

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

IN THE MATTERS OF:-

- I. Mrs. Anjali Bhatnagar wife of Rakesh Bhatnagar, Resident of H 902 Suncity Heights, Sector 54, Golf Course Road, Gurgaon 122001, Haryana
- II. Rakesh Bhatnagar son of Sh. S.N. Swarup, Resident of H 902 Suncity Heights, Sector 54, Golf Course Road, Gurgaon 122001, Haryana

.....Complainant(s)

VERSUS

Rajdeep and Company Infrastructure Pvt. Ltd. having official/registered address at Hollywood Plaza, SCO 12, VIP Road, Zirakpur, Punjab 140603 through its Director Rajdeep Sharma

.....Respondent

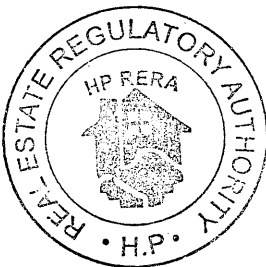
Complaint No. HPRERA/OFL/2020-21

Present: Sh. Rakesh Bhatnagar complainant through WebEx

**Sh.Rishi Kaushal, Ld. Advocate for the
respondent/promoter**

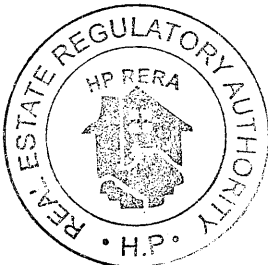
Final date of hearing (through WebEx): 02.09.2022

Date of pronouncement of order: 28.09.2022



Order**Coram: - Chairperson and both Members****1. Brief facts in the Complaint-**

The facts in brief giving rise to the present petition are that the complainant(s) have purchased the property A 401 (4th Floor & Attic) at Claridges Residency Himalaya, Upper Bharari, Shimla situated in Khasra no (old) 41/10/1 and (new) 752/42/1 with area measuring 3146 Sft from respondent company vide allotment letter dated 28th November, 2016. The agreement for sale referred to as the builder buyer agreement was executed on 28th December, 2016 in the present case. It was further pleaded that due to the delay in completion of the construction of the apartment, complainant(s) insisted to have the sale deed executed prior to full construction of the apartment. The sale deed was executed on 8th May, 2017 and along with the sale deed a MOU was also signed wherein it was agreed that balance construction, interior works and NOC were to be completed/ obtained on or before October, 2017. It was further pleaded that the property when purchased was semi constructed and thus balance construction work & interiors had to be completed and NOC had to be obtained by the respondent company on future date. It was further pleaded that post execution of the sale deed and MOU for completion of all works/NOC, the complainant(s) kept waiting and requesting the respondent company to do the needful and handover the apartment, but it was alleged that respondent company stopped all work and did not complete the construction on or before the agreed date. It was further pleaded that after much struggle the complainant(s) reached

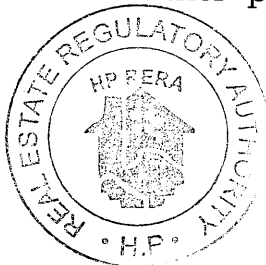


another settlement and executed a settlement agreement vide which the respondent company promised to complete all remaining works by September 30th 2018, along with NOC etc. It was further pleaded that possession of the apartment in question was handed over on 1st Jan, 2019. It was further pleaded that there are certain issues that are still unresolved. It was further pleaded that the respondent company has failed to provide NOC from MC Shimla till date. It was further pleaded that when the apartment was handed over it was in pathetic condition which required numerous repairs with respect to the roof, washrooms, water seepage etc. It was further pleaded that the complainant(s) had no choice but to get the repairs done at their own cost. It was further pleaded that initially a single commercial water connection was provided for five families in the building. It was further pleaded that ultimately the complainant(s) had to pay on their own to get the water tanks and commercial connections installed. It was further pleaded that single commercial electricity connection was provided for five families in the building and the complainant(s) are being forced to pay for electricity at commercial rates. Further it was pleaded that since the sub meters have also been removed, the complainant(s) have no clue as to how much electricity is being consumed by which family and have to pay disproportionately. It was further pleaded that since the respondent company had not paid his dues to the electricity department, the electricity connection of the complainant(s) was disconnected for a day and thereafter the complainant(s) are being threatened daily by the Electricity Department for disconnection of the construction connection due to non-payment of electricity bills by respondent company



as well as usage of electricity without installation of a transformer. It was further pleaded that the parking floor was not made available to the complainant(s) as well as other allottees as the same was being illegally used as an office by the respondent company. It was pleaded that despite repeated requests they have not shifted their office from the parking floor. It was further pleaded that there is no clubhouse as promised by the respondent company. It was further pleaded that there is no cleaning and maintenance of the premises, despite yearly charges being levied in this regard. It was further pleaded that there is no firefighting equipment installed despite charges qua the same being taken. It was further pleaded that no street lights or railings have been provided in the project in question.

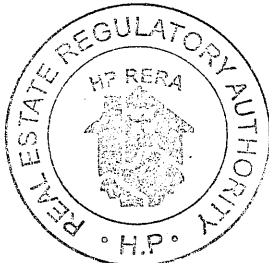
2. With these averments it was prayed that the respondent company be directed to provide to the complainant(s), the NOC from MC Shimla, along with the certified copies of the sanction plan, actual finished measurements and all approvals. It was further prayed that residential water meter and electricity meter be provided to the complainants. It was further prayed that the respondent company shall vacate the parking floor illegally occupied by it as office & provide proper parking for all residents along with the ramp. It was further prayed that the respondent company be directed to refund water tank & structure charges of Rs.45000/-paid by the complainant(s) as their share towards constructing of a water tank for the five resident families in the tower. It was further prayed that the respondent company be directed to refund of commercial rate of electricity paid by the complainant(s) to the respondent. It was further prayed that the respondent company shall pay



delayed possession charges at the agreed rate of Rs. 5/- per sq. ft to be calculated from the agreed date of August 2017 till December 2018, as per the agreement for sale. It was further prayed that interest on the consideration of Rs.45 Lakhs be also paid by respondent company to the complainant @ 18% p.a. till date of not providing the agreed quality of apartment and NOC. It was further prayed that as no EDC/IDC, firefighting, parking or club facilities, maintenance was given therefore respondent company shall refund extra charges paid of Rs 4.5 Lakhs. It was further prayed that respondent company be directed to provide proper sewerage facilities and complete all pending works such as water proofing and repair of the roof, seepage in bathrooms, proper sewerage pipe work etc. and also refund all charges paid directly by the complainant(s) for repairs undertaken. It was further also prayed that proof of payment of service tax charged from the complainant(s) be also produced by the respondent company.

