

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Complaint no.HPRERA2024025/C

In the matter of:-

- 1 Pranav Infra & Trade Ventures Private Ltd. through its authorized representative Sh. Ashish Sharma, Son of Sh. Ramesh Dutt Sharma (UID No. 407408684996) registered office:130 -C, Pocket-A, MayurViharPh II, East Delhi, 100091 and Corporate Office: LC House (adjacent to SBI Khalini) , Khalini, Shimla, H.P.171009
..... Complainant

Versus

- 1 Sh. Chander Kamal Baljee, Hotal Royal Orchid, No.1, Golf Avenue, Adjoining KGA Golf Course, Bangalore, Karnataka (560008)
- 2 M/s PINWOOD CHALETS, a partnership firm through its partner Mr. Jasdeep Singh Brar, Son of Late Sh. Jagjit Singh Brar, Resident of C-35, Dilshant Estate, Bharari, Shimla, Himachal Pradesh, 171003
.....Respondent(s)

Present: Sh. Sambhav Bhasin vice Sh. S.K. Agnihotri Ld. Counsel for complainant M/s Pranav Infra & Ventures Pvt. Ltd. through WebEx.

Sh. ArjunLal, Ld. Counsel for respondent no.1

Sh. Shivam Sharma Ld. Counsel for respondent no.2 Pinewood Chalet (JasdeepBrar) Partner.

Date of hearing:28.07.2025

Date of Pronouncement of Order: 25.08.2025

Order

Coram: Chairperson and Members

1. **Averments in the main complaint-** The complaint alleges that the complainant company, represented by its authorised signatory, paid ₹1 crore

in December 2019 to the respondents for allotment of two residential units in the project "Pinewood Chalets," registered with HP-RERA. Despite assurances, no Agreement to Sell was executed, no construction commenced, and the amount was neither adjusted nor refunded. The complainant relies on documents and correspondence showing respondents' role as promoters/developers, their receipt of money without requisite approvals, and later vague claims of forfeiture. The complaint seeks refund with interest, inquiry under Section 35, and penal action against respondents for violations of RERA.

2. **Averment in the application filed by Respondent no. 1 qua maintainability-** In the present matter, respondent no. 1, Chander Kamal Baljee, has filed an application challenging the maintainability of the complaint. It is stated that the dispute raised is outside the jurisdiction of this Authority and the complaint is collusive, filed in connivance with Mr. Jasdeep Singh Brar and Mr. Harjot Brar, business associates of the complainant under the name "Pinewood Chalets." The applicant contends that no oral or written agreement was ever executed between the complainant and respondents, and the mandatory requirement under Section 13 of the RERA Act, 2016 has not been fulfilled. Further, the complainant cannot claim the status of a "deemed allottee," as no residential unit was allotted to it or respondent no. 2, and no construction or land development has taken place. It is also stated that respondent no. 1 never authorized respondent no. 2 through a power of attorney or agreement to develop or sell the project. Since allegations of fraud are made in the complaint, the Authority lacks jurisdiction to adjudicate. Accordingly, it is prayed that the application be allowed and the complaint be dismissed as not maintainable.
3. **Reply by complainant-** In reply to the application of respondent no. 1, the complainant submitted that Section 79 of the RERA Act, 2016 bars the jurisdiction of civil courts, and this Authority is empowered to entertain and

decide complaints under a summary procedure as per Rule 23 of the HP RERA Rules, 2017. It was further stated that Section 38 empowers the Authority to regulate its procedure by following natural justice, while Section 35(2) confers civil court powers. Section 2(p) specifically vests jurisdiction in this Authority to decide the matter, as the project stands registered with HP RERA (Registration No. RERAHPSP10190063) valid up to 07.06.2027. The complaint is also within limitation under Section 14. The allegations of collusion with respondent no. 2 were denied. It was highlighted that respondent no. 1 has admitted receipt of ₹1 crore from the complainant through RTGS in his RERA registered account, but offered no explanation. Such receipt squarely attracts Sections 12 and 13 of the Act, establishing the contractual relationship. It was further pointed out that respondent no. 1 admitted no construction or development had taken place, which raises a serious issue as to how RERA registration and approvals were obtained, warranting investigation. The assertion that Jasdeep Brar and Harjot Brar are business associates of the complainant was denied, and it was submitted that respondent no. 1 is attempting to usurp complainant's money through false allegations. Annexure C-10 shows that respondent no. 1 himself signed an agreement dated 07.12.2019 with M/s Pinewood Chalets, evidencing a meeting of minds. Having admitted both the agreement and receipt of ₹1 crore, respondent no. 1 cannot now take a contradictory stand. Allegations of fraud by the complainant were denied. It was prayed that the application of respondent no. 1 be dismissed, and the Authority proceed to adjudicate the complaint within its jurisdiction.

