

**REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH**

In the matter of:-

Sh. Jeetender Bhardwaj Son of Sh. Tikka Ram Bhardwaj, Village Nala Post Office Phagu, Tehsil & District Shimla (H.P.)

Correspondence address: Colors of India Tours Pvt. Ltd., Anand Vas Khalini, Shimla-171002.

.....Complainant

Versus

1. M/s Rajdeep & Company Infra Private Limited, Corp. Office SCO91, 2nd Floor, Sector-1, Panchkula (Haryana) & SCO12, Hollywood Plaza, VIP Road, Zirakpur (Punjab) through its Authorized signatory Sh. Rajdeep Sharma.
2. Sh. Rajdeep Sharma Son of Sh. Sansar Chand Sharma, Resident of Tower No. A-2, Pent House No.1, NirmalChhaya, VIP Road, Zirakpur (Punjab).
3. Smt. Sakshi Rajdeep wife of Sh. Rajdeep Sharma, Resident of Village / Mohal Jakkar, Tehsil Rohru, District Shimla, H.P.

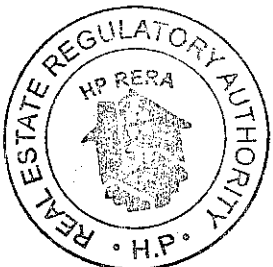
.....Non-Complainant(s)/ Respondents

Complaint no. HP/RERAOFL- 2020-03 (A)

Present: - Shri Jeetender Bhardwaj Complainant in person along with Shri Ashok Sood, Advocate

Shri Rishi Kaushal, Advocate for respondents.

Shri Mayank Manta, Assistant District Attorney for State of Himachal Pradesh/ RERA Himachal Pradesh.



Date of Hearing (Through WebEx): - 21.11. 2020

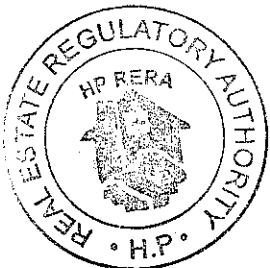
Date of pronouncement of Order: - 17.12.2020

ORDER

CORAM: - Chairman and both Members

BRIEF FACTS OF THE CASE

1. The present matter refers to the complaint filed under the provisions of the Real Estate (Regulation and Development) Act,2016 (herein referred to as the Act)
2. That the complainant Shri Jeetender Bhardwaj had filed a off-line complaint dated 23.01.2020 on “Form-M” bearing complaint NoHP/RERA-OFL-2020-03 (A) against the respondents that the respondent should not be granted registration under the Act,2016 and the registration if any granted earlier should be cancelled.
3. The respondent should be asked to provide list of customers from whom he has received copies of agreements executed with them and refund of Rs. Sixty Seven Lakhs and Sixteen received from complainant with interest @ 18% per annum. Since the respondent company has booked /sold and have invited persons to purchase the duplex , 3 BHK apartments etc. which otherwise



is a illegal/ unauthorized construction in the project named as “Claridge’s Residency” Shimla, therefore all the Directors of the company should be punished with imprisonment as specified under sub-section 2 of section 59. The respondents concerned has violated section 3(1) of the Real Estate (Regulation & Development) Act,2016 by not registering his project under RERA, HP.

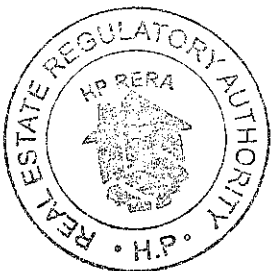
4. A notice was served to the respondents on dated 01-02-2020 and on date of hearing dated 2.3.2020 the complainant was directed to supply the copies of the complaint alongwith documents to the respondent party and it was directed by the Authority that the reply on behalf of the respondents be filed and the copies of the same be supplied to the complainant on or before 18.3.2020. During the course of hearing on dated 18.06.2020 respondents counsel Shri Rishi Kaushal submitted before this Authority through WebEx that complaint filed by the complainant is not in accordance with the H.P. Real Estate (Regulation and Development) Rules, 2017 being not submitted on “Form-M” and there are defects regarding paging and making of an Index. It was directed by the Authority that the complaint be filed by the complainant on “Form-M” as per HP, RERA Rules



