

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

**Complaint no. HPRERA2025015/C**

**In the matter of:-**

1. Mr. Vinay Saran Mehra, Son of Sh. Inder Saran Mehra, Resident of 1  
Ishwar Nagar East, 2<sup>nd</sup> Floor, New Delhi-110025

2. Mrs. Kakoli Chakraborty Mehra, Wife of Sh. Vinay Saran Mehra,  
Resident of 1 Ishwar Nagar East, 2<sup>nd</sup> Floor, New Delhi-110025

.....Complainant(s)

Versus

Sh. Manvinder Singh, Son of Late Sh. Mukhinder Singh, Resident of  
Village Kothi, Khalini, Shimla (H.P)

.....Respondent

**Present:** Sh. Ankush Dass Sood, Sr. Advocate alongwith Ajay Siphya Ld.  
Counsel along with complainant Sh. Vinay Saran Mehra in  
person.

Sh. Manvinder Singh, respondent/ promoter through WebEx.

Sh. Sameer Thakur Ld. Counsel for respondent promoter in  
person

**Date of hearing: 28.11.2025**

**Date of pronouncement of order: 20.02.2026**

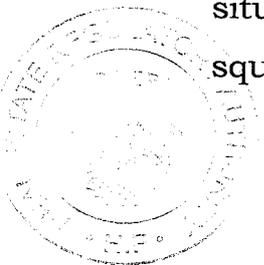
**ORDER**

**Coram: Chairperson and Member**



## **1. FACTS OF THE CASE:-**

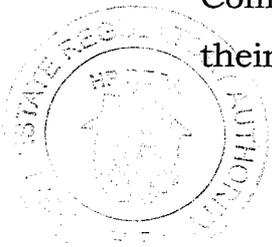
The Respondent Developer is a promoter of a real estate project registered under the provisions of the Real Estate (Regulation and Development) Act, 2016, namely "AURAMA VALLEY PHASE-III". The Respondent widely advertised its residential project "AURAMA VALLEY" through brochures and its website, representing that the Project would be developed as a fully equipped housing society with all necessary amenities and facilities, and that possession of apartments would be delivered within a stipulated time frame. Acting on such representations, the Complainants were induced to book an apartment in the Project. The brochure relied upon by the Complainants placed on record as Annexure C-1. The Respondent invited applications from the public for booking apartments in the said Project and expressly represented that all requisite statutory approvals, permissions, and clearances concerning the land, layout, and construction had already been obtained. It was further stated that the Project was an independent and self-contained development, not forming part of or linked with any other project or zone. These representations were made with the clear intent to induce bookings from prospective purchasers, including the Complainants, despite the fact that several approvals were either pending or incomplete at the relevant time, thereby constituting misrepresentation and breach of the statutory duty of disclosure. It was further stated that the Complainants applied for allotment of an apartment vide application dated 14.10.2021. Pursuant thereto, the Respondent allotted to the Complainants a residential apartment bearing Unit No. 2-B, 3BHK, situated in the Wood Pecker Block of the Project, admeasuring 2050 square feet of usable area along with one car parking space and



proportionate share in the common areas, for a total sale consideration of Rs. 1,69,96,000/- plus applicable GST. The allotment was formally communicated vide Allotment Letter dated 15.10.2021, annexed as Annexure C-2. It is further stated that an Agreement for Sale dated 07.03.2022 was executed between the parties, forming their contractual relationship. Under the said Agreement, the total sale consideration was fixed at Rs. 1,62,96,000/-, in addition to a Club Membership Deposit of Rs. 5,00,000/- and an Interest Free Maintenance Deposit of Rs. 2,00,000/-, exclusive of statutory taxes, with GST payable at the rate of 5%. The Agreement specifically governed the rights and obligations of the parties under the RERA framework. The said Agreement has annexed as Annexure C-3. It was further submitted that the Complainants and the Respondent entered into a Tripartite Agreement dated 10.03.2022 with Housing Development Finance Corporation Limited (HDFC), under which the Complainants availed a housing loan of Rs. 1,30,00,000/-. The Respondent issued a Permission to Mortgage Letter acknowledging sale of the apartment for a total consideration of Rs. 1,78,10,800/- inclusive of GST and confirming that the apartment formed part of the registered Project bearing RERA Registration No. RERAHPSHP04190055 dated 21.06.2019. These documents annexed as Annexures C-4 and C-5. It was further stated that as per Clause 6.1 of the Agreement for Sale, the Respondent was contractually bound to hand over lawful possession of the apartment, along with fully developed common areas, on or before 30.01.2023. The Respondent failed to honour this obligation. Under the proviso to Clause 8.2 read with Sections 18 and 19 of the RERA Act and the applicable Rules, the Complainants are entitled to interest for every

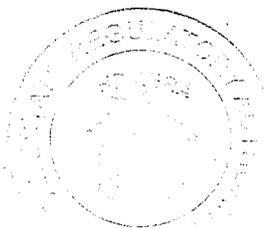


month of delay commencing from 31.01.2023 until actual delivery of possession. It is further stated that the Complainant fully complied with all financial obligations and made payments strictly in accordance with the demand notices issued by the Respondent, without any default. On 07.06.2024, the Respondent intimated that the apartment was ready for occupancy and sought release of the final payment. Subsequently, on 25.06.2024, the Respondent again stated that the apartment was "ready for handover", although subject to minor finishing work. These inconsistent communications have been annexed as Annexures C-6 and C-7. A Final Demand Letter dated 03.10.2024 was issued by the Respondent showing an outstanding amount of Rs. 19,00,157/-, while acknowledging receipt of Rs. 1,59,10,647/-. The Complainants paid the said amount on the same day, where after the Respondent issued a No Dues Certificate dated 03.10.2024, acknowledging full and final settlement of Rs. 1,78,10,800/-. The account statement confirming zero balance is annexed as Annexures C-8 to C-10. Despite receipt of the entire sale consideration, the Respondent neither executed the Sale Deed nor handed over physical possession. Instead, vide email dated 04.06.2024, the Respondent imposed a new condition requiring the Complainants to obtain permission under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, notwithstanding the fact that possession had been handed over to other allottees without such insistence and that the Respondent had facilitated such permissions in other cases. The same is annexed as Annexure C-11. Compelled by the Respondent's insistence, the Complainants independently obtained the Section 118 permission at their own expense and, upon receipt thereof, requested the



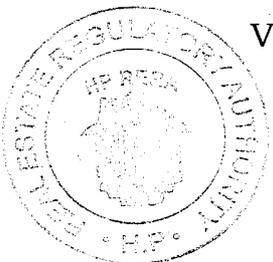
Respondent on 14.04.2025 to hand over possession and execute the Sale Deed. Despite reminders dated 18.04.2025, the Respondent, vide email dated 23.04.2025, raised new and extraneous demands relating to alleged helicopter service charges, purported increase in carpet area, and an alleged discrepancy in floor numbering, all of which were contrary to the Agreement and prior communications. These documents annexed as Annexures C-12 to C-16. On 26.04.2025 and 14.05.2025, the Respondent further escalated its unlawful demands, alleging an increase in carpet area from 2050 sq. ft. to 2265/2267 sq. ft., far exceeding the permissible 3% variation stipulated in Clause 1.6 of the Agreement, and demanded additional amounts at revised rates, accompanied by threats to brick off portions of the apartment. The communications are annexed as Annexures C-17 and C-18. The Complainants refuted these demands and reiterated their readiness and willingness to complete registration. They deposited stamp duty and registration charges and appeared before the Sub-Registrar, Shimla (Rural), on 02.05.2025. The Respondent deliberately failed to appear, as certified by the Sub-Registrar's office vide Annexure C-20. It is further stated that the Respondent has failed to obtain the mandatory Completion Certificate and Occupancy Certificate, rendering the Project incomplete and legally incapable of lawful possession or conveyance. The Project continues to suffer from substantial deficiencies in infrastructure and amenities, contrary to the representations made in the brochure and Agreement. In view of the submissions made, the Complainants have prayed for the following reliefs:-

- I. The Complainants seek a direction to the Respondent to pay interest for the delayed delivery of possession of the allotted



Apartment till the actual date of handing over lawful possession, as per the Real Estate (Regulation and Development) Act, 2016 and the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017.