4. **Reply by respondent no. 2-** In reply, respondent no. 2 submitted that negotiations were held with respondent no. 1 to acquire development and marketing rights for the Bharari project, but the deal did not materialize as environmental clearance was not obtained until 2024. It was stated that the complainant paid ₹1 crore directly to respondent no. 1 for purchase of a residential unit, and the agreement was to be signed between complainant and

respondent no. 1. Respondent no. 2 only shared progress updates and assured the complainant that a proper agreement would be executed once the deal was finalized. It was denied that respondent no. 2 lured the complainant, stressing that the decision to purchase was solely that of the complainant. No payment was ever received by respondent no. 2. Since the project was registered with HPRERA at the time of payment, any refund, if directed, is solely the liability of respondent no. 1, not respondent no. 2.

5. **Rejoinder**

The applicant/respondent no. 1 reiterates that the complaint is not maintainable for want of jurisdictional facts. A statutory authority like HP-RERA can act only within the four corners of the RERA Act, 2016; the averments and reliefs pleaded place the matter outside its ambit. Section 79 does not aid the complainant: it itself limits the Authority to matters falling under the Act and empowers them to determine, whereas the complaint, in substance, seeks refund of ₹1 crore dehors the Act. The Authority must first decide jurisdiction before merits; absent essential jurisdictional facts, the complaint must be dismissed. Under Rule 23(2)(b) the respondent is not mandatorily bound to file a reply; and by Clause (e) the Authority may decline to proceed further if not satisfied. It is specifically contended that RERA provisions are inapplicable here. Section 38's scheme presupposes a promoter-allottee relationship, which is absent: the complainant styles itself a "deemed allottee" and respondent no. 1 a "deemed promoter," classifications unknown to Sections 2(d) and 2(zk). The Authority may be procedurally guided by the CPC; hence this maintainability application is proper. On limitation, the applicant asserts the Limitation Act, 1963 squarely applies; Section 14 of RERA is inapposite, and COVID-19 extensions do not enlarge limitation beyond the statute. On merits (without prejudice), no contractual obligations ever arose between complainant and respondent no. 1. Sections 12 and 13 are not satisfied: no identified unit/flat/space (size, location, consideration) is pleaded or proved; no executed agreement exists. Any

alleged dispute is a civil one inter se Mr. Jasdeep Singh Brar and Mr. Harjot Brar of M/s Pinewood Chalets. Penalty provisions in Chapter II (Ss. 59–61) arise only if the Act applies—which it does not. Allegations of collusion are borne out by the record: documents annexed, and respondent no. 2's own reply, show no agreement for a residential unit ever came into existence; respondent no. 2 merely forwarded an agreement dated 07.12.2019 for purchase of the entire project for ₹24 crore, to which the complainant is not privy. It is denied that respondent no. 1 signed that agreement or that there was any meeting of minds. The unexplained deposit of ₹1 crore, absent identification of any unit or an executed agreement, underscores non-applicability of RERA. .

4. **Arguments on behalf of respondent no. 1/ applicant-** It was argued that the present complaint is wholly misconceived and not maintainable before this Authority. It is submitted that the dispute raised is collusive, filed in connivance with Mr. Jasdeep Singh Brar and Mr. Harjot Brar of M/s Pinewood Chalets. No oral or written agreement was ever executed between the complainant and the answering respondent, nor with respondent no. 2, thereby failing the mandatory requirement under Section 13 of the RERA Act, 2016. It was further argued that the complainant, styling itself as a “deemed allottee,” does not fall within the definition of an allottee under Section 2(d). No construction or development has taken place in the project and no authorization was ever given to respondent no. 2 to develop or market the same. It was further argued that it is a settled principle that jurisdictional facts must exist before this Authority can assume jurisdiction. The complaint essentially seeks refund of ₹1 crore, dehors the provisions of RERA, and is therefore barred. It was further argued that Section 79 does not assist the complainant; rather, it reinforces that only matters covered by the Act fall within the Authority's domain. It was further argued that on merits, no contractual obligations ever arose, no flat/unit was identified, and no

agreement executed. The alleged dispute, if any, is a civil dispute between business associates inter se. The deposit of ₹1 crore, unexplained and unconnected to any identified allotment, cannot attract the jurisdiction of RERA. Accordingly, the application deserves to be allowed and the complaint dismissed.