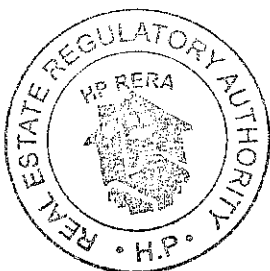
along with all annexures, proper index and complete paging a copy of which shall also be supplied to the respondent counsel within four days by e-mail. It was again directed that the reply on the behalf of the respondents shall be filed before the Authority and the copy of the same shall be supplied to the complainant on or before 06.07.2020 then the complainant can file replication before the next date of hearing by e-mail to the respondent as well as to this Authority. The matter was listed for hearing and arguments on 31.07.2020 at 11.00 AM.

5. Accordingly the complainant filed his complaint on "Form-M" duly paged and indexed with annexures dated 29.06.2020. The facts of which are as under :-

- i) The complainant is a self-employed businessman at Shimla carrying on business of tours and travels and his brother Sh. Narinder Bhardwaj is also self-employed in the same business. Both the brothers are living in the rented accommodation at Shimla, therefore they were interested in purchasing residential accommodation of two flats in the same building which can be used as duplex accommodation for the joint living and messing of their entire family at Shimla.

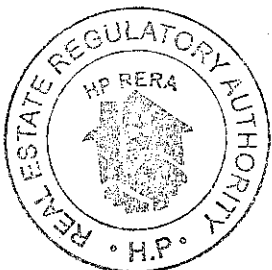


- ii) As represented by the Respondent no. 1&2 the respondent No. 1 is a registered company under the Companies Act having registered office at address as mentioned above. The respondent no. 1 company is engaged in the business of developer for developing various kinds of projects. The complainant and his brother came to know that a residential project known as Claridge's Residency is being developed and raised by the respondents at Bharari, Shimla.
- iii) That the complainant and his brother persuaded by respondent no. 1 and 2 through their employees at Bharari to go for booking of two storeyed 3rd and 2nd floors in block C in the Claridge's Residency. The development and construction work of the project was in progress at site and it was represented by the above said respondents that block C and accommodation therein will be completed shortly and two floors will be ready in all respects for handing over the possession within a period of 18 to 24 months.
- iv) That the complainant signed a printed document described as application for purchase of flat on 7.5.2014



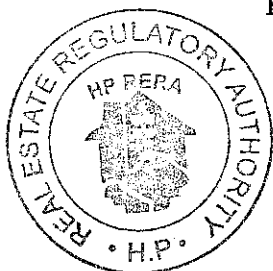
and allotment of entire third floor (3BHK) in Tower C block with super area of 1720 sq.ft. and carpet area of 1349 sq. ft. for sale consideration of Rs. Sixty two lakhs and fifty thousand. Similarly his brother also moved an application for purchase and allotment of 2nd floor with same specifications and consideration etc. and paid the consideration amount for purchase of 2nd floor in C block Rs. Sixty Two Lakhs Fifty Thousand.

- v) That the respondent no.1 company issued a allotment letter in which the said allotted floor was described as Flat No.204, 3rd Floor C-Block (3 BHK apartment) measuring area 1720 sq. ft. to the complainant and also allotment letter of 2nd floor was issued to his brother.
- vi) That 75% of the total sale consideration worth Rs. Forty seven lakhs, twenty five thousand was paid by the complainant to the respondent no. 1 through its Managing Director Sh. Rajdeep Sharma by 9.11.2015.
- vii) On persistent requests made by the complainant and his brother after long time of expiry period of handing over of possession the respondent nos. 1 & 2 demanded



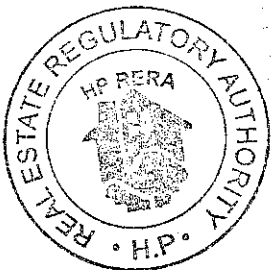
to release the final 15% payment before 15.09.2016. Accordingly the complainant and his brother immediately paid the amount of Rs. Nine lakhs, forty five thousand to the respondent no. 1 & 2 on 15.09.2016 and had failed to handover the possession and grabbed the final payment also.