3. Reply

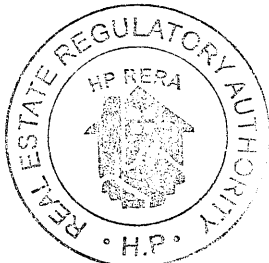
In reply, it was stated that the complainant(s) have no cause of action to file the present application. The complainant(s) are well aware that the water and electricity connections are to be given by the concerned authorities to which the respondent company has no objection. It was further pleaded that there are a series of the settlements agreements dated 08.05.2017, 30.06.2018 and a final settlement agreement & possession certificate dated 31.12.2018 by way of which the complainant(s) have taken concession in the total sale consideration and settled with the respondent company. It was further pleaded that settlement agreement dated 31.12.2018 has been withheld deliberately by complainant(s) from the



Authority perusal of which according to respondent company goes to show that entire claim of the complainant(s) is baseless. It was further pleaded that the complainant(s) have purchased flat/unit in the already developed structure from the owner of the plot and said development on the plot is having less than 500 sq. meters and number of the units as per approved plan are less than eight, hence it was pleaded that this Ld. Authority has no jurisdiction to deal with the present case as per Section 3 of the Act. It was further pleaded that NOC from MC Shimla has been applied which is pending consideration before the concerned competent Authority. It was further pleaded that parking facility has been provided and allotted and the said parking areas and other common area have already been handed over to the residents of the project. It was further pleaded that in spite of the fact that the complainant(s) compelled the respondent company to do the remaining work for 2 Lakhs which was initially agreed to be done for a cost of 10 Lakhs and therefore it was pleaded that by way of concession granted to the complainant(s), the respondent company has duly compensated them which fact they have admitted while signing the settlement agreement dated 31.12.2018. With these averments the respondent company prayed for dismissal of the complaint.

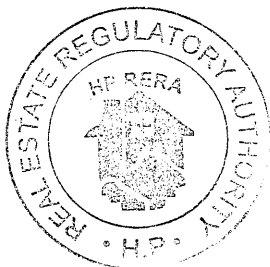
4. Rejoinder-

Apart from re iterating the fact(s) mentioned in the complaint, it was further pleaded in the rejoinder that in the project Himalaya Residency, Upper Bharari over 10 to 12 towers with 3-4 floor in each tower were sold to different allottees, but till date there is one tower erected with 5 flats & another tower with 8 apartments and the rest of the construction is ongoing.



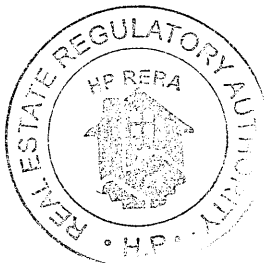
It was pleaded that approvals have not been obtained by respondent company for the past 4 to 5 years. Further it was pleaded that none of their built up structures have any legal or official clearance/NOC from MC Shimla or have provisions for residential water & electricity connections. It was further pleaded that in lieu of extra charges no extra services as promised have been installed such as club, IDC, EDC, firefighting etc. It was further pleaded that while selling it was represented by the respondent company that they have the necessary approvals to develop this housing project in Upper Bharari and it further represented that the project titled "Residency Himalaya" was to include 10-12 Towers, Bell Boy service, Washing & Dryer Services, Maintenance Staff, Chef on demand, Security Guards, CCTV Camera(s), Lifts, Power Backup, Welfare Society, Waste Disposal, Club House, Visitor Parking etc. It was further pleaded that the screen shots from their website & brochure(s) clearly show all the services/facilities promised by respondent company.

5. It was further pleaded that once the complainant(s) understood the dubious nature of the respondent company then for the sake of protecting their money which was already paid by the complainant(s), they got the sale deed of the apartment executed before the date of completion of works and entered into additional MOU(s)/ settlement agreement dated 8th May 2017 and 30th June, 2018. By way of these settlement agreements/MOU's the date of completion of works got extended from time to time. It was further pleaded that till date all 5 apartments are using the electricity from single construction connection available with the respondent company. It was further pleaded that there is no segregation of

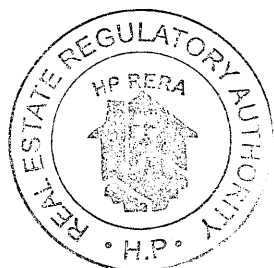


meters or consumption bills of the residents or the respondent company and in addition, it was pleaded that the respondent's electricity bills, at times, remain unpaid for over 6 months. It was further pleaded that the electricity department has issued an official notice to the respondent company that they need to install a transformer at their own cost for supply of electricity to its residents (whether domestic or commercial) but till date nothing has been done in this regard. It was further pleaded that the respondent company is building two towers of approx. 8 apartments each.

6. It was further pleaded that the respondent company is time & again using baseless interpretations of Section 3 RERD Act, 2016 to say that this Authority does not have the jurisdiction to decide the present case. It was further pleaded that Section 3 (2) of the Act says that projects having area not greater than 500 sq mts proposed to be developed or the number of apartments proposed to be developed does not exceed eight inclusive of all phases only are exempted under the RERD Act, 2016 from the jurisdiction of this Authority. It was further pleaded that the Himalaya Residency project includes multiple towers clearly exceeding 8 apartments / 500 square meters inclusive of all phases. It was further pleaded that the respondent company has built 8 apartment tower titled as "premium tower" above Tower A of Himalaya Residency and also co-developing another tower having 6 to 8 apartments with one Mr. Vij adjacent to Tower A, which need to be added to the above phase A and including apartments in all the phases they are more than eight in number therefore the project is amenable to the jurisdiction of this Authority. The copy of the Joint Development agreement for the project



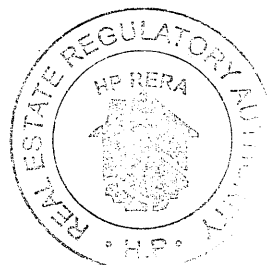
“Residency Himalayas” executed between the respondents and land owners is annexure 3. It was further pleaded that despite many requests, the respondent company till date has not submitted any details of the formal application submitted to the MC Shimla for providing NOC. It was further pleaded that as per the order of this Authority dated 17.07.21 qua the parking facility, the parties had a joint meeting with the respondent company and listed the solutions and action to be taken. It was further pleaded that once the same are completed as per the joint meeting the complainant(s) may get recorded their objections with respect to the same. It was pleaded that as per clause 14 & 15 of the agreement for sale dated 28th December 2016 it was the obligation of respondent company to comply with all terms & regulations as required by MC Shimla or other government authorities. Further it was pleaded that as per clause 25 of the aforementioned agreement for sale the respondent was to deliver the possession along with the NOC from MC Shimla on or before 15th April 2017. It was further pleaded that the MOU dated 8th May 2017 clearly defines the acceptance of the responsibility of the respondent company to obtain the NOC from MC Shimla on or before 30th Oct 2017. It was further pleaded that the settlement agreement executed dated 30th June 2018 also clearly defines the acceptance of the responsibility of the respondent company to obtain the NOC from MC Shimla on immediate basis. It was further pleaded that Clause 1 of the settlement agreement and possession certificate dated 31st Dec 2018 reveals that whole work is of good quality and any manufacturing defects in items such as TV, cabinets or other issues i.e. plumbing, seepage shall be rectified as and when