5. **Written Submissions on behalf of complainant-** The complainant chose to file written submissions in the matter instead of arguing orally. It was stated in the written submissions that the present application filed by respondent no. 1 is frivolous, misconceived, and intended only to delay proceedings. The admitted facts establish beyond doubt that respondent no. 1 is the license holder and registered promoter of the project “Pinewood Chalets” (RERA Regn. No. RERAHP SHP10190063). It is also admitted that ₹1,00,00,000/- was received by respondent no. 1 directly in his RERA-registered account on 10.12.2019, which he used for his own benefit. Despite this, no agreement to sell has been executed, no units earmarked, no construction commenced, and no refund has been made. The grounds raised in the application lack merit. Firstly, Section 79 of the RERA Act expressly bars the jurisdiction of civil courts, vesting exclusive jurisdiction with this Authority. Section 38 empowers the Authority to regulate its own procedure guided by natural justice, while Section 35(2) confers powers of a civil court for inquiry. Rule 23 of HP RERA Rules, 2017 prescribes summary procedure. The plea that this Authority must conduct a civil trial by framing issues or examining witnesses is contrary to law, as held by the Hon’ble HP High Court in *Sumit Khanna v. Kanchan Sunil Adani* (CMP 408/2024, 20.08.2024), where it was clarified that only specified CPC provisions apply, and not the full civil trial procedure. On limitation, the present complaint filed on 20.11.2024 is well within time after accounting for the Hon’ble Supreme Court’s COVID-19 extensions in *Suo Motu W.P. (C) No. 3/2020*. Further, under Section 18(2) of RERA, claims arising from defective title are not barred by limitation. The receipt of consideration by a promoter without

executing a formal agreement is itself a violation of Sections 12 and 13. The law recognizes oral agreements as enforceable contracts (*Alka Bose v. Parmatma Devi*, (2009) 2 SCC 582). Respondent no. 1, being a promoter, is bound to refund the advance and compensate the complainant. Judicial precedents, including *Wadhwa Group Housing Ltd. v. Vijay Choksi* (2024 Bom HC) and *Unnikrishnan Pillai v. Tata Realty* (2022 Ker HC), affirm that promoters are jointly liable and refund can be sought under RERA. In light of the above, the application of respondent no. 1 deserves dismissal with costs, and the complaint merits allowance forthwith.

6. **Findings-**

The present complaint has been challenged at the threshold on the ground of maintainability. The first question for consideration, therefore, is whether the complaint discloses the jurisdictional facts that would enable this Authority to assume jurisdiction under the Real Estate (Regulation and Development) Act, 2016 (“the Act”).

Section 2(d) of the Act defines an “allottee” as:

“a person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.”

Section 13(1) of the Act further provides:

“A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.”

These provisions, read together, make it clear that for an applicant to claim the status of an allottee and invoke the jurisdiction of this Authority, there

must be at least (i) an allotment of a specific unit or (ii) a written agreement for sale duly executed and registered.

In the present case, the complainant admits that no written agreement for sale was ever executed and no particular apartment/unit was ever identified or earmarked. The complainant relies upon an oral understanding and the transfer of ₹1,00,00,000/- into the account of respondent no. 1. However, mere payment without identification of the unit or execution of a written agreement for sale does not satisfy the requirements of Sections 2(d) and 13(1) of the Act. In absence thereof, the complainant cannot be treated as an “allottee,” and the Authority cannot assume jurisdiction over the claim. It was held in *Arun Kumar v. Union of India*, (2007) 1 SCC 732, that the existence of a jurisdictional fact is a sine qua non for the exercise of power by a statutory authority. In the absence of such foundational facts, the action will be ultra vires and void. Applying the above principle, this Authority must first ascertain whether the complainant has established the jurisdictional fact of being an “allottee.” Since neither an allotment letter nor a written agreement for sale exists, the very foundation of jurisdiction is missing.

The complainant has sought to rely on *Alka Bose v. Parmatma Devi*, (2009) 2 SCC 582, to contend that an oral agreement can be binding. While the general proposition under the Indian Contract Act is correct, the reliance is misplaced in the context of RERA. The Act is a special law, and Section 13(1) specifically mandates a written agreement before collection of sums beyond 10%. Thus, even if an oral contract may be enforceable in civil law, it cannot, by itself, vest jurisdiction in this Authority under the special framework of the Act. Similarly, reliance on *Wadhwa Group Housing Ltd. v. Vijay Choksi* (2024 Bom HC) and *Unnikrishnan Pillai v. Tata Realty* (2022 Ker HC) is distinguishable. In both cases, the complainants were undisputedly “allottees” within the meaning of Section 2(d), having either executed agreements for sale or been allotted specific units. The ratio that promoters are jointly liable

under Section 2(zk) is premised on the existence of an allottee-promoter relationship, which is absent in the present case. To that extent, these authorities cannot be applied.

The unexplained deposit of ₹1 crore by the complainant into the account of respondent no.1, in the absence of any identified unit or executed agreement, may give rise to civil consequences or remedies elsewhere, but it does not fall within the ambit of the remedies provided under Sections 12,13,18 or 19 of the Act. For the reasons stated above, this Authority holds that the complainant has not established the jurisdictional fact of being an "allottee" under Section 2(d) of the Act. No written agreement for sale as mandated under Section 13(1) has been executed. No specific allotment of any apartment/flat/unit has been made in favour of the complainant. In absence of these foundational facts, the jurisdiction of this Authority cannot be invoked. Accordingly, the complaint is held to be **not maintainable for want of jurisdiction**, and is dismissed. The complainant is at liberty to avail appropriate remedies before the competent civil forum.


(**Amit Kashyap**)
MEMBER


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


(**Vidur Mehta**)
MEMBER