viii) That instead of handing over the possession of the allotted 3rd and 2nd floor to complainant and his brother the respondent raised another illegal demand of Rs. Seventy Five thousand which was paid to the respondents on dated 28.08.2017. On another demand of the respondents 1 & 2 an amount of Rs. Nine lakhs, fifty five thousand and sixteen under head extra charges was also paid to the respondents 1 & 2 on dated 18.05.2018 with the expectation of getting physical possession of the flats as above. Despite receiving total amount Rs. Sixty Seven Lakhs and Sixteen from the complainant and same amount from his brother separately the respondents 1 & 2 failed to hand over possession and execute sale deeds in favour of



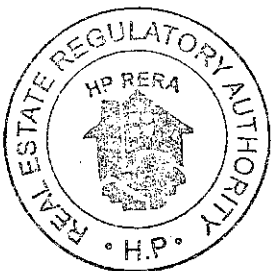
complainant and his brother in respect of allotted flats / floors on 3rd and 2nd floors.

- ix) That on detailed enquiry made by the complainant it transpired that above respondents had raised construction of C block in utter violation of sanctioned plan and Municipal Corporation bye-laws and therefore Municipal Corporation was not issuing mandatory required completion plan of the building and the respondents were not been able to obtain such completion plan for transferring and handing over possession of the said accommodation. Therefore, they are liable to be ordered and directed to have the completion plan sanctioned from Municipal Corporation Shimla before execution and registration of sale deed and handing over possession by dated 31.07.2020 failing which respondents are liable to refund the entire amount of Rs. Sixty Seven Lakhs and Sixteen with interest @ 24% from the date of receipt of each and every installment.
- x) The complainant further came to know that the respondents have cheated and played calculated fraud



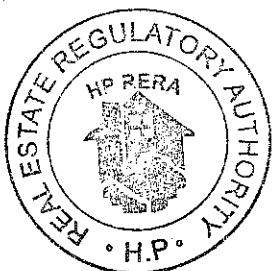
on the complainant and his brother by manipulating that the respondent No.3 wife of respondent No.2 had already sold 2nd floor of block C to Smt .Komal Gupta w/o Sh. Anil Gupta and Sh. Anil Gupta S/o Sh. Jagdish Gupta vide registered sale deed dated 22.05.2017 and 3rd floor was booked and allotted to the complainant (Annexure C-7 of the complainant file). The respondent no. 3 had also sold the ground floor of the said block C to Smt. Kamna w/o Sh. Gopal Beri vide sale deed dated 15.11.2019 (Annexure C-8 of the complainant file).

- xi) That from the above said sale deed and revenue records annexed with sale deed it transpired that the said block stands constructed on khasra no. 5/3 measuring 190 sq.meters which is not owned and possessed by the respondent company. The Khasra no. 5 measuring 1416.80 sq. m is owned by respondent no. 2 Sh. Rajdeep and out of this khasra no. undivided share 38000/141680 stood transferrd to respondent No. 3 Smt. Sakshi Rajdeep and again out of said khasra No. 5/3, 190 sq.meters transferred to respondent no. 2. Then again the said khasra No. 5/3 alongwith building



thereon stands transferred to respondent No. 3 Smt. Sakhshi Rajdeep and Smt. Sakshi Rajdeep sold 2nd floor to Smt. Komal Gupta. Thus calculated fraud had been committed by manipulating such revenue entries to execute sale deed of the 2nd floor. Thus, the very purpose of purchasing the aforesaid two floors by complainant and his brother for making it a duplex unit for the entire family has been defeated by the aforesaid sale of the second floor and complainant and his brother with family suffered physically and financially on account of aforesaid acts of cheating and fraud played by respondents 1 to 3 in connivance with each other.