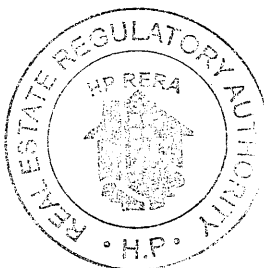
the problem comes up in front of the owner. Further it was pleaded that clause 5 of the settlement agreement dated 31.12.2018 reiterated the NOC requirement and full responsibility to obtain the same was taken by the respondent company. It was further pleaded that merely offering possession of a property without the completion/occupation certificate not only deprives the owner of property from enjoying residential status, services of water & electricity but also deprives him of a recognized legal title in municipal records and affects its overall marketability. With these pleadings it was prayed that copies of the last approved sanctioned plan along with other documents submitted to MC for purpose of supplying by NOC, providing residential water meter and electricity meter for which the respondent company needs to install a transformer at their cost as has been directed by the electricity department for providing independent "commercial electricity" connections to the allottees (in tower of complainant as well the new towers being constructed). It was further pleaded that the respondent company be directed to immediately file a reply to the electricity department accepting their conditions & charges for installation of the much needed transformer.

7. Arguments by complainant(s)-

It was argued by the complainant(s) that due to non-availability of NOC the complainant(s) have to operate on commercial electricity and water connections that also from a single connection of the respondent company taken for construction purposes. It was further argued that the respondent company has failed to provide the services as promised by them in their brochure and advertisement and



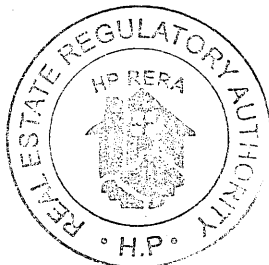
the excess payments done on account of such services shall be refunded. It was further argued by the complainant(s) that no proof of service tax has been shown as paid which was collected by respondent company from complainant(s). It was further argued that the respondent company has violated the agreement for sale and every subsequent MOU dated 8.05.2017, 30.6.2018 & 31.12.2018 executed between both the parties. It was further argued that there is complete lack of basic amenities and separate water tanks and the complainant(s) had to incur expenses from their own pocket for getting the commercial water connections installed. It was further argued that in every second month there is a threat of disconnection of electricity. The single common commercial connection is feeding tower A of the complainant(s) along with another premium tower and other construction activities are also being taken up by the respondent company wherein he is co-developing another tower adjacent to tower A. It was further argued that 50% of the electricity bill is being paid by respondent company and rest is being shared by the complainant (s) along with other allottee(s) as per usage. It was further argued that the respondent company needs to install a transformer and the cost of laying the lines as it was his legal duty to do so. It was further argued that no maintenance is done by the respondent company and there are no street lights installed. It was further argued that roads are being metalled by the residents themselves without any assistance by the respondent company. It was further argued that the bathroom of the apartment of the complainant(s) in question was rectified by respondent through a court order. It was further argued that delayed possession charges shall be given by



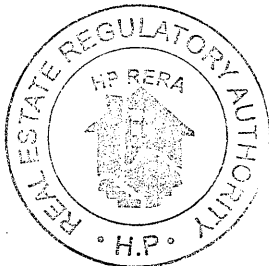
respondent company with effect from August 2017 to December, 2018 i.e. from the date when the possession was due till the date when possession was handed over. It was further argued that the complainants have applied for individual electricity connection from HPSEB but for this the respondent company has to install a transformer.

8. Written submissions and arguments by respondent-

The respondent filed written submissions to counter the arguments of the complainant(s). It was submitted that it is an admitted fact that in the entire plot/block in question there are 5 flats and it is only the complainants who are repeatedly approaching this Hon'ble Authority without any sufficient cause of action and the complainant(s) during his oral arguments are trying to highlight useless, irrelevant and trivial issues and thereby attempting to rake up the grievances of all the other residents of the said block without any locus standi. It was further submitted by way of written submissions that it is also an admitted fact that a series of the settlement agreements dated 08.05.2017, 30.06.2018 and 13.12.2018 (final settlement agreement) took place between the parties and the complainant(s) got a concession in the total sale price for finally settling the matter which they have done out of their free will and volition. It was further submitted by way of written submissions that all these issues were resolved vide settlement agreement & possession certificate dated 13.12.2018. It was further submitted that despite settlement of issues the complainant(s) have again escalated the same issues during the arguments in these proceedings. It was further submitted that all the major issues regarding providing parking, compensating on electrical and water bills and



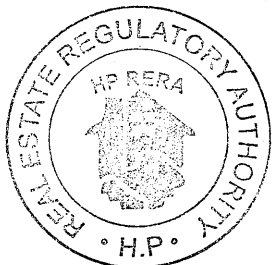
handing over the common areas to the residents of the block have been resolved but again the complainant(s) are pressing the same issues for reasons best known to them. It was further submitted that the complainant(s) vide email dated 04.07.2022 admitted and confirmed that the issues now pending are only in respect of electricity, NOC, parking ramp & building paint. It was further submitted by way of written submissions that the respondent company in order to compensate on account of paying the electrical and water charges on commercial rates, shares 50% of the total bill at all the times, even ignoring the fact that the complainant(s) are doing commercial activities from their apartments by renting their premises as homestay. It was further submitted that the parking issues and problems created by the homestay guests was never objected to by the respondent company but still the complainant(s) never appreciated the forbearance on the part of respondent company. It was submitted that the electricity department has been informed wrongly that the entire area is being developed by the respondent company and on the basis of this false information the electricity department issued a letter dated 09.03.2022 (part of Annexure R-4) which has duly been replied vide letter dated 04.07.2022 (part of Annexure R-4). It was further argued that, immediately after that the respondent company approached the electricity authorities and all the occupants were asked to apply for residential connection and the same has been done by all the other residents except complainant(s). It was further submitted that the complainant(s) instead of applying the same are more interested to find fault with respondent company. It was further submitted that the respondent company waived an



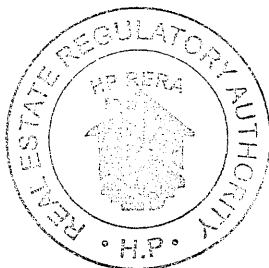
amount of Rupees Five Lakhs Fifty Thousand out of total Rs Ten Lakhs vide agreement dated 31.12.2018 on account of mutual settlement in order to resolve all the issues amicably. The complainant(s) by way of the aforesaid document also resolved not to claim any delayed possession charges or raise any disputes with respect to delays in construction. It was further submitted that the present complainant(s) in utter disregard to the mutual settlement agreement(s) mentioned above have again raised all the earlier issues. It was further submitted that the respondent company to the best of their ability complied all the directions issued from time to time by this Hon'ble Authority and also handed over the common areas and parking floor to the residents association, but still the complainant(s) are not satisfied, which makes it apparent that the nature of the complainant(s) is vindictive.

