acted upon it by accepting a substantial portion of the sale consideration amounting to Rs. 31.25 lakhs, which constitutes about 80% of the total agreed price of Rs. 39,00,000/- (Rupees Thirty-Nine Lakh Only). Subsequently, during the pendency of proceedings, a revised Agreement for Sale dated 01.08.2024 was executed in the name of the project "Residency Himalayas" pursuant to settlement, further reaffirming the project identity and the respondent's obligations as a promoter. Once the respondent has executed Agreements for Sale in the name of "Residency Himalayas' a registered real estate project and has acted upon those agreements by accepting money and giving assurances to the allottee, the respondent cannot later deny the applicability of the RERD Act by selectively relying on Section 3(2) of the RERD Act. The conduct of the respondent clearly shows that the development was treated by him as a real estate project governed by contractual and statutory obligations. The legal provisions do not permit a promoter to take advantage of an agreement to receive consideration and give commitments, and then deny the statutory framework to such transactions when the allottee seeks

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enforcement of rights. Further, it is an admitted fact on record that the respondent subsequently obtained registration of the project "Residency Himalayas" with Himachal Pradesh RERA under Registration No. HPRERASHI2023066/P. Once the respondent has voluntarily brought the project within the RERA framework by obtaining registration, the respondent cannot claim exemption under Section 3(2) of the Act. Additionally, the site inspection reports of the Municipal Corporation, Assistant Planner, and Assistant Town Planner clearly establish that the respondent has constructed more dwelling units than were sanctioned, has converted approved parking areas into residential use, and has raised unauthorised construction including habitable attic floors. Thus, total nos. of dwelling units in the Khasra No. 752/42/2 & 753/42/1 (NEW), 42/10/2 & 42/11/1 (OLD) mentioned in the agreement for sale and the report from the AP along with the site plan shows that there are more than 8 units. These findings directly contradict the respondent's claim that the development qualifies for exemption under Section 3(2) of the RERD Act. Rather, the project squarely falls within the jurisdiction of the Act. It is also evident from the site inspection reports that the building in question forms part of a common development, having common access road, common basic amenities, and adjoining buildings, and is not an independent construction as sought to be rendered by the respondent. The existence of common infrastructure and combined development further establishes that the project has the character of a real estate project i.e. Residency Himalayas. Further, the Section 4(2)(c) of the Real Estate (Regulation and Development) Act, 2016, which requires a promoter, at the stage of registration, *an*

authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases. The very nature of the construction, provision of common amenities, and phased development, as revealed from the inspection reports, establishes that the respondent's project falls within the regulatory framework under the Act and cannot be selectively excluded by invoking Section 3(2) of the Act. It is a settled principle that objections regarding jurisdiction must be genuine and cannot be raised merely to avoid lawful claims, especially when a party has, by its own conduct, accepted and acted under a statutory framework. In the present case, the respondent executed the Agreements for Sale, acted upon it, participated in the proceedings before this Authority, and registered the project under RERA. Therefore, the issue stands decided against the respondent. The Agreements for Sale is binding upon the respondent/ promoter, and having executed and acted upon the same, the respondent cannot deny the applicability of the RERD Act or question the maintainability of the complaint before this Authority.

(ii) **Whether the respondent failed to handover the possession of the apartment within stipulated period under the agreement for sale dated 08.01.2020 and under the revised agreement for sale executed pursuant to settlement, and whether such failure**

amounts to delayed possession and breach of contractual obligations?