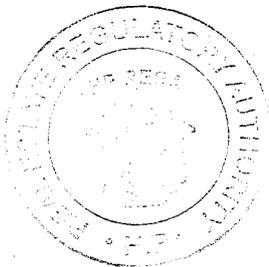
- II. The Complainants further seek a direction to the Respondent to execute and register the Sale Deed and to hand over final lawful possession of Apartment No. 2-B (3BHK), situated on the Second Floor of the Woodpecker Block, "AURAMAH VALLEY PHASE-III", Mohal Tikkar, Tehsil Shimla, District Shimla, Himachal Pradesh, together with one designated car-parking space, all appurtenant rights, and the undivided proportionate share in the land and common areas and amenities in accordance with law.
- III. A direction to the Respondent to obtain and produce the Completion Certificate (CC) and Occupancy Certificate (OC) from the competent statutory authorities and to complete all common areas, facilities, and amenities in accordance with law.
- IV. The Complainants have also prayed for a declaration that the Respondent's post-facto demands raised towards:
  - (a) the so-called "Helicopter Club" or "Heli-Service"; and
  - (b) additional consideration allegedly arising from a unilateral and alleged increase in carpet area from 2050 sq. ft. to 2265/2267sq.ft., are illegal, void, and unenforceable, being contrary to the Agreement for sale and the provisions of the Real Estate (Regulation and Development) Act, 2016.
- V. The Complainants further seek a direction that the Respondent be ordered to forthwith and unconditionally



revoke, cancel, and permanently refrain from enforcing any and all financial demands raised after issuance of the No Dues Certificate dated 03.10.2024, including but not limited to demands towards the purported "Helicopter Club or Heli-Service" charges and alleged "increased carpet area" charges, which demands are ex facie illegal, wholly outside the four corners of the Builder Buyer Agreement, and in violation of the transparency and consumer-protection mandate under the RERA Act, 2016.

- VI. A further relief sought is to restrain the Respondent from bricking off, walling, altering, partitioning, or otherwise reducing the functional area of the Apartment in question.
- VII. The Complainants have also prayed for imposition of appropriate penalties upon the Respondent for deliberate violations of statutory provisions and for failure to fulfil legal obligations under the RERA Act, 2016.
- VIII. Lastly, the Complainants have prayed for grant of any other relief, order, or direction as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the case, in the interest of equity and justice.

**2. INTERIM RELIEFS SOUGHT:** Pending final adjudication of the Complaint, the Complainants have sought interim protective directions restraining the Respondent from creating any third-party rights, encumbrances, liens, or interests in respect of Apartment No. 2-B, and from allocating the said Apartment to any other allottee or facilitating the process of obtaining permission under Section 118 of the Himachal Pradesh Tenancy



and Land Reforms Act, 1972 in favour of any third party in respect of Apartment No. 2-B. The Complainants further seek restraint orders restraining the Respondent from cancelling or forfeiting the allotment of Apartment No. 2-B. An additional interim relief sought is to restrain the Respondent from raising any further illegal demands or from adopting any coercive measures, including threats of physical alteration to the Apartment. The Complainants also seek restraint against the Respondent, its officers, contractors, agents, or any person claiming through or under it, from bricking off, walling, partitioning, altering, mutilating, or otherwise reducing or interfering with the functional area of Apartment No. 2-B, Woodpecker Block, "AURAMAH VALLEY PHASE-III", or from effecting any physical change to the layout, openings, common areas, fixtures, amenities, or sanctioned specifications of the Apartment without the prior written consent of the Complainants. The Complainants have further prayed for restraint on the Respondent from charging any maintenance charges, holding charges, or similar levies until lawful possession is handed over upon obtaining valid Occupancy Certificate and Completion Certificate. The Complainants have also prayed for grant of any other interim order or direction as deemed fit and proper in the interest of justice.

### **3. REPLY TO THE COMPLAINT:**

The present reply has been filed by Sh. Manavinder Singh, Sole Proprietor of Club One Estates, the promoter and developer of the project known as Auramah Valley Phase-III (Residential)



(hereinafter referred to as “the Project”). The Respondent is fully authorised and competent to file the present reply and contest the complaint on behalf of the Project. It is stated that the Respondent categorically denies each and every allegation, averments, contention, and submission made in the complaint, except those expressly and specifically admitted herein. It is further stated that the Respondent has never indulged in any unfair trade practice, misrepresentation, nor has there been any breach of the provisions of the Real Estate (Regulation and Development) Act, 2016, the Rules framed thereunder, or any local laws. There has also been no violation of the contractual terms contained in the Allotment Letter dated 15.10.2021 or the Agreement for Sale dated 07.03.2022 executed between the parties. It is further stated that as per Clause 32 of the Agreement for Sale, exclusive jurisdiction to adjudicate disputes arising out of the Agreement vests with the Adjudicating Officer appointed under the RERA Act. The complaint is misconceived, erroneous, and untenable in law. The Complainant has suppressed material facts, has not approached this Authority with clean hands, and has abused the process of law. It is further stated that prior to the development of the project, the Respondent obtained all requisite statutory approvals, permissions, and clearances from competent authorities, including registration as a developer with H.F. Housing & Urban Development Authority, NOC from the IPH Department, development licence from the Town & Country Planning Department, and registration of the Project under RERA on 21.06.2019 bearing Registration No. RERAHPSHP04190055.