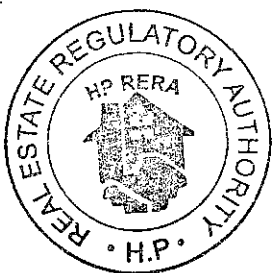
- xii) That the respondents are liable to be ordered and directed to obtain completion certificate and sanction completion plan of both third and second floors to ensure future handing over peaceful vacant possession and execution and registration of third and second floors in complete in all respects in favour of complainant and his brother by July 31, 2020 with complete free hold rights of the said floors be



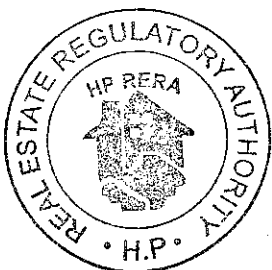
transferred to the complainant and his brother without any encumbrances of any kind. The respondent should also be directed to refund the total amount of Rs. Sixty Seven Lakhs and Sixteen alongwith interest @18% per annum from the date of receipt of each amount which comes to Rs. Eighty Seven lakhs, Forty Six Thousand and Eight Hundred Thirty Two upto dated 30.06.2019 by 10th August,2020 by all means jointly and severally. It be further ordered and directed to pay interest @ 24% per annum on the said amount of Rs. Eighty Seven lakhs, Forty Six Thousand and Eight Hundred Thirty Two from dated 01.07.2020 and the same amount with same interest be also directed to be refunded to his brother.

Reply on behalf of Respondents

6. In reply to the complaint as mentioned above the respondent counsel has submitted that complainant has concealed material facts necessary to adjudicate this complaint and before approaching this Hon'ble Forum the complainant has approached the Hon'ble High Court at Shimla and same is pending for adjudication. In the



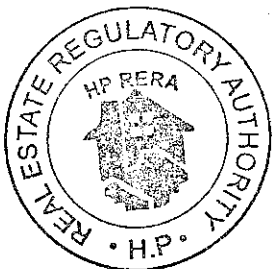
present case the complainant has raised the similar issues before Hon'ble High Court H.P. and same is pending for adjudication. The complainant failed to raise the alleged violations against the respondents that committed the contravention of RERA Act, Rules and Regulations. He has further mentioned that as per section 31 of the Act, filing of complaint with the Authority or Adjudicating Authority the present complaint is false, frivolous, and vexatious and abuse of the process of this Authority. The complainant has not approached the Authority with clean hands and concealed the material facts approaching that the matter in issue is pending for adjudication before the Hon'ble District Consumer Forum at Shimla and other material facts, hence this complaint is liable to be dismissed on this ground. That further the complainant has no right to approach this Hon'ble Authority as the complainant himself defaulted in paying the agreed amount as duly agreed vide allotment letter dated 7.5.2014. The complainant is fully aware of the fact that the layout plan of C block in question is approved and



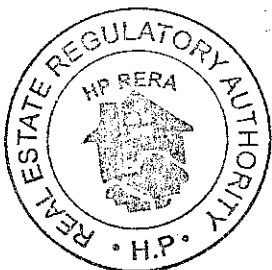
the same has been submitted for revision under retention scheme which has been challenged and litigation is pending before the Hon'ble High Court H.P at Shimla. Further the complainant is also fully aware of the fact that the construction in State of H.P. comes under scrutiny in largely in the year 2018 of the Hon'ble National Green Tribunal due to which the construction of all projects in the State of H,P including the present project was put on hold resulting into "Force Majeure" condition. The complainant is also fully aware of the fact that there is typographical mistake on the part of sale deed (Annexure C-7 of the reply) which the purchaser is ready to make the statement and get the mistake corrected at any time. The answering respondent was always willing to get the transaction completed rather as per requirement of the complainant the unit in question has been designed as duplex and ready to be delivered.

Rejoinder on behalf of Complainant:

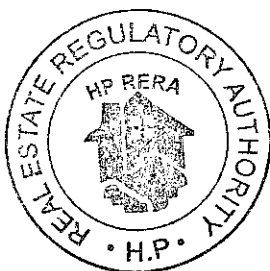
7. The complainant in his rejoinder through his Counsel Sh. Ashok Sood in his rejoinder dated 27.08.2020 has stated that respondent company or even its Managing