9. The developments during Court proceedings which are material in the case-

During the course of proceedings an email was received by the Authority from the complainant(s) dated 2.7.2021 wherein a grievance with respect to parking was raised and it was stated that respondent company has not yet constructed a proper ramp in the parking floor of the project in question rendering the same useless and also attached photographs as proof. Further it was alleged that railing on the valley side of the parking floor are not of sufficient height, strength and there is a possibility of mishap and the same is required to be strengthened/ re-erected to ensure prevention of any unforeseen accident. On this, the Authority vide its interim order dated 3.7.2021 directed the respondent company to construct proper ramp at the entrance of parking floor of the



project in question so as to enable the entry of the vehicles of the complainant (s) along with other allottees in the parking floor. It was further directed that the respondent company shall ensure proper strengthening or re-erection of the railings on the valley side of the parking floor. Thereafter vide interim order dated 17.7.2021, both parties were directed to conduct a joint meeting of all the allottees to resolve the remaining common issues. Thereafter vide email dated 9th July, 2021 which was addressed by respondent company to this Authority, the respondent company apprised the Authority that the development of parking floor has been completed and after marking the parking numbers they have been allotted/ handed over to allottee(s)/ occupants Hanish Kumar Rana, Mamta Arora, Rakesh Bhatnagar (the complainant here-in), Parvinder Malik and Sunita Sherawat. The parking lay out plan was also appended along with. Thereafter vide email dated 12th July, 2021 which was addressed by respondent company to this Authority it was apprised that the common areas and other services of the block in question have also been handed over to the complainant(s) along with other occupants of the block. The minutes of the meeting dated 25th July, 2021 held between complainant(s) and other allottee(s) with respondent company were also submitted before this Authority on 20th October, 2021. By way of the aforesaid minutes of meeting and the email appended along with , it was apprised that certain common issues were raised by all the occupants of the block including the complainant(s) which have been resolved and both the parties vide interim order of the Authority dated 23.10.2021 conveyed their satisfaction and acknowledgement with respect to the same. Thereafter the



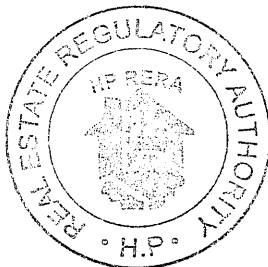
instant matter was fixed on several dates for the purpose of amicable settlement on the pending issues of the complainant(s). An email was received from respondent company dated 19th July, 2022 wherein it was stated that after much rounds of discussion the key points of issue have been narrowed down. The first key point/issue was regarding electricity wherein it was stated that against 5 to 6 blocks, the respondent company was able to construct only 1 plot/ block comprising of 5 units and the said units along with its common areas have been delivered/ handed over to respective allottees therefore the respondent company requests the complainant(s) to apply for individual residential connection. The second point/ issue is regarding NOC and it was apprised by the respondent company that matter regarding NOC has been taken up with MC Shimla by the land owner and the same is being pursued regularly. The third & fourth issue was with respect to parking, ramp and building paint and it was apprised that the entire common areas were handed over to allottees after completing the works. Fifth and the last issue raised in the email was with respect to service tax and it was apprised that the same was levied by the Government and has been deposited with concerned government authority.

10. To the aforesaid email of the respondent company dated 19th July, 2022 an email by complainant(s) in reply was received in this Authority on the same date wherein the complainant(s) acknowledged that the aforementioned are the only five key points/ issues that require deliberation from this Authority. On the first issue of electricity it was apprised that six persons from electricity department visited on 2nd and 3rd July (year not mentioned) and the J.E. Mr. Ajit communicated that all the



residents of the tower where complainant(s) reside along with the premium Tower need to come out with a solution on electricity or else the electricity lines will be disconnected. It was further apprised that complainant(s) are struggling every month with bill calculations, delayed bill payments, extra charges and threat of disconnection. On the second issue of NOC it was replied by the complainant(s) that respondent company shall commit a time frame within which they shall obtain NOC. Qua the third and fourth issue of parking, ramp and building paint it was replied by the complainant(s) that the parking earmarked to the complainant (s) does not accommodate SUV vehicle of the complainant(s). It was further replied that about Rs 40,000/-was spent to get the ramp widened. Further on the issue of building paint it was replied that the same has been done at their own cost. Qua the fifth issue it was said that service tax of Rs 1.75 Lakhs was paid but no services were made available against this amount.

11. After hearing the arguments in the matter this Authority vide its interim order dated 2.9.2022 directed the complainants(s) to supply copy of application submitted by him to HPSEBL for installation of electricity connection. Further the respondent promoter was also directed to supply copy of proof of service tax paid by him qua the flat allotted to complainant(s). In pursuance to the order passed by this Authority, the complainant(s) have submitted a letter from Assistant Engineer Electrical Sub- Division HPSEBL Sanjauli Shimla to JE, Electrical Section Ellysium, HPSEBL, Shimla dated 19.8.20120 where in it has been mentioned that *“remarks given on the files applied by the consumers for temporary connections in the name of Rakesh Bhatnagar and Hanish*

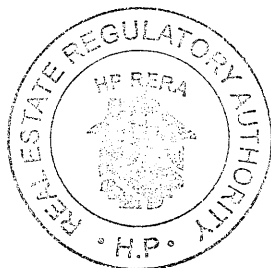


Kumar Rana Block-A, Claridges Regency, Brahri, Shimla that new Transformer and LT line is required before release of load to these blocks. You are therefore directed to submit the estimate for the installation of new transformer & LT line immediately so that the same could be sent to the concerned for seeking necessary deposit.” Further the respondent company has also complied with the direction to deposit proof of deposit of service tax by submitting the said document for the financial year 2017-2018 of payment of total tax of Rs 23,52,000/-.

12. CONCLUSION/ FINDINGS OF THE AUTHORITY:

We have heard the arguments advanced by the complainant(s) & respondent company and also have perused the record pertaining to the case. This Authority is of the view the following issues requires the consideration and adjudication, namely:-

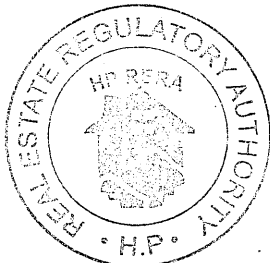
- Whether this Authority has the jurisdiction to adjudicate upon the present complaint.
- Delayed possession charges and Interest on consideration.
- Issue of NOC from MC Shimla.
- Builder to provide individual electricity connection.
- Builder to provide residential water connection and refund the amount spent by complainant(s) for installation of water tanks and structure charges.
- Builder to vacate the parking floor illegally occupied as his office & provide proper parking for all residents along with proper ramp.