The Agreement for Sale dated 08.01.2020 executed between the parties clearly stipulates the timeline for delivery of possession. As per Clause 29 of the said Agreement, the respondent accepted to hand over possession of the apartment by 30.06.2020, with a further 3 months grace period contemplated up to 30.09.2020. Clause 30 of the Agreement specifically provides that in the event of failure to deliver possession by the said date, the respondent shall be liable to pay penalty at the rate of Rs. 25,000/- per month with effect from 01.10.2020 till actual handing over of possession. It is an admitted position on record that the respondent did not hand over possession of the apartment within the agreed period. Even after the expiry of the grace period on 30.09.2020, possession was not delivered, and the respondent did not raise any lawful demand for completion of the transaction. The complainant had already paid a substantial portion of the sale consideration, amounting to approximately 80% of the total agreed price, by 30.05.2020, and the delay cannot be attributed to any default on the part of the complainant. During the pendency of the proceedings, the respondent sought to justify the delay by invoking force majeure on account of the COVID-19 pandemic. However, it is borne out from the respondent's own pleadings and submissions that the force majeure period recognized by Himachal Pradesh RERA extended only up to 24.09.2020. The respondent has not placed any material on record to demonstrate any legally justifiable impediment preventing completion of the project or delivery of possession beyond the said date. Therefore, the delay commencing from

01.10.2020 onwards remains unexplained and unjustified. It is observed from the record that during the pendency of the proceedings before this Authority, the parties entered into a settlement, pursuant to which a revised/ fresh Agreement for Sale dated 01.08.2024 was executed. Under the said agreement, the complainant agreed to accept an alternative unit i.e. 2 BHK Flat No. 101, First Floor, Tower-B1. As per the said Agreement for Sale, the total sale consideration of the subject flat was fixed at Rs. 65,25,000/- (Rupees Sixty-Five Lakh Twenty-Five Thousand Only), with GST @ 5% amounting to Rs. 3,26,250/-, payable as applicable. It stands admitted and established on record that the complainant/ allottee has already paid the amount as agreed under the clause 1(1.1)(i) of the Agreement for Sale, including the booking amount, and no default in payment is attributable to the complainant. The agreement for sale further categorically records that no additional charges whatsoever were payable by the allottee towards:

- Car Parking
- Internal Development Charges
- External Electrification Charges
- Fire-Fighting Charges
- Club Membership
- Sinking Fund
- IFMS
- One-Year Maintenance

The agreement also clarifies that the total price includes the amount already paid by the allottee and all applicable taxes up to the date of handing over possession, excluding only statutory charges payable to Government Authorities at the time of registration of the sale

deed. Further, the respondent agreed to give possession of the unit on 31st October 2024. The revised Agreement for Sale thus superseded the earlier possession timeline and created a fresh contractual obligation upon the respondent to deliver possession within the newly agreed period. It is an admitted and undisputed position that despite the execution of the revised Agreement for Sale, possession of the apartment was not handed over by 31st October 2024. The respondent has not placed on record any material facts to show that the delay beyond the revised possession date was attributable to any act or omission on the part of the complainant. On the contrary, the complainant had already complied with all obligations under the amicable settlement. The record further reveals that an Addendum to the Agreement for Sale was executed between the respondent and the complainant to clarify the correct floor location of the flat in the project "Residency Himalayas" at Shimla. In the original revised agreement for sale, the flat was mistakenly described as being located on the First Floor due to a typographical error. Through the said addendum, it has been expressly clarified that the flat being purchased is actually situated on the Ground Floor. Both the parties have acknowledged that the error was purely clerical in nature and that they were aware of the correct floor location at the time of entering into the original revised agreement for sale. The complainant has accepted this clarification and has voluntarily waived any present or future claim, dispute, or objection regarding the floor location of the flat. Further, the possession of the flat no 101, 2BHK (above parking), Ground Floor in Tower B1 in the project name "Residency Himalayas" has been handed over to the complainant on