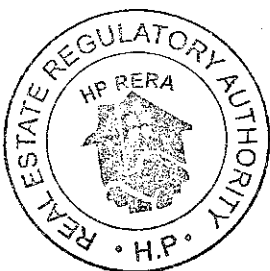
Director Sh. Rajdeep Sharma was not owner of the land on which the said project was proposed to be developed and constructed and even then the respondents have booked the flats on 3rd and 2nd floors of block C and also received advance booking amount towards the part payments of sale consideration from complainant and his brother on 7.5.2014 for both the floors in block C. After receiving an amount of Rs. Sixty Seven Lakhs and Sixteen from the complainant they have also received the same amount for the sale of the second floor from his brother separately. But the land on which the said floors were proposed to be constructed was purchased by respondent No. 2 from previous owner on 9.5.2014. The respondent company is debarred from purchasing the land in question or even structures raised thereon under the provisions of section 118 of the H.P. Tenancy and Land Reforms Act, 1972 as the respondent no. 1 to whom the land is further transferred is not agriculturist of Himachal Pradesh. The respondents intentionally and purposely have made false and misleading representations with regard to ownership of land on



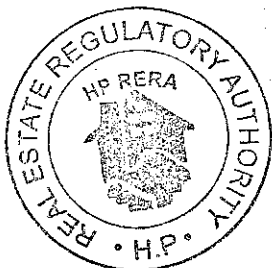
which the block C was proposed to be constructed and are in utter violations and breach of section 4(1) (A), 7(d), 11 & 12 of the Act . Such acts on the part of the respondents are also breach of duties cast upon seller under section 55 of clause (1) of Indian Transfer of Property Act and section 17 and 18 of Indian Contract Act. Further another fraud committed by the respondent no. 1 and 2 have also come to the notice of the complainant regarding Joint Development Agreement dated 16.06.2014 executed with respondent no. 1 & 2 in respect of present project which shows that the same was also executed after booking of second and third floors and advance of sale/ booking amount was paid to respondent No. 1 through its Managing Director Sh. Rajdeep Sharma the respondent no. 2 on 7.5.2014 before execution of said agreement on 16.06.2014. The respondents have intentionally and purposely suppressed the execution and existence of the said agreement in the present reply before this learned Authority. As the above said Joint Development Agreement the physical possession of agricultural land



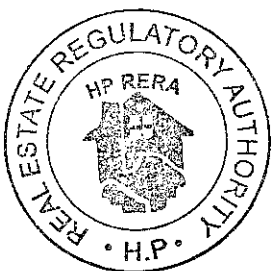
and all rights, titles and interests in said land and rights to sell have been transferred by respondent no. 2 to respondent no. 1 company which is not an agriculturist under section 118 of H.P. Tenancy and Land Reforms Act. Therefore the Joint Development Agreement is itself illegal, null and void and in breach of provisions of section 118 of the said Act. Therefore to avoid and over reach the provisions of section 118 of the H.P. Tenancy and Land Reforms Act, 1972, the respondents manipulated to purchase land in the name of the Director respondent No. 2 Shri Rajdeep Sharma who then manipulated different documents of family settlements in name of his wife, mother and brother and also manipulated mutations in their names in revenue records and then affecting partition managing small plots of big areas of 1480.16 sq.meters to avoid provisions of sub-division of land under the provisions of H.P. Town & Country Planning Act. This fraud is not only with the complainant but also with Government and its exchequer and income tax authorities, registering and revenue authorities. The respondents



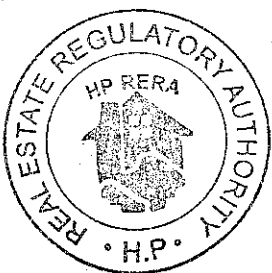
have further trapped the complainant by agreeing to sell third floor about which the complainant came to know later on that the plan of the said floor had not been sanctioned by the Municipal Corporation, Shimla. They also came across the copy of sanction plan annexed to sale deeds of 2nd floor to Smt. Komal Gupta and Sh. Anil Gupta. This fact has not been denied by the respondents in present reply but is trying to justify it as typographical mistake which stands falsified from the sanctioned plan. Since block C consists of one basement floor, one ground floor, first and second floor and attic as per sanctioned plan. Therefore the respondents have also raised unauthorized and unsanctioned additional floor which is now referred by them as third floor which is not sanctioned by Municipal Corporation, Shimla as per bye-laws as amended from time to time and also under H.P. Town and Country Planning Act. The said fraudulent acts are not only in breach of provisions of section 11, 12, 13 and 14 of the Real Estate (Regulation and Development) Act, 2016 but also an offence committed by respondents of fraud, cheating and