- Refund of extra charges of Rs 4.5 Lakhs paid along with interest as no EDC/ IDC, fire fighting, parking, club facilities and maintenance.
- Builder to immediately provide proper sewerage facilities-
- Issue of external building paint.
- Proof of Service Tax.

13. Whether this Authority has the jurisdiction to adjudicate upon the present complaint?

The Authority in terms of Section 11, 14, 17, 19 read with Section 31 of the Act has necessary jurisdiction to adjudicate the complaint filed by complainant(s) for various relief(s) except for compensation which is in the domain of adjudicating officer under Section 71 and 72 of the Act *ibid*. Further Section 31 of the Act prescribes that any aggrieved person can file a complaint before the Authority or the Adjudicating Officer as the case may be for any violation of the provisions of the Act. Further Section 34 of the Act prescribes that it is the function of the Authority to ensure that promoter ensures compliance of the obligations cast upon it. Section 11(4) of the RERA Act, 2016 casts an obligation on the promoter that he shall be responsible to fulfill the responsibilities and functions prescribed under the provisions of the Act, rules and regulations made there under as per the agreement for sale entered between the parties till individual flats are handed over to allottees or common areas are handed over to the association of allottees. Further as per Section 11(4) it is the promoter who is responsible to obtain completion and occupancy certificate and it is his responsibility to provide and maintain the essential services till the association of allottees takes over. Further Section 38



(1) of the RERD Act, 2016 empowers the Authority to impose a penalty or interest in regard to any contravention of the provisions of this Act.

14. The complainant(s) pleaded that Himalaya Residency project includes multiple towers clearly exceeding 8 apartments / 500 square meters inclusive of all phases. It was further pleaded that the respondent company has built 8 apartment tower titled as "premium tower" above Tower A of Himalaya Residency and is also co-developing another Tower having 6 to 8 apartments with one Mr. Vij adjacent to Tower A, which needs to be added to the above phase wise development and include apartments in all the phases to see whether they exceed eight or not. As per his version the total apartments in all the phases certainly exceed eight. These averments have been evasively denied by the respondent company in their reply. **Order VIII Rule 3 of the Code of Civil Procedure-**

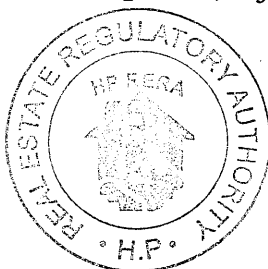
3. Denial to be specific.—It shall not be sufficient for a defendant in his written statement **to deny generally** the grounds alleged by the plaintiff, but the **defendant must deal specifically with each allegation of fact** of which he does not admit the truth, except damages.

Order VIII Rule 4 CPC

4. Evasive-denial.—Where a defendant denies an allegation of fact in the plaint, **he must not do so evasively, but answer the point of substance.** Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Order VIII Rule 5 CPC-

5. Specific denial.—1 (1) Every allegation of fact in the plaint, if not denied specifically or by necessary



implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission: *[Provided further that every allegation of fact in the plaint, if not denied in the manner provided under Rule 3A of this Order, shall be taken to be admitted except as against a person under disability.

(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

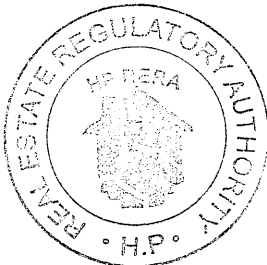
(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader. (4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.

As per the provisions of the CPC, pleadings in the plaint/complaint should be specific and an evasive denial of a fact alleged in the plaint/complaint would be deemed to be an admission under Order VIII Rule 3 and Rule 5 of the CPC and thus the Court can pass a decree under Order XII Rule 6 of CPC against the respondent. Similarly in the present case also the respondent company has failed to answer as to whether a premium Tower comprising of 8 apartments which is above Tower A of Himalaya Residency (Tower in which the complainant(s) reside) and another Tower having 6 to 8 apartments being developed with one Mr. Vij adjacent to Tower A are being constructed or not. The respondent company has very cleverly omitted to answer on all the phases being developed and rather has confined its pleadings only with



respect to tower A which admittedly has five flats including that of the complainant(s). As per Section 3 of the RERD Act, 2016 for the purpose of assuming jurisdiction apartment(s) inclusive of all phases is to be seen and if they jointly exceed eight or area of land exceeds 500 sqm then the Authority has jurisdiction to hear and decide the same. The respondent company cannot be permitted to take benefit of non answering the specific pleadings qua jurisdiction made by the complainant(s). Further while addressing arguments or at any time earlier during the proceedings of the case respondent company has never raised any issue or disputed the jurisdiction of this Authority to hear and decide the present case. Further in a similar case of Radhika Sharma versus Rajdeep and Co. bearing complaint no. RERAHPSHCTA06200023 which was pertaining to the same project wherein joint development agreement(s) pertaining to the land owned by different persons, measuring far more than 500 sqm, involved in the project was submitted and the matter was settled before the Authority by the respondent company and in another case of Renu Jain versus Rajdeep and Co. bearing complaint no. HPRERA/OFL-21-48, the respondent company has also settled with the complainant Renu Jain therefore the Authority is of the considered view that the respondent company has admitted the jurisdiction of this Authority. Otherwise also it is settled law that ouster of jurisdiction has to expressly proved and unless the same is done this Authority has to rule in favour of the jurisdiction.

- 15. Delayed possession charges and Interest on consideration-**
The prayer of the complainant(s) is that the respondent company shall pay delayed possession charges at the agreed



rate of Rs 5/- sq. feet to be calculated from the agreed date of August, 2017 till December, 2018, as per the agreement for sale. Further the complainant (s) also prayed for interest on sale consideration of Rs 45 Lakhs @ 18%. For the purpose of adjudication this issue, let us discuss in brief the agreement for sale 28.12.2016, sale deed dated 8th May, 2017, MOU dated 8th May, 2017, settlement agreement dated 30th June, 2018 and final settlement agreement and possession letter dated 31st December, 2018. This discussion is necessary for adjudicating on all the other issues and it is relevant to discuss the important clauses of the aforesaid agreement(s).