02.08.2025, i.e., nearly ten months after the agreed possession date under the revised Agreement for Sale. The respondent has not produced any legally tenable justification for this prolonged delay after execution of the settlement agreement. No force majeure, statutory restraint, or external impediment has been established for the period subsequent to October 2024. Moreover, even the possession claimed to have been handed over on 02.08.2025 was admittedly incomplete, as it was without execution of the sale deed, without obtaining a completion certificate, and without providing essential services such as electricity, water, and sewerage connections. Such possession cannot be treated as proper compliance with the respondent's obligations under the revised Agreement for Sale. The settlement and the fresh Agreement for Sale were entered into to finally resolve the dispute and to ensure that the complainant received possession within the agreed time. However, the respondent failed to comply even with the revised possession timeline. This failure defeats the very purpose of the settlement and amounts to a clear breach of the obligations voluntarily accepted by the respondent. It is a settled law, when a party is given additional time by way of settlement or a revised agreement, it is expected to strictly adhere to the extended timeline. Such concession cannot be used to delay performance indefinitely. The respondent, having taken the benefit of the settlement and extended time, was under a greater responsibility to comply with the revised possession date. The section 11(4) provides that 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."

Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 provides that where a promoter fails to complete the project or is unable to give possession of the apartment in accordance with the terms of the agreement, the allottee has a statutory right to seek appropriate relief under the Act. The Hon'ble Supreme Court in the case of **Newtech Promoter and Developers Pvt. Ltd. VS. State of UP and ors MANU/SC/1056/2021**,

"22. If we take a conjoint reading of sub-sections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable under Sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.

23. Correspondingly, Section 19 of the Act spells out "Rights and duties of allottees". Section 19(3) makes the allottee entitled to claim possession of the apartment, plot or building, as the case may be. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund of amount part 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."

Accordingly, this Authority holds that the respondent failed to hand over possession of the apartment within the time agreed under the revised Agreement for Sale executed pursuant to settlement, and that such failure amounts to delayed possession and breach of contractual obligations.

(iii) Whether the possession handed over to the complainant without execution of sale deed, without completion certificate and without providing basic amenities, can be treated as lawful and valid possession?

Upon adjudication of this issue, the record reveals that possession of Apartment/Flat No. 101, 2BHK (above parking), located on the Ground Floor in Tower B1 of the project "Residency Himalayas", was handed over by the respondent to the complainant on 02.08.2025. However, it is not in dispute that such possession was handed over without execution and registration of the sale deed, without

obtaining a completion certificate or occupation certificate, and without providing essential services such as electricity, water, and sewerage connections. Under the provisions of the Real Estate (Regulation and Development) Act, 2016, possession of an apartment cannot be regarded as lawful or complete unless it is accompanied by compliance with statutory requirements. Section 17(1) of the Act mandates that the promoter shall execute a registered conveyance deed in favour of the allottee and hand over possession in accordance with the sanctioned plans and applicable laws. Section 17 of the Act reproduced as under:-

"17. (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate."

Mere physical handing over of keys, in the absence of a registered sale deed, does not confer legal ownership or lawful possession. Further, Section 11(4)(b) of the Act obligates the promoter to obtain the completion certificate or occupation certificate from the competent authority before handing over possession. Section 11(4)(b) of the Act is reproduced as under:

"(b)The promoter shall 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;"

The requirement of a completion certificate is not a procedural formality but a statutory safeguard to ensure that the construction is in accordance with sanctioned plans. Possession handed over without a completion or occupation certificate is legally unsustainable and cannot be recognised as valid possession in the eyes of law. Any occupation without such certification is treated as unauthorised occupation and does not create legal rights in favour of the complainant/ occupant. The record further establishes that even on the date of the purported possession, the flat was not habitable, as electricity, water, and sewerage connections had not been provided. The provision of basic civic amenities is an integral component of "possession" in law. Possession of a residential unit without essential services renders the unit unfit for occupation and defeats the purpose of delivery of possession. It is also relevant to note that inspection reports of the Municipal Corporation and the Assistant Planner on record establish that the construction itself was not in conformity with the sanctioned plans and that no completion certificate had been issued. In such circumstances, any

possession handed over is only symbolic or paper possession and does not attain the status of lawful possession recognised under law. Accordingly, this Authority finds that the possession stated to have been handed over to the complainant on 02.08.2025, in the absence of execution of sale deed, completion certificate, and essential services such as electricity, water, and sewerage connections, cannot be treated as lawful possession in the eyes of law. Such possession does not satisfy the mandatory provisions of the RERD Act and does not absolve the respondent of its contractual and statutory obligations.