mischievous under section 420, 415 and 425 etc. of IPC with criminal intention to grab huge amount of Rs. Sixty seven lakhs and sixteen from the complainant and his brother separately causing wrongful loss to them. The respondents no. 1 & 2 have not got the project registered under provisions of section 3, 4, 5 of the Real Estate (Regulation and Development) Act, 2016 with this learned Authority with regard to present ongoing project. Therefore they are liable to be punished under section 59, 60 and 61 of the Act. The respondent no. 1 and 2 are in habitual default in another project one at Kasauli under the name and style "PARAISO", other at Mashobra known as "MASHOBRA HILLS" and third at Bharari itself known as "HIMALYA HILLS". The respondents have further hatched criminal conspiracy by selling second floor by showing respondent No. 3 Smt. Sakshi Rajdeep Sharma as owner of block-C and executing a sale deed of second floor block C in favour of Smt. Komal Gupta and Sh. Anil Gupta the purchasers (Annexure C-13) despite having grabbed the sale consideration of Rs. Sixty Seven Lakhs and Sixteen from



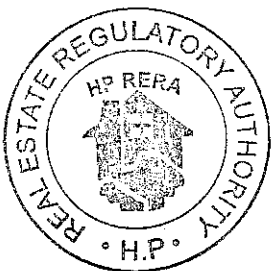
his brother. They have not cheated and played fraud on the complainant only but have also played fraud on like proposed buyers grabbing huge advance sale consideration with delivery of possession and execution of sale deeds and they also lodged FIRs in different police stations. They have further stated that so far as duties of buyer referred under sub-head 1, 2, 3 of para-1 of preliminary submissions are concerned, it is humbly submitted that the complainant / buyer and his brother have neither committed any breach of the terms and conditions of the agreement nor they have backed out from any commitment or have failed to perform any of the duties cast on them any time from the date of booking and allotment of floors till date. Since the complainant has also not committed single default in payment of sale consideration as and when demand raised by the respondent no. 1& 2 , therefore there is no question of making payment of interest as respondents no. 1 and 2 have failed to carry out and complete the construction in a time bound manner. The respondents have not gone through the contents of para 7 of the



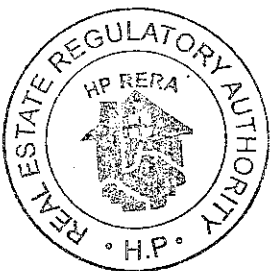
complaint wherein it has been specifically disclosed that suit for specific performance stood filed in Hon'ble High Court H.P which is totally separate and independent remedy available to the complainant under law of specific performance and the present complaint has been filed without prejudice to the said pending suit. Further the exercise of jurisdiction of RERA, Act by this learned Authority is in addition to other remedies available to the complainant as per provisions of section 88 of Real Estate (Regulation & Development) Act, 2016 whereas actions for violation of provisions of RERA, Act and Rules framed thereunder by the respondents lie exclusively with this learned Authority under the Act and Hon'ble High Court cannot entertain action against such violations committed by the respondents.

Arguments advanced by the contesting parties:-

8. The arguments in the present complaint have been heard partly on dated 18.09.2020. Sh. Ashok Sood, Ld. Counsel representing the Complainant has argued before this Authority that the Complainant & his brother had booked 3rd & 2nd floors in block 'C' of Claridges

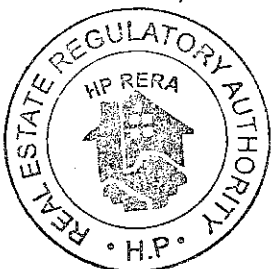


Residency at Bharari in May,2014, the allotment letters of which were issued by the respondents 1 & 2 on 7th May,2014 & the said floors were agreed to be handed over along with sale deeds within the period of 18 to 24 months. It has been argued that the Complainant & his brother have paid to the respondent Rs. Sixty Seven Lakhs and Sixteen each as the sale consideration of aforesaid floors. He further contended that the area of floors agreed to be sold is 1720 sq.ft.separately for each floor in the allotment letters and the carpet area was also 1349 sq.ft. for each floor. But the sanctioned area of 2nd floor is only 88.01 sq.meters equal to 947.33 sq. ft. The respondent No. 3 has sold the 2nd floor to Smt. Komal Gupta and Sh. Anil Gupta as per sale deed. The 3rd floor is an unauthorized construction without any sanctioned plan from the competent authority and at the time of booking of 3rd and 2nd floors also the respondent No 2 was not the owner of the land. The project is ongoing at present and not registered as yet. As per section 2 (zk) of Real Estate (Regulation and Development) Act, 2016 the complaint can be registered