As per **clause 25** of the **agreement for sale** which is as follows

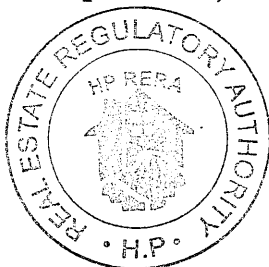
*“25. As on the date of execution of this agreement both parties agree that the super structure of the entire building (Tower A) is complete and hence the tentative date of completion of the said apartment (i.e. 4th top floor) along with complete furnishings & obtaining of **No Objection Certificate (NOC)** for final occupation from municipal authorities is **tentatively scheduled to be on or before 15th April, 2017**. It is clearly agreed that **the Developer shall get the sale deed/ registry in favour of the buyer only upon obtaining of “NOC” and regular water & electricity supply connection** in the apartment along with full furnishing as described annexure C.”*

*“26.It will be the responsibility of the Developer to **ensure the registry, NOC** and all related legal formalities as per prevailing rules and laws to ensure transfer of ownership and full rights in favour of the buyer.”*

Therefore in terms of the aforesaid clause of agreement for sale, NOC and supply of regular water and electricity connection was the responsibility of the developer that is respondent company in the present case.



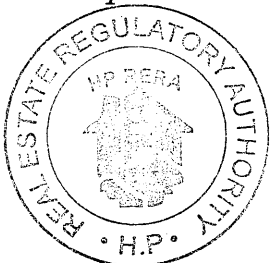
16. Thereafter **sale deed dated 8th May, 2017** of the apartment in question took place and the total sale consideration mentioned in it was Thirty Nine Lakhs plus Ten Lakhs was mentioned as the cost towards construction of attic & completion of interiors/ furnishing as described in agreement for sale. Further as per clause 6 of the sale deed the actual physical possession of the said property was conveyed and delivered to the allottee on the spot but thereafter on the date of the aforesaid sale deed another **MOU dated 8th May, 2017** was also entered into between the parties wherein it was agreed that sale deed for an amount of Rs 39 Lakhs shall be executed prior to the completion of interior work, furniture and also prior to obtaining NOC and the total sale consideration for the complete apartment was agreed as Rs 49 Lakhs. It was undertaken by both the parties in this agreement that the balance sale consideration of Rs Ten Lakhs (total sale consideration of Rs 49 Lakhs – 39 Lakhs paid at the time of sale deed) shall be paid when the work of interiors, attic construction, furniture etc. is completed. The date of possession was extended up to 30th October, 2017 and it was also agreed that NOC shall be provided by respondent company on or before the said date of delivery of possession.
17. Further another **agreement dated 30th June, 2018** registered in Delhi was executed between the parties wherein time for completion of pending works was extended and it was agreed that all pending works can be completed on or before 30th September, 2018. It was further agreed that the complainant(s) are at discretion and may accept the possession of the apartment on the aforesaid date of 30th September, 2018 even if the NOC is not available till that time.



It was further agreed that if there is delay in obtaining NOC the respondent company shall provide un-interrupted water and electricity from its own commercial/ construction connection. It was also agreed that payment of balance payment of Rs.Ten lakhs shall be made at the time of actual delivery of possession.

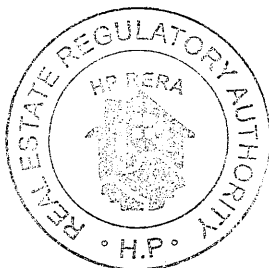
18. Thereafter **last settlement agreement was entered on 31st December, 2018 and possession certificate was issued on 1st January, 2019.** In the said agreement, sale deed earlier executed between the parties was acknowledged and physical possession was also handed over at the time of execution of this agreement by issuing a possession certificate. It was stated in this agreement that the flat was ready and complete in all respects. Further in lieu of balance payment of Rs 10 Lakhs, a sum of Rs 4.5 Lakhs was paid by the complainant(s) as full and final settlement. The most important and relevant clause of this agreement i.e. clause 3 is as under:

*"3. It is hereby agreed between the developer & owner that as against any amounts agreed upon earlier whether in written (through emails, MOU's etc) or verbal and **keeping in mind the disputes, delays, delayed possession penalty to owner etc., a full and final amount of Rs Four Lakhs Fifty Thousand vide cheque no. 0001100 of HDFC Bank dated 31.12.2018 has been agreed upon payable by the owner to the developer towards all pending charges/amounts payable.** There shall not be any additional amount payable or due from the owner towards either of the following above charges including but not limited to any car parking construction, interior works, furniture, furnishings, club charges, external or internal development charges, electrification or water related charges, NOC charges, maintenance charges, interest, penalties or what so ever etc. upon execution of this MOU*



all accounts and payable/ receivable between the developer and the owner shall stand settled and this shall be treated as a full and final settlement.”

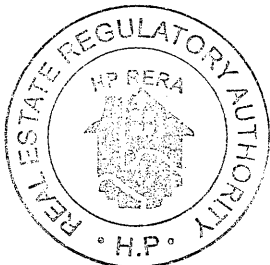
19. According to the above clause of settlement agreement the complainant(s) only paid Rs 4.5 Lakhs as balance sale consideration in lieu of Rs 10 Lakhs as full and final settlement. From the language used in this clause which has been duly acknowledged by both the parties, it is certain that the complainant(s) were duly compensated for any loss due to delay or on account of delayed possession charges by providing concession in the total sale consideration. Therefore the complainant (s) have been duly compensated by the respondent company while executing this agreement and a part of the sale consideration has been waived off in favour of the complainant(s) by providing concession so that the controversy is put to rest. Further there is no protest or counter to this settlement agreement and the possession letter has not been disputed at all, meaning thereby possession was taken without any coercion or pressure but by free will.
20. The sum and substance of all the aforesaid agreement(s) dated 8.5.2017, 30.06.2018 & 31.12.2018 goes to show that both the parties mutually kept on extending the date of possession and of providing NOC. Further it is also clear that there were some pending works in the apartment which were completed before handing over possession which is evident from settlement agreement dated 31.12.20218 and possession letter dated 1st January, 2019. While executing this settlement agreement, as per clause 3 of the same, the complainant(s) themselves undertook/ agreed not to raise any issue of delay or delayed possession charges from the respondent company, meaning thereby that complainant(s) were conscious and



aware of the entire situation and got themselves compensated by taking concession in the total sale price of the apartment. In return the complainant(s) undertook not to raise any protest qua delay in works or claim delayed possession charges in future. Therefore the complainant(s) cannot be granted delayed possession interest or interest on consideration.