(iv) Whether the construction raised by the respondent is in violation of the sanctioned plans, including conversion of approved parking area into residential units, construction of additional dwelling units, alteration of layout, and use of roof/attic as habitable space?

The inspection reports placed on record by the Municipal Corporation, Shimla, the Assistant Planner, and the Assistant Town Planner (ATP) conclusively establish that the construction raised by the respondent is not in accordance with the sanctioned building plans approved by the competent authority. Under Section 11(3) of the Real Estate (Regulation and Development) Act, 2016, the promoter is required to make available to the allottees the sanctioned plans, layout plans, and 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. Further under section 14(1) of the Real Estate (Regulation and Development) Act, 2016, a promoter is under a statutory obligation to develop the

project strictly in accordance with the sanctioned plans, layout plans, and specifications approved by the competent authority. Any deviation from the sanctioned plan without approval of revised plans is impermissible in law. The inspection reports categorically record that the respondent converted the approved parking area into residential use by raising walls and providing electrical and plumbing fittings. Parking areas form an integral part of sanctioned plans, and their unauthorised conversion has consistently been held to be illegal. The reports further establish that the respondent constructed additional dwelling units beyond those approved in the sanctioned plan. Construction of extra dwelling units without sanction amounts to unauthorised development, which violates Section 14(1) of the RERD Act, which mandate that construction, must strictly conform to approved plans and sanctioned number of units. It is also recorded that the respondent altered the approved layout, including shifting of parking to another floor and providing access through an unauthorised steel ramp constructed partly outside the plot boundary. Such alteration of layout without approval violates the conditions of sanction and is impermissible under municipal planning laws. The inspection reports further reveal that the roof/attic area, which was not sanctioned for residential use, was converted into a habitable attic floor. Use of attic or roof space as habitable accommodation without sanction is prohibited and constitutes unauthorised construction. Such use also violates Section 14(1) of the RERD Act, which mandates adherence to sanctioned plans and specifications. Further, the inspection authorities have specifically recorded that no revised building plan or completion plan has been approved by the

Municipal Corporation, Shimla. In the absence of approval of revised plans, the deviations noticed at site remain unauthorised and illegal. The conversion of parking space into habitable residential units is a material alteration and also violates Section 14(2) of the RERD Act, which prohibits a promoter from making any addition or alteration in the sanctioned plans without obtaining prior written consent of the allottee and approval of the competent authority. Section 14 is reproduced as under:-

"14. (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person: Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a

change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

Consequently, since the building was not constructed as per the sanctioned plan, the respondent could not legally obtain the Completion or Occupation Certificate. It is a settled principle of law that any construction raised in deviation of sanctioned plans is illegal and confers no legal right. Possession or sale of such unauthorised construction amounts to deficiency in service and an unfair trade practice. It further constitutes a breach of the Agreement for Sale. Any incorrect or false representation made through brochure, advertisement, or prospectus amounts to misrepresentation and attracts the provisions of Section 12 of the Real Estate (Regulation and Development) Act, 2016. The inspection

reports are official documents prepared by statutory authorities in discharge of their public duty and carry significant evidentiary value. The respondent has failed to place on record any sanctioned revised plan or technical report rebutting the findings recorded by the inspecting authorities. Accordingly, in view of Sections 11 and 14, of the RERD Act, this Authority finds that the respondent has raised construction in clear violation of the sanctioned plans by converting approved parking areas into residential units, constructing additional dwelling units, altering the approved layout, and using roof/attic space as habitable accommodation without approval. Such construction is unauthorised, and illegal, with statutory requirements of the RERD Act.