Construction commenced only after approval of final layout plans and specifications. Copies of all approvals are annexed as Annexure R-1 (Colly). The requirement of permission under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, is mandatorily to be obtained by the purchaser/allottee and not by the Respondent. The Complainant was fully aware of this statutory requirement at all times. The Project enjoys high goodwill, and several units have already been delivered without a single complaint before any statutory or judicial authority. The present complaint is motivated and filed with the intention of pressurising the Respondent. The Project brochure and website explicitly disclosed that Helicopter Club Services form an integral and compulsory feature of the Project, primarily for emergency medical evacuation and accessibility. Copies of brochures and website extracts are annexed as Annexure R-2 (Colly). It is further stated that the Complainant applied for allotment and was allotted Apartment No. 2-B (3 BHK) in Woodpecker Block vide Allotment Letter dated 15.10.2021 for a total consideration of Rs. 1,76,96,000/- excluding GST, which specifically included helicopter club charges of Rs. 7,00,000/-. The Allotment Letter is annexed as Annexure R-3. Thereafter, an Agreement for Sale dated 07.03.2022 was executed. Schedule-D of the Agreement clearly stipulated payment of helicopter club charges at the time of possession. The Agreement is annexed as Annexure R-4. Upon completion of construction, the Respondent lawfully demanded the helicopter charges vide email dated 23.04.2025, strictly in accordance with contractual terms. Copies are annexed as



Annexure R-5 (Colly). Clause 1.6 of the Agreement for Sale, framed in conformity with Form-L under Rule 17 of the H.P. RERA Rules, expressly provides that final carpet area shall be confirmed after completion and issuance of the completion certificate, and corresponding price adjustments shall be made. Sections 2(p), 2(q), 2(zf), and 2(zq) of the RERA Act define the competent authority, completion certificate, occupancy certificate, and sanctioned plan respectively. Section 14 permits minor deviations due to architectural and structural reasons, subject to certification by an authorised architect or engineer. Rule 4 of the H.P. RERA Rules mandates disclosure of deviations before issuance of completion certificate. The Respondent duly complied with these provisions. It is submitted that the clauses referred to hereinabove, read conjointly with Clause 1.6 of the Agreement for Sale, clearly stipulate that the developer is required to adhere to the sanctioned building plans as approved by HP RERA at the time of registration. However, the Agreement also permits reasonable deviations arising out of architectural and structural requirements. Upon completion of construction, the developer is obligated to apply to HP RERA for issuance of the Completion Certificate, disclosing such deviations, including any increase in carpet area, duly justified by a certified report of an architect or engineer. Upon approval, the Completion Certificate reflects the final carpet area, inclusive of the increased area, which may then be intimated to the allottee, and possession offered subject to payment of the additional cost. As per Clause 1.6, the developer is entitled to charge the cost of increase up to 3% of the carpet area in the normal course,



whereas any increase beyond 3% can be charged only after issuance of the Completion Certificate and upon the allottee's express consent. In the event the allottee refuses to pay for the increased area, the developer is under no legal or contractual obligation to hand over such additional area free of cost. It is further submitted that as per correspondence issued by the HP Town and Country Planning Department dated 23.10.2023, the requirement of obtaining a part Completion Certificate was dispensed with. Subsequently, vide correspondence dated 03.12.2024, the HP TCP Department issued a Part Completion Certificate, wherein the increase in carpet area was duly assessed and approved. The respondent had applied to HP RERA in the prescribed format for issuance of the Completion Certificate, which included the increased carpet area arising due to minor architectural and structural variations necessitated by hilly topography. Such variations are inherent in hill-area constructions and cannot be entirely avoided. Consequently, the respondent raised additional demands vide emails dated 26.04.2025 and 14.05.2025 strictly in accordance with the Completion Certificate issued by HP RERA. The said demands were fully lawful, contractual, and within the statutory framework of the RERA Act, HP RERA Rules, and the Agreement for Sale. It is further stated that Clause 6.1 of the Agreement for Sale stipulates that possession of the apartment was to be handed over by 30.01.2023, subject to there being no delay in grant of permission under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. This clause clearly establishes that Section 118 permission is a precondition for



handing over possession. Further, Clause 15 of the Agreement provides that the complainant entered into the Agreement with full knowledge of all applicable laws, while Clause 31 mandates that the rights and obligations of the parties are governed by the RERA Act, HP RERA Rules, Regulations and other applicable laws. Section 118(2)(h) read with Rule 38-A of the HP Tenancy and Land Reforms Rules, 1975 casts the obligation of applying for such permission squarely upon the purchaser. Accordingly, the respondent lawfully requested the complainant to furnish Section 118 permission prior to possession.

It is further stated that the complainant applied for permission under Section 118, which was granted on 03.04.2025 for purchase of a 3BHK apartment measuring 2050 sq. ft. It is pertinent that the permission reflects only the original carpet area and not the increased area. As per the conditions of the said permission, if any discrepancy is found in the particulars, the property would vest in the State Government free from encumbrances. Therefore, possession and registration of the apartment with increased area cannot be lawfully effected unless a revised Section 118 permission is obtained reflecting the correct carpet area and nomenclature. It is further clarified that as per the sanctioned plans approved by HP TCP, the Woodpecker Block is identified as Block "F" and Apartment No. 2B is technically designated as 3B. This correction pertains only to nomenclature and does not alter the physical identity of the allotted apartment. As per Clauses 1.4, 5, and 8.3 of the Agreement for Sale, the complainant was obligated to make

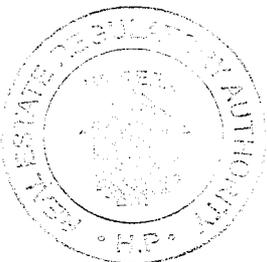


timely payments as per the agreed payment schedule. The complainant defaulted on multiple occasions, as reflected in the payment record annexed as Annexure R-12. Several reminders were issued, and such delays disrupted construction-linked cash flow and adversely impacted timelines. Despite such defaults, the respondent refrained from charging interest as an act of good faith. In view of the aforementioned submissions, it is respectfully prayed that the complaint be dismissed with costs.

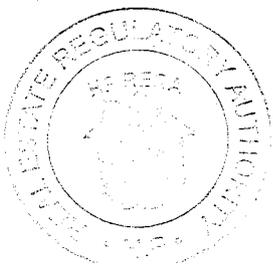
#### **4. REJOINDER ON BEHALF OF THE COMPLAINANTS**

The Complainants, through the present rejoinder, respectfully traverse, controvert and deny each and every averment, allegation, submission and contention raised by the Respondent in their Reply. It is stated that the Builder Buyer Agreement dated 07.03.2022. The governing legal framework is clear, namely:

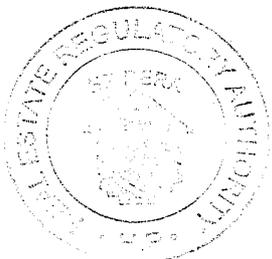
(i) the BBA makes time the essence and conditions any offer of possession upon the prior issuance of a valid Completion/Occupancy Certificate by the competent authority; (ii) Section 31 of the RERA Act confers a concurrent statutory right upon an allottee to approach this Hon'ble Authority notwithstanding any boiler-plate forum clause; and (iii) Section 14 of the RERA Act strictly regulates deviations from sanctioned plans, permitting only minor architect-certified variations, while expressly excluding additions to area and changes to ingress or egress from the scope of minor changes. It is further stated that against this settled legal position, the Respondent advances three untenable propositions: that jurisdiction of this Hon'ble



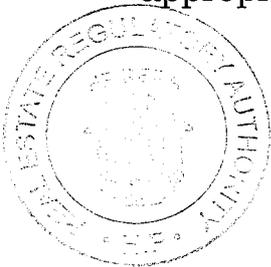
Authority is ousted by a private forum clause; that possession could be offered and consideration demanded prior to lawful completion; and that a unilateral escalation of carpet area by approximately 10.58%, coupled with a post-facto "option" to purchase or suffer bricking, is contractually permissible. Each of these propositions is legally unsustainable. The maintainability objection fails in view of Section 31. The alleged readiness for possession is contrary to the contractual requirement of completion certification. The carpet area escalation violates Section 14 and Clauses 1.5 and 1.6 of the Agreement for sale, which restrict adjustments to  $\pm 3\%$  and require prior consent for any major deviation. It is further stated that the Respondent's attempt to convert Section 118 permission under the Himachal Pradesh Tenancy and Land Reforms Act, 1972 as a force majeure shield. The BBA does not recognise Section 118 as force majeure, nor can statutory promoter obligations be diluted by contractual drafting. The promoter's primary obligation is to complete construction as per sanctioned plans and secure completion certification before raising possession-linked demands. The doctrine of reciprocal promises cannot be invoked to compel allottees to perfect downstream title permissions when lawful readiness under the BBA has not been established by the promoter. The record reveals premature demands in 2024, issuance of a No Dues Certificate on 03.10.2024, and thereafter shifting positions through alleged extra area and helicopter club demands. Such conduct attracts estoppel. The Respondent's own communications induced the Complainants to believe that Section 118 documentation was being progressed, only for the