21. Issue of NOC from MC Shimla-

As per Section 11 (4)(b) & 11(4)(d) it is the duty and obligation of the promoter to obtain NOC and also to provide and maintain essential services. As per clause 14 & 15 of the agreement for sale dated 28th December 2016 it was the obligation of respondent company to comply with all terms & regulations as required by MC Shimla or other government authorities. Further as per clause 25 of the aforementioned agreement for sale the respondent company was to deliver the possession along with the NOC from MC Shimla on or before 15th April 2017. Thereafter vide MOU dated 8th May 2017 the date to provide NOC from MC Shimla got extended to 30th Oct 2017. There after vide settlement agreement dated 30th June 2018 executed between the parties the date to provide NOC got further extended. There after as per clause 5 of the final settlement agreement dated 31st December, 2018 the respondent company got extended the date of providing NOC even further but took full responsibility to obtain the same. Further an officer of this Authority was directed vide interim order dated 19.7.2022 to get feed back from the concerned competent authority, MC Shimla, on the status of application for completion made by respondent promoter. In reply a letter along with annexure(s) received from the MC Shimla has been

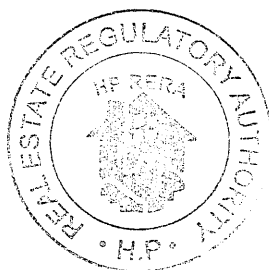


submitted to this Authority which has now been made part of the record. The perusal of the same shows that Architect Planner, Municipal Corporation Shimla vide its letter dated 24.1.2017 had raised certain queries/ observations to the land owner Hari Om Sharma but what appears from the record is that the same have not been answered/ reverted even till today by the respondent company or the owner. As per clause 25 of the agreement for sale the developer/ respondent company has held himself responsible for obtaining NOC for domestic water and electricity connection. The clauses of agreement for sale are binding on the parties. Otherwise also it is the legal obligation of the respondent promoter to obtain completion certificate from MC Shimla with in a time bound period and in case of default he is liable to penalty in terms of 61 and 69 of the Act.

22. Builder to provide individual electricity connection-

Admittedly single commercial electricity connection was provided for five families in the building Tower A including the complainant(s). It is the duty of the respondent company to provide electricity to every allottee. This obligation has also been re-iterated in Section 11(4)(d) of the RERD Act, 2016. The completion plan has not yet been approved by MC Shimla. As held by the Hon'ble Apex Court in the matter of **Chameli Singh and others vs. State of U.P. and another 1996) 2 SSC 549**, Whereby it has been held that,

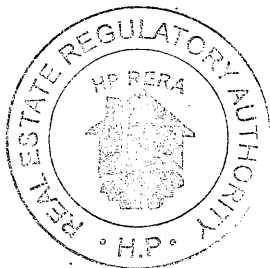
“Right to live and specifically observed that right to life includes the right to live with human dignity further observed that right to live guaranteed in any and civilized society implies the right to shelter and while discussing the right to shelter, includes electricity which is undisputedly, an essential service to the shelter for a human being. In State of Karnataka V. Narasimha



murthy (AIR 1996 SC 90) SCC p. 526, para 7: JT at p. 378, para 7), the Hon'ble Apex Court held that, "Right to shelter is a fundamental right under Article 19(1) of the Constitution. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads etc. so as to have easy access to his daily avocation ...". The Madras High Court in the matter of **T.M. Prakash and others v. The District Collector, Tiruvannamalai District, Tiruvannamalai and another 2013 SCC OnLine Mad 3001** has held that access to electricity supply should also be considered as a right to life, in terms of Article 21 of the Constitution of India and observed as under:

"66. Lack of Electricity supply is one of the determinative factors, affecting education, health, cause for economic disparity and consequently, inequality in the society, leading to poverty. Electricity supply is an aid to get information and knowledge. Children without Electricity supply cannot even imagine competing with others, who have the supply. Women have to struggle with firewood, kerosene, in the midst of smoke. Air pollution causes lung diseases and respiratory problems. Electricity supply to the poor, supports education and if it is coupled with employment, disparity is reduced to certain extent. Lack of education and poverty result in child labour.

68. The Respondents ought to have visualized the difficulties of the women, children and aged per living in the huts for several years, without Electricity. Electricity supply is an essential and important factor for achieving socioeconomic rights, to achieve the constitutional goals with sustainable development and reduction of poverty, which encompasses lower standards of living, affects education, health, sanitation and many aspects of life. Food, shelter and clothing alone may be sufficient to have a living. But it should be a meaningful purpose. Lack of Electricity denies a person to have equal opportunities in the matter of education and consequently, suitable

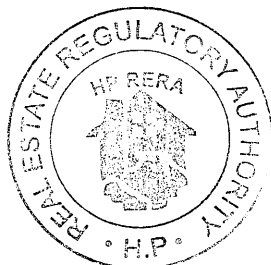


employment, health, sanitation and other socioeconomic rights. Without providing the same, the constitutional goals, like Justice, Liberty, Equality and Fraternity cannot be achieved."

Complainant(s) are very much within their rights to demand the reimbursement of the difference of charges between the commercial and domestic rates of electricity as they are forced to pay for the services on rates which are exorbitant, without any justification. From the proof submitted by the complainant(s) they have applied for electricity connection and rest it is the duty and responsibility of the respondent company as a promoter to facilitate the electricity connection in favour of the complainant(s) by getting the transformer installed, as required by the HPSEBL.

23. Builder to provide residential water connection and refund the amount spent by complainant(s) for installation of water tanks and structure charges.

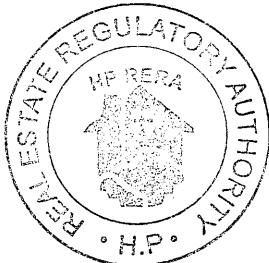
The water connection as submitted by the complainant(s) has already been applied and a commercial connection has been installed since there is no NOC obtained by respondent company from MC Shimla. It is further re-iterated that complainant(s) are very much within their rights to demand the reimbursement of the difference of charges between the commercial and domestic rates of water as he is forced to pay for the water connection at exorbitant rates, without any justification. Further all five apartment owners including complainant(s) had to contribute and get their own water tank constructed, placed their own tanks on the stand and applied for "commercial water connections" and paid for laying of pipes. Admittedly an amount of Rs 45,000/- has been spent by the complainant(s) qua the same therefore the same is



required to be refunded by the respondent company to the complainant(s).

24. Builder to vacate the parking floor illegally occupied as his office & provide proper parking for all residents along with proper ramp –

The parking floor during the course of these proceedings has already been handed over to allottees. The parking(s) to all the allottees of the building were earmarked by respondent company as mentioned in the email dated 9th July, 2021 and 12th July, 2021. During arguments it was conceded by the respondent that the earmarking of the parking was not approved in the drawing nor it is specifically mentioned/ allotted in sale deeds and there is no approval in the drawings for earmarking the parking to the allottees. Since the whole floor is approved for parking and as such no earmarked parking could have been done by the respondent company and the whole parking floor is to be handed over to the association of allottees/ residents of tower A. The earmarking and allotment of parking is not to be done by the promoter. The grievance of the complainant(s) that the parking earmarked to the complainant (s) does not accommodate SUV vehicle of the complainant(s) cannot be the subject matter of adjudication as the parking floor was existing when the complainant agreed to buy the said flat and size and design of parking floor was clear at the site. Since the residents association has already taken over, it is the discretion of the association to manage the parking floor and other common facilities in the manner they like and they may take a call, if need be, to either use the parking floor on first come first serve basis or suitably earmark it amongst themselves.