(v) Other issues and imposition of penalties?

From the pleadings, documents on record, and inspection reports submitted by the Municipal Corporation, Assistant Planner, and Assistant Town Planner, it is evident that the development undertaken by the respondent is not a separate or individual construction but forms part of an integrated real estate project dealt with under the name "Residency Himalayas". The project consists of multiple buildings constructed on adjoining plots, having common access road, common infrastructure, and common basic amenities, and has been presented to allottees as a single development. The flat given to the complainant is located in a building which the respondent has tried to show as a separate construction. However, the manner in which the project has been developed, the order in which the buildings were constructed, and the use of common amenities clearly show that this building is not independent but

forms a later phase (Phase-II) of the same project, namely "Residency Himalayas". Under Section 3(1) of the Real Estate (Regulation and Development) Act, 2016, every real estate project is required to be registered with the Authority prior to advertisement, marketing, booking, or sale. The proviso and Section 3(2) only provides that where the real estate project is to be developed in phases, every such phase shall be considered a stand-alone real estate project, and the promoter shall obtain registration under this Act for each phase separately. In the present case, the site inspection reports clearly show that the respondent has constructed more flats than permitted, converted parking areas into residential units, raised unauthorised attic floors, and changed the approved layout. These facts clearly show that the project does not qualify for exemption under Section 3(2) of the RERD Act, 2016. When a project is developed in phases, each phase is required to be registered separately under Section 3 of the Act. Therefore, the building in which the complainant's flat is located should have been registered as Phase-II of the project "Residency Himalayas". The respondent's failure to register the said phase is a clear violation of Section 3 of the RERD Act. The non-registration is not a minor or technical lapse but goes against the basic purpose of the Act, which is to ensure transparency, accountability, and protection of the rights of allottees. Further, under Section 11(3) of the RERD Act, the promoter is required to make available the sanctioned plans, layout plans, and specifications approved by the competent authority to the allottees. The respondent has failed to comply with this statutory obligation, as the construction raised on site does not conform to the approved plans. Further, the respondent has also

violated his statutory obligations under Section 11(4) (a) of the Act by failing to fulfill his responsibilities towards the complainant in accordance with the Agreement for Sale, including timely and lawful delivery of possession, execution of conveyance deed, and provision of essential services. Additionally, Section 11(4)(b) of the Act specifically casts a duty upon the promoter to obtain the completion certificate or occupancy certificate from the competent authority. In the present case, the respondent has admittedly failed to obtain the completion certificate for the building in which the complainant's unit is situated. Further, Section 14 of the Act mandates that the promoter shall develop the project strictly in accordance with the sanctioned plans, layout plans, and specifications approved by the competent authority, and prohibits any addition, alteration, or modification without prior approval and consent as prescribed. The inspection reports of the Municipal Corporation, Assistant Planner, and Assistant Town Planner conclusively establish that the respondent carried out unauthorised alterations, including conversion of approved parking areas into residential units, construction of additional dwelling units beyond sanction, alteration of the approved layout, and conversion of roof/attic space into habitable accommodation. These deviations were made without approval of revised plans and without lawful consent, and therefore constitute a clear violation of Section 14 of the Act. Further, In addition, Section 17 of the RERD Act mandates that the promoter shall execute a registered conveyance deed in favour of the allottee and hand over lawful possession of the apartment along with the common areas after obtaining the completion certificate. In the present case, the respondent neither registered the project phase