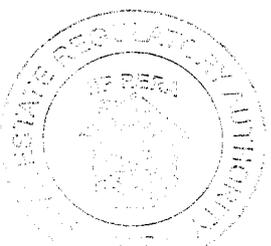
Respondent to later disown responsibility while simultaneously revising particulars such as apartment nomenclature. The true copies of WhatsApp messages along with certificate under Section 63 of the Bharatiya Sakshya Adhinyam (BSA), 2023 are annexed as ANNEXURE C-21. It is further stated that the demand towards "helicopter club" charges constitutes an impermissible extra-contractual levy. The controlling document is the BBA, which supersedes the allotment letter. Schedule-A and Schedule-D of the BBA do not capitalize or quantify any helicopter club charge. At best, the term appears as an unpriced descriptor. The brochure itself characterises helicopter services as "for members only. the Respondent's demand dated 03.10.2024 expressly recorded Rs.0/- against helicopter charges, followed by issuance of a No Dues Certificate. This contemporaneous conduct estops any subsequent demand. Aviation services, absent DGCA approvals and regulatory integration, cannot be imposed as consideration under RERA. The helicopter charge is therefore void, waived, and unenforceable. That the Respondent's plea of increased carpet area is equally unsustainable. Clause 1.5 of the BBA prohibits additions or alterations without prior written consent, save for minor variations. Clause 1.6 permits only an arithmetic re-measurement within  $\pm 3\%$ . The Respondent pleads an increase of approximately 10.58% (217 sq. ft.) involving ingress/egress alterations, which are statutorily excluded from the category of minor changes. No prior consent exists. Inventory filings continue to reflect 2050 sq. ft. for Woodpecker apartments. Demand emails are inconsistent in quantum and rate. Absent



consent and sanction, no monetary claim lies beyond  $\pm 3\%$ . Those allegations of delay in payment are baseless. Construction-linked finance operated strictly as per BBA milestones. Where premature demands were raised, the financier declined disbursal. Upon achievement of milestones, payment followed promptly. On 03.10.2024, the Respondent itself raised the possession-linked demand, which was paid the same day, followed by issuance of a No Dues Certificate. Any subsequent claim of arrears is legally foreclosed. The Respondent cannot justify its non-appearance for registration on 02.05.2025 by fresh "pre-requisites", including demands towards helicopter charges, post-facto re-nomenclature of the apartment from 2-B to 3-B. The contractual sequence under the BBA is unequivocally promoter-led, namely: completion of construction strictly as per sanctioned plans; procurement of lawful completion certification; issuance of a valid offer of possession; and execution of conveyance without imposition of any extra-contractual conditions. The Complainants have acted with scrupulous diligence. It is the Respondent who has repeatedly oscillated on the status of completion, attempted to re-price the concluded bargain through an aviation club, asserted an ultra vires escalation, and introduced a late-stage renumbering of the apartment calculated to frustrate registration and the Section 118 formalities already procured. In these circumstances, the preliminary objections raised by the Respondent are devoid of merit, the Reply discloses no defence to the core contractual and statutory breaches, and the matter is ripe for issuance of appropriate directions regarding conveyance and possession



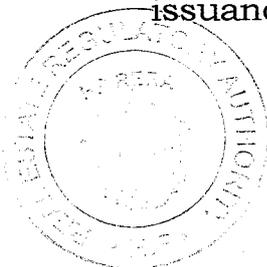
strictly in accordance with the contract and the governing statute, together with payment of delay interest and imposition of appropriate regulatory consequences upon the Respondent Promoter/Developer for unilateral alterations and post-closure monetary demands. In view of the foregoing submissions, it is prayed that this Authority may be pleased to reject the Reply filed by the Respondent and allow the Complaint in toto along with all consequential reliefs as already prayed for therein. It is further prayed that this Authority may be pleased to record a finding that the Respondent has failed to produce a lawful Completion/ Occupancy Certificate and accordingly direct the Respondent to place on record certified copies thereof forthwith, and in the event of failure to do so, to draw an adverse inference that no valid completion existed as on the relevant dates. It is further prayed that this Authority may be pleased to treat the Final Demand on Intimation of Possession and the No Dues Certificate dated 03.10.2024 as conclusive financial closure for the purposes of Schedule-D of the Builder Buyer Agreement, and to strike out from the Reply all post-closure monetary claims and annexures premised on (a) the alleged levy towards "helicopter club/service", and (b) the unilateral claim of "increased carpet area" beyond the contractual tolerance of  $\pm 3\%$ , and further direct that such heads shall not be looked into for deciding possession or execution of conveyance. It is further prayed that this Hon'ble Authority may be pleased to direct the Respondent to restore the apartment to its original condition strictly in accordance with the layout plan in Builder Buyer Agreement and to take such action against the Respondent as



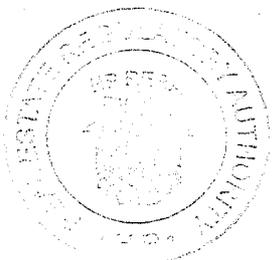
this Authority may deem fit and proper for breach of the undertaking given. It is further prayed that this Authority may be pleased to direct the Respondent, at its own cost and within a time-bound schedule, to carry out all necessary administrative rectifications in the nomenclature of the apartment, namely “2-B” versus “3-B”, across all records and approvals without insisting upon a fresh permission under Section 118 from the Complainants, and further to accept the existing Section 118 permission already obtained for Unit No. 2-B admeasuring 2050 square feet as sufficient for the purpose of conveyance, with the entire responsibility of any internal code-mapping being solely upon the Respondent. It is further prayed that this Authority may be pleased to pass such further orders or directions as may be necessary to effect to the contractual and statutory scheme and to secure complete and lawful conveyance and possession of the subject apartment in favour of the Complainants, in the interests of justice.