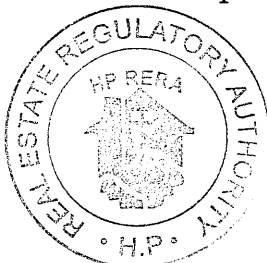


25. Refund of extra charges of Rs 4.5 Lakhs paid along with interest as no EDC/ IDC, fire fighting, parking or club facilities, maintenance.

While entering into various MOU's entered earlier and also as per final settlement agreement 31st December, 2018 the complainant(s) have already settled on all the issues by taking concession from the respondent company and the plain and simple language of clause 1 & 3 of the final settlement agreement coupled with the possession certificate goes to show that possession has been taken after settlement agreement as above, therefore the right to agitate on these issues does not survive. In addition, during the course of entire proceedings these issues were never raised before and when both the parties, vide email dated 19th July, 2022 narrowed down the entire controversy and jotted down key points/issues which were sent to this Authority, these points were never raised. For the purpose of seeking compensation on these issues, the complainant(s) are at liberty to approach the adjudicating officer under Section 71 and 72 of the RERD Act. 2016. Further as the association of allottees have already taken over therefore the issue of maintenance has to be worked out mutually amongst them.

26. Builder to immediately provide proper sewerage facilities-

During the course of the arguments, the complainant(s) apprised this Authority that septic tank has been constructed/installed to which the apartment belonging to complainant(s) is connected. Further no such issue was ever raised by the complainant(s) at the time of final settlement agreement dated 31 December, 2018 or during the course of the entire proceedings and even while sending key points/



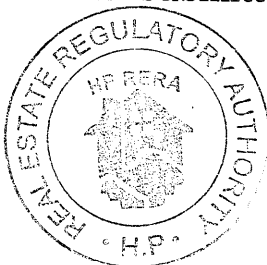
issues vide email dated 19th July 2022 to this Authority, therefore no findings are returned on this issue.

27. Issue of external building paint-

With regards to the exterior painting works, the complainants have been in possession of the flat along with other allottees and have been using it for the last more than four years and it cannot be expected of the promoter/ respondent to maintain the building unless he is legally undertaking the maintenance of the building for certain consideration, which is not the case herein. The maintenance of the building is to be done by the allottees jointly. The issue of the painting of all common areas including exterior is the job of residents association and the promoter cannot be saddled with this responsibility after he has handed over the building to the residents association. Therefore the Authority hereby holds that since maintenance of the project is taken over by the residents association therefore they are jointly liable to maintain the same and do all maintenance works.

28. Proof of Service Tax-

The authority is of the view that the complainant(s), in accordance with the prevailing provision of law at that time, pertaining to the payment of service tax, were liable to pay the same. The complainant(s) paid service tax of Rs 1.75 Lakhs. It was the responsibility of the respondent to collect the same and deposit the same with concerned competent Authority. In terms of the interim order of this Authority dated 2.9.2022, the respondent company was directed to supply proof of payment of service tax to the tune of Rs 1.75 Lakhs qua the flat of the complainant(s). In compliance thereof the respondent company has submitted details of the payment of service tax w.e.f.

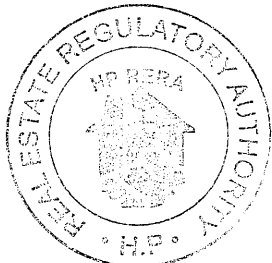


1.4.2017 to 31.3.2018 to the tune of Rs 23,52,000/- which according to respondent company includes the tax qua all the transactions/ conveyance deeds with different persons in the financial year of 2017-2018. However, still if the complainant(s) are aggrieved on this issue they are at liberty to file complaint with the Board of Indirect Taxes and Customs with respect to the above.

29. Relief-

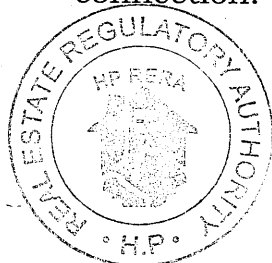
Keeping in view the above mentioned facts, this Authority in exercise of power vested in it under various provisions of the Act, rules and regulations made there under, issues the following orders/directions:

- I. The complaint is party allowed.
- II. The respondent promoter has failed to obtain completion certificate and consequent NOC for basic services like water and electricity which was his commitment and also his legal obligation under the RERD Act, 2016. The respondent company is directed to obtain completion certificate as required under Section 11 (4)(b) for the building named as "Tower A" from MC Shimla within 60 days from the date of passing of this order failing which the respondent company shall be liable to pay penalty under Section 61, 63 & 69 of the RERD Act, 2016.
- III. As complainant(s) have applied for electricity connection with the HPSEBL therefore the respondent company is directed to ensure that an individual electricity connection is sanctioned within 90 days in the apartment of the complainant(s) by coordinating with the HPSEBL and install a transformer if required by the HPSEBL. Further the respondent company is directed to




reimburse the difference of domestic charges and the commercial charges/ rates paid by the complainant(s) in the past and in future every month, for supply made/ to be made by the promoter from his commercial connections or individual commercial connections that the complainant may install till the respondent promoter obtains requisite "NO Objection Certificate" for getting domestic rate connection/installation of domestic connection. The bills of which may be raised by the complainant(s) to the promoter on monthly basis and the same shall be honoured within one month of the submission. In case individual electricity connection is not sanctioned in the apartment of complainant(s) within 90 days from the passing of this order, the respondent company will be liable to pay a penalty of Rs Three lakhs under Section 61, 63& 69 of the Act.

- IV. The complainant(s) have already got installed a commercial water connection in the apartment at his own cost. The respondent company is directed to refund an amount of Rs 45,000/- spent by the complainant(s) in getting the water tank and commercial water connection installed. Further the respondent company is directed to reimburse the difference of domestic charges and the commercial charges/ rates paid by the complainant(s) in the past and in future every month, for supply made/ to be made from individual commercial connection that the complainant has installed, till the respondent promoter obtains "NO Objection Certificate" for getting domestic rate connection/ installation of domestic water connection. The bills of reimbursement may be raised by




the complainant(s) to the promoter and the same shall be honoured within one month of the submission.

- V. The marked ear lining in the car parking space is set aside being un approved in the drawings. Since the common areas along with parking have already been handed over to the residents association who have taken over the common areas therefore the maintenance of the project along with car parking and other common areas shall be done/ managed by the aforesaid association.
- VI. The complainant(s) for the purpose of compensation are at liberty to approach the Ld. Adjudicating Officer under Section 71 and 72 of the Act.
- VII. The respondent company has provided the general details of payment of service tax, however, if still the complainant (s) are aggrieved, they are at liberty to file complaint with the Board of Indirect Taxes and Customs in respect of their grievances.


B.C. Badajia
MEMBER


Dr. Shrikant Baldi
CHAIRPERSON


Rajeev Verma
MEMBER