nor executed the sale deed nor obtained the completion certificate, thereby violating Section 17 of the Act. In addition the respondent failed to hand over lawful possession within the stipulated period, even after execution of the revised Agreement for Sale pursuant to settlement. The possession eventually claimed to have been handed over was without completion certificate, without basic amenities, and therefore unlawful. Such conduct attracts the consequences contemplated under Section 18(1) of the Act. In addition to the aforesaid violations, this Authority observed that the respondent has also contravened Section 12 of the Real Estate (Regulation and Development) Act, 2016. Section 12 casts a statutory obligation upon the promoter to be responsible for the accuracy of the particulars disclosed or representations made in any advertisement, prospectus, brochure, or agreement relating to the real estate project, including the services, amenities, specifications, layout plans, and timelines promised to the allottee. In the present case, the respondent represented to the complainant, through the Agreement for Sale, brochures and other documents that the apartment is part of project "Residency Himalayas" and possession would be delivered within the stipulated period complete in all respects, including balcony, lifts, parking, electricity, water, sewerage connections, club facilities, and other promised amenities. However, the facts on record clearly establish that these commitments were not honoured. The flat handed over lacks several promised features, the layout has been altered, the sanctioned plans have been violated, and possession was offered without completion certificate and basic amenities. Such conduct amounts to false and misleading representation with intention to induce the

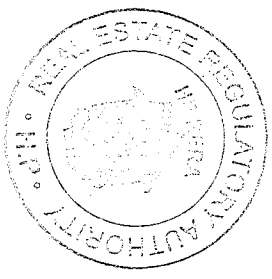
complainant into making payments and signing the agreement for sale and attracts the provision of Section 12 of the Act. These violations taken together clearly show that the respondent has failed to discharge its statutory duties under Sections 3, 11(3)(a), 11(4)(a) 11(4)(b), 12, 14, 17, and 18 of the RERD Act, thereby attracting regulatory provisions under the Act. The Authority is of firm view that respondent/promoter must be held liable and penalized under Section 61 of the Act ibid, in view of Sections 34 (f), and Section 37, of the Act which empower the Authority to ensure compliance of the obligation(s)/direction(s) cast upon the promoter, for their failure to fulfill the obligations as promoters as prescribed in Section 3, 11, 12, 14, 17 and 18 of the Act, (ibid). Further, section 38 of the Act empowers the Authority to impose penalty or interest in regards to any contravention of obligation cast upon the promoter.

(vi) **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 hereby directed to obtain registration of Phase-II of the project "Residency Himalayas" under section 3 of the RERD Act, 2016 and also obtain the completion certificate from the competent authority as per the sanctioned plan within a period of two months from the date of passing of this order and to execute the sale deed/conveyance deed within one month thereafter.

c) The respondent is directed to pay the interest for delayed possession, at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 to the complainants. The present highest MCLR of SBI is 8.80%. Hence the rate of interest would be 8.80 %+ 2% i.e. 10.80% per annum on the amount paid by the complainant i.e. Rs. 65,25,000/- w.e.f. 01.11.2024 till the date of handing over of lawful possession after obtaining the completion certificate/ part completion of the building. The interest is to be paid by the respondent/ promoter to the Complainants within 90 days from the date of passing of this order.

d) That under Section 61 of the Act, in order to ensure adequate deterrence and to protect the interests and rights of the allottees, the Authority, considering all facts of the case, deems appropriate to impose a penalty of Rs. 10 Lakh for contravention of the provisions of the Section 12 and 18 of the RERD Act. Accordingly, the penalty imposed, shall be deposited by the respondent in the bank account of this Authority, operative in the name of "Himachal Pradesh Real Estate Regulatory Authority Fund bearing account no."39624498226", State Bank of India, HP Secretariat Branch, Shimla, having IFSC Code. SBIN0050204, within a period of 60 days from the passing of this order, failing which the respondent shall further be liable for coercive action for non-compliance of directions as per relevant provisions of Act/Rules.



e) That in view of violation of provision(s) contained in Sections 3, 11, 14 and 17 of the RERD Act, 2016, the TCP wing of this Authority is directed to examine the matter further after affording the respondent opportunity to being heard and to take action accordingly as per provisions of the Act and Rules made thereunder.

R.D. DHIMAN
(CHAIRPERSON)

VIDUR MEHTA
(MEMBER)