#### **5. ARGUMENTS ON BEHALF OF THE COMPLAINANTS**

The Ld. Counsel for the Complainants submitted that the Agreement for sale was executed on 07.03.2022 (Annexure C-3), whereby the Respondent categorically committed to hand over possession of the apartment on or before 30.01.2023, subject only to lawful compliances. It was argued that the Complainant has discharged all his financial obligations strictly in accordance with Clause 1.4 of the Agreement for sale (page 31) read with Schedule-D (page 49). It was further submitted that upon issuance of the Final Demand on Intimation of Possession dated



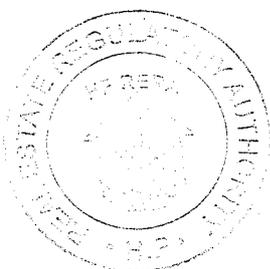
03.10.2024 (Annexure C-8, page 65), the Complainant paid the entire demanded amount on the same date, as evidenced from proof of payment at page 66 of the Complaint. The said demand letter explicitly records helicopter charges as "NIL". Consequent thereto, the Respondent issued a No Dues Certificate dated 03.10.2024, certifying that there were no pending dues or liabilities in respect of Apartment No. 2-B, Block-F, as on that date. The Ld. Counsel emphasized that the carpet area agreed under the Agreement for sale is 2050 sq. ft., which reflected consistently in the BBA (Annexure C-3), the payment schedule, and the statutory records. It was argued that even if the Respondent's contention of variation is assumed, the alleged increase goes beyond the permissible  $\pm 3\%$  limit stipulated under Clause 1.6 of the Agreement for sale and that too without any consent of the Complainant. It was submitted that there is no clause in the BBA providing for helicopter or heli-service charges. The demand for such charges was raised only post-issuance of the No Dues Certificate, vide email dated 23.04.2025 (page 81 of the Complaint), which, according to the Complainant, is legally impermissible and unenforceable. The Complainant further relied upon the permission under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, dated 03.04.2025 (Annexure C-12, page 72), which specifically pertains to Apartment No. 2-B, Block-F, admeasuring 2050 sq. ft. It was argued that the Respondent thereafter unilaterally attempted to change the nomenclature of the apartment from 2-B to 3-B, without any legal basis, solely to obstruct possession and registration. The Ld. Counsel further



submitted that the brochure and allotment letter are merely invitations to offer and do not override the contractual terms of the agreement for sale. Attention was drawn to Clause 6.1 and Clause 6.2 of the BBA, which mandate that possession can be offered only after obtaining a valid Completion Certificate / Occupancy Certificate. It was contended that despite repeated demands, the Respondent failed to place on record a lawful completion or occupancy certificate. Reference was also made to the Architect's Certificate filed with the rejoinder (Annexure c-24, page 72), wherein the Respondent's own architect certified that the project had been only partially completed, thereby contradicting the Respondent's claim of readiness for possession. The Complainant reiterated that he has not taken possession, does not seek refund, and is entitled to possession, execution of sale deed, and interest for delayed possession, as prayed at page 19 of the Complaint.

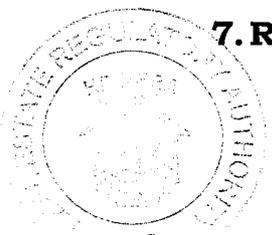
## **6. ARGUMENTS ADVANCED ON BEHALF OF THE RESPONDENT**

The Ld. Counsel for the Respondent contended that the Respondent has at all times been committed to handing over 2050 sq. ft., as recorded in the Agreement for sale dated 07.03.2022, and is ready to deliver possession of the said area. It was argued that the Respondent is not demanding any consideration for the alleged additional area and is not charging even for the permissible 3% variation. It was submitted that the construction has been carried out strictly as per the approved building plan, wherein the approved plinth area is 498 sq. meters, and the same has not been altered. The Respondent



relied upon the revised cum part completion approval dated 03.12.2024 (Annexure R-7), issued pursuant to the application dated 27.04.2024, under Section 31(1)(d) of the Himachal Pradesh Town and Country Planning Act. The Ld. Counsel submitted that in hilly landscape, minor deviations may occur due to footing displacement, which is permissible under Rule 4 of the HP RERA Rules. It was argued that 97% of the allottees accepted the revised configuration and that only the present Complainant objected. It was further argued that consent of two-thirds of the allottees was not required, as the plinth area remained unchanged, and that TCP authorities are concerned only with plinth area. Attention was drawn to Section 14 of the RERA Act, contending that the statutory requirement stood satisfied. The Respondent further contended that possession cannot be handed over nor sale deed executed unless a valid Section 118 permission exists for the correct apartment nomenclature. It was argued that TCP nomenclature reflects the apartment as 3-B, whereas the Section 118 permission reflects 2-B, and execution of sale deed on an incorrect number would be illegal. The Ld. Counsel also relied upon the brochure and allotment letter dated 15.10.2021 / 20.10.2021, contending that helicopter services were disclosed therein. It was argued that while DGCA clearance is the Respondent's responsibility, the Complainant cannot selectively accept contractual benefits and reject obligations. The Respondent reiterated willingness to refund the entire amount if directed by this Hon'ble Authority.

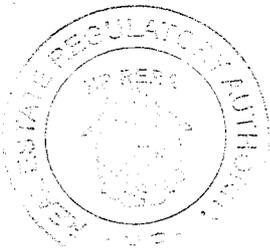
**7. REBUTTAL ARGUMENTS ON BEHALF OF THE COMPLAINANTS:**



In rebuttal, the Ld. Counsel for the Complainants reiterated that the Agreement for sale (Annexure C-3) is the sole binding contract and that neither brochure nor allotment letter can override Clause 1.4 read with Schedule-D (pages 32 and 49). It was reiterated that the Final Demand dated 03.10.2024 (Annexure C-9, page 65) and the No Dues Certificate conclusively closed all financial liabilities. It was further reiterated that Clause 1.6 of the BBA permits variation only within  $\pm 3\%$  and only in accordance with law, which admittedly was never consented to by the Complainant. It was also reiterated that the Respondent cannot take advantage of its own unilateral change in nomenclature after the Complainant had already obtained Section 118 permission (Annexure C-12, page 72). The Complainant finally reiterated that possession has been unlawfully withheld beyond the contractual date, without lawful completion/occupancy certification, and that the Respondent's post-closure monetary demands are unsustainable in law.

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

- a. Whether the offering of more area by the promoter than the agreed to between the parties is legally tenable?**
- b. Whether the respondent can force the complainants to pay for the helicopter club charges?**
- c. Whether the respondent/promoter has allotted a different flat than mentioned in the permission under section 118 of HP Tenancy and Land Reforms Act, 1972,**



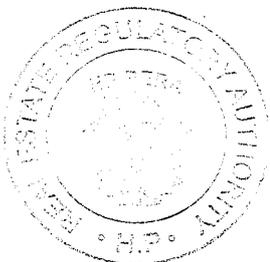
- d. Whether there is delay in handing over the possession of the unit to the complainants?**
- e. Whether there is change in the map, registered at the time of registration of the project with the HPRERA and at the time of execution of the agreement for sale?**
- f. Other issues and imposition of penalty?**
- g. Relief.**

#### **9. DISCUSSION AND FINDINGS ON EACH ISSUE:-**

##### **9 (a). Whether the offering of more area by the promoter than the agreed to between the parties is legally tenable?**

The Constitution of India recognizes the right to shelter as an integral aspect of the fundamental right to life guaranteed under Article 21. A house/flat/apartment squarely falls within the ambit of "shelter". Accordingly, the right of a homebuyer to purchase a plot/house/flat/apartment for residential purposes is a legally enforceable fundamental right, as housing is essential for living with dignity. This right encompasses not merely a roof over one's head, but also adequate privacy, space, security, lighting, basic infrastructure, and access to social amenities. Any deprivation or interference with this right, otherwise than in accordance with due process of law, amounts to a violation of Article 21 of the Constitution of India, which reads as under:

*"21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law"*

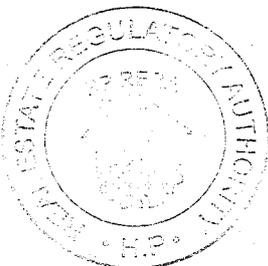


In the case in hand the respondent/promoter has presented himself to be the sole proprietor of the property in dispute and owner in possession of Khasra no.s 53/2,54,55,56,57,58,59,60,61,66,74 and 75 in Mauza Prahani and Khasra no.s 180,182,183/1 and 192 in Mauza Tikker Naldehra, Tehsil and Distt. Shimla H.P. having RERA license no. HIM/TP/Apt-LIC-15/2017 dated 22.11.2017 for constructing the proposed Building, Duplex/Houses and Villas. As per clause (h) of the agreement for sale executed on 07.03.2022 between the parties, the Developer has agreed to sell the unit to the complainant. The relevant clause reads as under:

*“The allottee has applied for an apartment in the project vide application dated 14.10.2021 and has been allotted 3BHK-2050 SQ FT Apartment no.2-B in Wood Pecker Block( “Building”) side having usable area 2050 Sq. Ft. (including Balconies) of square feet along with 1 car parking marked in the layout site plan Schedule c, as permissible under the applicable law and pro rata share in the common areas ( “Common Areas”) as defined under clause(n) of Section 2 of the Act (hereinafter referred to as the “Apartment” more particularly described in Schedule A and the floor plan of the apartment is amended hereto and marked as Schedule-B).”*

From the language of clause- h of the agreement it is clear that the developer has agreed to allot 3BHK-2050 SQ FT Apartment no.2-B in Wood Pecker Block (“Building”) side having usable area 2050 Sq. Ft. The Developer has agreed to sell the unit to the complainant as per clause 1.2 of the agreement. Clause 1.2 of the agreement is reproduced as below:

*“1.2 The total price for the apartment based on the Carpet area (including Balconies + Car parking) is Rs.1, 62,96,000/- ( One Crore Sixty Two Lacs Ninety Six Thousand Only) ( Total*



*Price0 ( as per Schedule A). The Total Price above is excluding of Govt. Taxes which is 5% GST only.”*

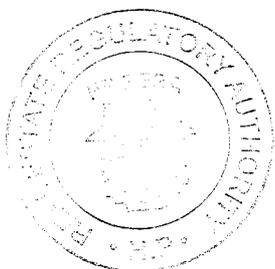
The allottee has also agreed to make the payment as per the terms and conditions mentioned in the agreement for sale. Clause 1.4 of the agreement for sale is also the key factor in order to constitute a contract in order to complete the offer and acceptance. Similarly, clause 1.6 of the agreement for sale is one of the most important factor in order to constitute the terms and condition for the sale of the unit in between the parties to the agreement. Clause 1.6 of the agreement for sale is reproduced as under:

*“1.6 The Developer shall confirm to the final carpet area that has been allotted to the Allottee after the construction of the building is complete and the occupancy certificate or such other certificate or such other certificate by whatever name called/ issued by the competent authority is granted by the competent authority by furnishing details of the changes, if any, in the carpet area. The total price payable for the carpet area shall be recalculated upon confirmation by the developer. If there is reduction in the carpet area then the Developer shall refund the excess money paid by the Allottee within 60 days with annual interest at the rate prescribed in the Rules from the date when such in excess amount was paid by the Allottee. If there is any increase in the carpet area which is not more than three percent of the carpet area of the apartment, allotted to Allottee, the Developer may demand that from the Allottee as per the next milestone of the Payment Plan as provided in Schedule D. All these monetary adjustment shall be made at the same rate per square feet as agreed in para 1.2 of this Agreement.”*

The aforesaid clauses of the agreement for sale between the parties make it amply clear that both the parties have agreed to sell and



purchase of 3BHK-2050 SQ FT Apartment no.2-B in Wood Pecker Block ("Building") side having usable area 2050 Sq. Ft. The respondent has applied for the permission for the revised-cum-part completion of Real Estate Project/ Colony for sanction before the Town and Country Planning Department of the Himachal Pradesh, which has been granted permission on 03.12.2024 contained under Section 31(1)(b) of the Town and Country Planning Act,1977(Act no.12 of 1977) on Khasra no.s 178,180,181,182 and 194 at Mohal Tikkar and 53 to 61, 66,74 & 75 at Mohal Parahani Tehsil and Distt. Shimla H.P to carry out the development/ construction of building as per application made by the respondent, copy of which is enclosed with the case file. This is clear from the approval granted by competent authority vide letter dated 03.12.2024 that same is pertaining to grant of revised approval for development/ construction rather than part completion. However, record shows that there is no consent of the 2/3<sup>rd</sup> majority of allottees placed on record by the respondent while seeking revised approval for drawing plan etc. Moreover, the complainants have denied that he has given such consent to the respondent as mandate under Section 14(2)(i) of the RERD Act,2016. Further, there is a clear cut violation of the Section 14 (2)(ii) of RERD Act as the consent of 2/3<sup>rd</sup> allottee has not been obtained by the respondent/promoter at any point of time. Thus, the offer of 2267 Sq. Ft. area of the allotted flat by the promoter/respondent is not tenable, being violative of mandatory provision contained under Section 14 of RERD Act, read with agreement for sale. As such complainant is not liable to pay additional amount for the increased area of the unit as claimed by



the respondent and the respondent/promoter is required to hand over the flat/unit strictly as per the provision of the agreement for sale.

**9 (b) Whether the complainant is bound to pay the helicopter club charges?**

Upon adjudication of this issue, it is noted that the allotment letter was issued on 15.10.2021 and the Agreement for Sale was executed between the parties on 07.03.2022. As per the case set up by the promoter/respondent, Clause 1.4 of the Agreement for Sale obligates the allottee(s) to make payments strictly in accordance with Schedule D (Construction Linked Payment Plan) or as may be mutually agreed between the parties.

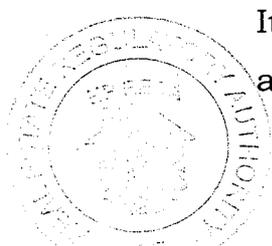
Perusal of Schedule D reveals that the charges towards helicopter services are payable at the stage of intimation of possession. The relevant payment schedule is reproduced herein below:

**SCHEDULE D**

**Construction Linked Payment Plan**

<i>At the time of Booking</i>	<i>10,00,000/-</i>
<i>On start of retaining wall &amp; foundation</i>	<i>15% of BSP</i>
<i>On start of Structure</i>	<i>20% of BSP</i>
<i>On completion of structure</i>	<i>20% of BSP</i>
<i>On completion of walls</i>	<i>20% of BSP</i>
<i>On completion of windows + flooring</i>	<i>10% of BSP</i>
<i>On intimation of possession</i>	<i>5% of BSP + GST + (Club Membership + Car Parking+ 1FMD + Helicopter Club)</i>

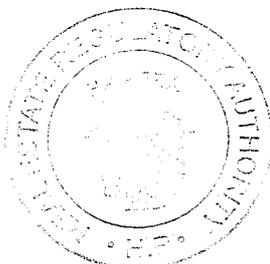
It is further observed that the allotment letter dated 15.10.2021 also specifically mentions helicopter charges amounting to Rs.



7,00,000/- . Upon perusal of the record, it is evident that the complainants have made payments as per Schedule A, which fact stands admitted and confirmed by the respondent. Clause 1.4 of the Agreement for Sale, which governs the payment obligations, reads as under:

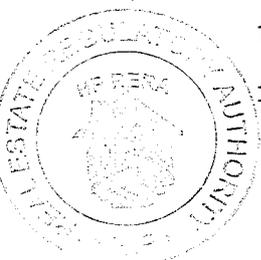
*“The Allottee(s) shall make the payment as per the payment plan set out in Schedule D (“Payment Plan”) or as mutually agreed between the parties.”*

The respondent raised a demand of Rs. 8,26,000/- (inclusive of applicable taxes) towards helicopter services vide demand/request letter dated 24.04.2025 (Annexure R-5). The said demand has been raised strictly in terms of Clause 1.4 of the Agreement for Sale read with Schedule D. During the course of arguments, learned counsel for the complainants contended that the complainants had never consented to the levy of helicopter charges. However, the material available on record clearly establishes that the obligation to pay helicopter club charges forms an integral part of the Agreement for Sale and the allotment letter, both of which were duly accepted by the complainants. In view of the above, this Authority holds that the complainants are contractually bound to pay the helicopter charges as stipulated under Schedule D of the Agreement for Sale and the allotment letter dated 15.10.2021, and the demand raised by the respondent in this regard cannot be faulted.



**9. (c) Whether the respondent/promoter has allotted a different flat than mentioned in the permission under section 118 of HP Tenancy and Land Reforms Act, 1972.**

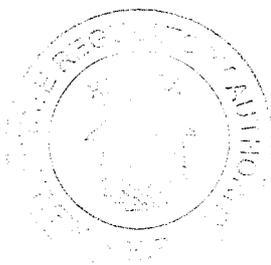
From the inception of the transaction, the unit agreed to be sold by the respondent to the complainants has consistently been described as a 3 BHK apartment admeasuring 2050 sq. ft., bearing Apartment No. 2-B, situated in the Wood Pecker Block, with a usable area of 2050 sq. ft. The complainants also obtained permission under Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 in respect of the same unit, i.e. 3 BHK Apartment No. 2-B. The permission granted by the Government of Himachal Pradesh, Department of Revenue, vide File No. REV-B.F.(10)-100/2025, placed on record, reflects permission in favour of the complainants for a 3 BHK apartment on the Second Floor (2-B) of Block-F. Subsequently, the respondent, vide correspondence dated 23.04.2025 (Annexures C-15 and R-13), informed the complainants that due to technical reasons, the apartment number now has changed to 3-B instead of 2-B. Both the parties have categorically submitted before this Authority that the unit remains the same in terms of location, area, configuration, and specifications, and that there has been no physical change or substitution of the apartment. In view of the above, this Authority finds that there has been no change in allotted unit, and that the discrepancy pertains only to the nomenclature of the apartment, i.e. 3-B in place of 2-B, which is purely clerical/technical in nature. However, it is incumbent upon the respondent/promoter to take appropriate steps at the earliest to rectify the discrepancy in the apartment number and ensure



consistency with the permission granted under Section 118 of the H.P. Tenancy and Land Reforms Act, 1972, so as to avoid any future ambiguity or prejudice to the complainants. Accordingly, the issue is decided subject to the respondent's obligation to carry out the necessary correction.

**9. (d) Whether there is delay in handing over the possession of the unit to the complainants?**

As per the Agreement for Sale, the respondent was obligated to hand over possession of the unit to the complainants on or before 30.01.2023, subject to delay only on account of force majeure events such as delay in approval under Section 118 of the H.P. Tenancy and Land Reforms Act, 1972, pandemic, war, flood, snow, cloudburst, drought, fire, cyclone, earthquake, or any other natural calamity affecting the regular development of the real estate project. The respondent has contended that part completion of the project was obtained from the Town and Country Planning Department on 03.12.2024. Upon perusal of the record, the Authority has observed that part completion of the unit has been accorded to the respondent as the drawing shows Wood Pecker Block as Green hence, it can be construed as completed building or part completion accorded. As such the respondent/promoter could not hand over the valid possession to the complainant before the date of partial completion i.e. 03.12.2024. Thus, there is a clear delay in handing over the possession w.e.f. 30.01.2023 to 03.12.2024. It is further borne out from the record that the respondent has admittedly not handed over possession of the unit to the complainants till date. It is also observed that permission under

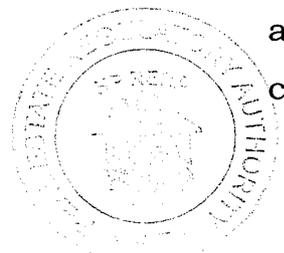


Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 (Annexures C-12 and R-10) was granted by the Government of Himachal Pradesh in favour of the complainants on 03.04.2025. Thus, the binding deadline of handing over of possession was 30.01.2023 which has not been met by the respondent/promoter. Thus, total delay in handing over of possession beyond 30.01.2023 need be trifurcated as under:

- i. Delay from 30.01.2023 to 03.12.2024 is attributable to the promoter because he had not obtained completion/part completion certificate till then which was mandatorily required for offering lawful possession;
- ii. Delay from 04.12.2024 to 03.04.2025 is attributable to the complainant because the permission under Section 118 of H.P. Tenancy and Land Reforms Act, 1972 could not be obtained by him despite being informed to obtain the same vide communication dated 04.06.2024;
- iii. Delay from 04.04.2025 onwards till handing over of possession as per agreement for sale is attributable to the promoter/ respondent.

**9(e) Whether there is change in the map, registered at the time of registration of the project with the HPRERA and at the time of execution of the agreement for sale.**

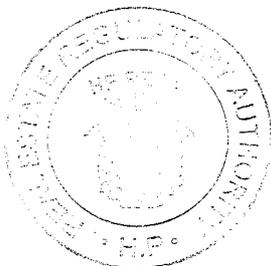
For adjudication of this issue, the record submitted with the Authority has been perused in detail. From the perusal of record it appears that there is difference in the building permission maps submitted to the Authority at the time of registration of project and at the time of execution of agreement of sale between the complainant and the respondent/promoter. At the time of



registration of project with the HP RERA approval was granted for four storeys + open parking. However, the plan/drawings attached with agreement for sale is different from the drawing uploaded on the HP RERA website at the time of registration of the project. The record also shows that the respondent/promoter has not taken permission for uploading of revised drawing/map from HP RERA and it is clear from the record that the respondent/promoter has also not taken the consent of the 2/3<sup>rd</sup> majority of the allottees including the complainants. It is further observed that there is a change in the size and structure area of the project/blocks without the permission of this Authority and is accordingly contravention of Section 4 and Section 14 of RERA Act, 2016. However, the Authority is of view that before issuing any direction, the facts be further ascertained and be taken on record in order to adhere to the principle of natural justice. Hence, suo- moto proceedings be initiated, separately, against the promoter and the TCP wing of this Authority is directed to issue fresh notice calling for explaining the circumstances as to why the promoter be not penalised for violation of various provisions of the Act.

**9.(f) Other issues and imposition of penalty?**

The perusal of Form-L (Rules 17(1)) Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 and the agreement for sale shows that clause 1.3 is not completely included in the agreement for sale. Clause no.4 of Form-L is also not mentioned in the agreement for sale. The clause pertaining to possession of the apartment/plot is mentioned as clause 7 in Form-L, whereas in the agreement for sale, it is mentioned as clause no.6. The most



important clause 7.5 regarding Cancellation by Allottee is not mentioned/ found missing in the agreement for sale. Further, the Respondent/ Promoter has not shown any sincerity in delivering possession of the unit as agreed to the complainants in terms of the agreement for sale. Moreover, the Authority is of this firm view that agreement for sale has not been prepared as per the prescribed format of Form -L Rule 17(1) of the HP RERD Rules. Moreover, it was the duty of the respondent/ promoter to handover the possession to the complainants as per the terms and conditions of the agreement for sale, which the respondent has failed to do so. As per section 11(4)(a) of the RERD Act, the promoter shall be responsible for all obligations, responsibilities and functions as per the agreement for sale. The section 11(4) (a) is reproduced as under:

*“(4) The promoter shall— (a) be responsible for all obligations, responsibilities 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.”*

Further, the respondent has changed the carpet area of the unit without prior consent of the complainant as mandated under

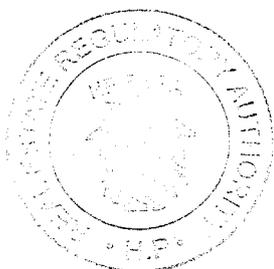


Section 14(2)(i) of RERD Act,2016. The respondent was bound to take consent of 2/3<sup>rd</sup> majority of the allottees for any change in the sanctioned plan/ drawings. Perusal of pleadings shows that no such permission of 2/3<sup>rd</sup> majority of the allottees which is required under section 14(2)(ii) of the RERD Act, was obtained which is sufficient to conclude that there is violation of section 14 of the RERD Act, 2016. The 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—*

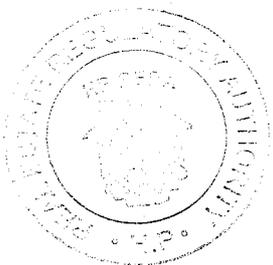
*(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person: 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.”*

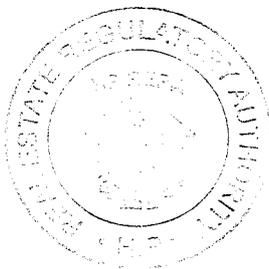
Since, the respondent has failed to deliver the possession of the apartment to the complainants in terms of agreement for sale and allottees do not intend to withdraw from the project, the complainants are entitled for interest for every month of delay as per Section 18 of RERD Act read with Rule 15 of HP RERD Rules, 2017 from 30.01.2023 to 03.12.2024 and w.e.f. 04.04.2025. Hence, there is also violation of Section 18 of the RERD Act, 2017 as there is a delay to handing over the possession. Section 18 of RERD Act, 2017 is reproduced as under:

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

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

*b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

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



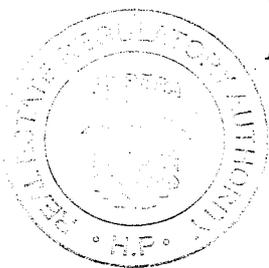
The Hon'ble Supreme Court in the case of **Newtech Promoter and Developers Pvt. Ltd. VS. State of UP and ors MANU/SC/1056/2021,**

*"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.*

The Hon'ble Supreme Court in "**Pioneer urban land & infrastructure case**" has also held that the flat purchaser is entitled to get refund of the entire amount deposited by him with interest. Thus, the Complainant is entitled to get interest as prescribed as per the Section 18 of the Act read with rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017, that clearly states that the rate of interest payable by the promoter to allottee or by the allottee to the promoter, as the case may be, shall be the highest marginal cost of lending rate of SBI, plus two percent.

The Hon'ble Bombay High Court in the landmark judgment of **Neel Kamal realtors**

*"in para 261 of judgment has held that the Section 18 is compensatory in nature and not penal. The promoter is in effect constructing the apartments for the allottees. The allottees make payment from time to time. Under the provisions of RERA, 70% amount is to be deposited in a designated bank account which*



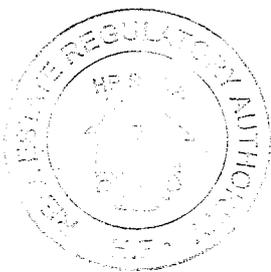
*covers the cost of construction and the land cost and has to be utilized only for that purpose. Interest accrued thereon is credited in that account. Under the provisions of RERA, 30% amount paid by the allottees is enjoyed and used by the promoter. It is, therefore, reasonable to require the promoter to pay interest to the allottees whose money was used by the promoter when the project is delayed beyond the agreed contractual period.”*

Hence, the Respondent/ Promoter is liable to be held accountable and penalized under Section 61 of the Act *ibid* for his failure to fulfil his obligations as respondent/promoter as prescribed in Sections 11(4)(a), 14(2)(i), 18 of the RERA Act, 2016 and Rule 17(1) of the HP RERA Rules, 2017.

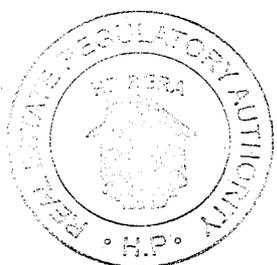
**9.(g)RELIEF:**

- a. The complaint is partly allowed.
- b. As per the findings of para 9(d), the respondent is directed to pay the interest for delayed possession w.e.f. 31.01.2023 as under;
  - i. Delay from 31.01.2023 to 03.12.2024 is attributable to the promoter because he had not obtained completion/part completion certificate till then;
  - ii. Delay from 04.04.2025 onwards till handing over of possession as per agreement for sale is attributable to the promoter/ respondent.

Interest will be payable 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. 1,78,10,804/- for every month of delay for the period as  
above till the date when valid/lawful offer of possession is made.
- c. The complainants are directed to pay the helicopter club  
charges as per Schedule D of the agreement for sale calculated  
as Rs. 8,26,000/- (inclusive of applicable taxes) with in the  
period of two months from the date of this order. This amount  
could also be adjusted against the refund to be made under  
clause 'b' above.
- d. The respondent is directed to obtain with assistance of  
complainants the necessary correction from the concerned  
authorities regarding the nomenclature of the unit, i.e.,  
correction of Apartment No. 3-B to Apartment No. 2-B or as  
required, before execution of the sale deed etc.
- e. That in view of violation of provision(s) contained in sections  
18, 14(2)(i) and 11(4)(a) read with Section 61 of the Act, 2016,  
which prescribes the maximum penalty that could be imposed  
for the contravention of any other provision of the Act other  
than Section 3 and 4, as five percent of the total cost of the  
project, the Authority deems it appropriate to impose the  
penalty of Rs 5 Lakhs upon the respondent. 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 noncompliance of directions as per relevant provisions of Act.

- f. It is directed that suo- moto proceedings be initiated, separately, against the promoter for violation of section 4(2) (d), 14(1) and 14(2)(ii) of the RERD Act,2016. The TCP wing of this Authority is directed to issue fresh notice calling for explaining the circumstances as to why the promoter be not penalised for violation of various provisions of the RERD Act.
- g. The Complainants shall be at liberty to approach the Adjudicating Officer for compensation under Section 71 of the Act *ibid*.



**R.D. DHIMAN  
(CHAIRPERSON)**



**VIDUR MEHTA  
(MEMBER)**