against un-registered project also. The violations of the provisions of aforesaid Act are still being continued by the respondent promoters. The land of block-C has further been transferred in the name of wife of the promoter respondent No. 2 Smt. Sakshi Rajdeep Sharma as per Joint Development Agreement entered into in the year 2016. Since the concerned Company respondent no. 1 and 2 were not owners at the time of booking of the flats, the permission under section 118 of H.P. Tenancy and Land Reform Act, 1972 has also not been taken. He also contended that as per section 55 (1) of the Transfer of Property Act *“that the seller is bound to disclose to the buyer any material defect in the property (or in the seller’s title thereto) of which the seller is aware, and the buyer is not aware and which the buyer could not with ordinary care discover”*.

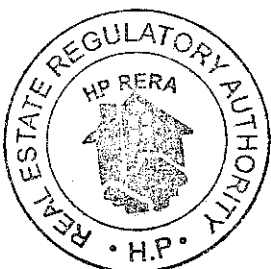
The respondent no. 2 has been wrongfully indulged in transfer of land to his wife with family settlement and partition. He further contended that the case of specific performance of agreement is pending in the Hon’ble High Court and the complainant is at liberty to file the



complaint before this learned Authority under the provisions of the Act *ibid*.

The Ld. Counsel representing the respondents no. 1 to 3 argued that there is no dispute in respect of sanction of the plan in respect of 2nd floor of block-C of the project. Regarding the plan of 3rd floor the revised plan for sanction has been submitted to the Municipal Corporation, Shimla which is still pending. He further contended that the flats / floors in question are ready for possession and fully furnished. The sale deed has also been corrected. Since the respondents 1 & 2 have applied to the Govt. for regularization of the deviation made in the project under retention policy and as per directions / decision of National Green Tribunal the construction work has been hampered with. Therefore, the respondents have not delayed it intentionally.

The Ld. Counsel for respondents also relied upon certain documents, more particularly a Joint Development Agreement executed by respondents for the proper adjudication of the present complaint and also requested the Authority to allow to submit written

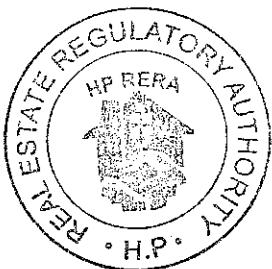


arguments further in the present complaint. The Authority keeping in view the documents purported to be relied upon by the respondents necessary and important for adjudication of the complaint in issue, it directed to submit a copy of Joint Development Agreement and written submissions on the behalf of the respondents.

10. The final arguments in this case were heard on 21.11.2020 at 11.00 AM through WebEx. The Ld. Counsel for complainant Sh. Ashok Sood said that he has already argued the relevant aspects relating to the complaint and requested authority to refund the whole amount paid as sale consideration worth Rs. Sixty Seven Lakhs and Sixteen with interest @ 24% from the dates the payment has been made to the respondent promoters.

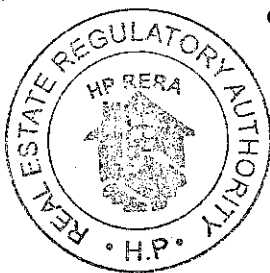
11. The Ld. Counsel for respondents vide his written submissions submitted to the Authority dated 26.10.2020 has contended –

(a) That Sh. Rajdeep & Co. respondent no. 1 has a specific role in construction, development, marketing and sales



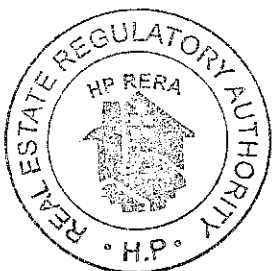
assistance and in the present case Smt. SakshiRajdeep respondent no. 3 is the owner of the plot measuring 190 sq. meters received vide family settlement dated 3.5.2016 from her husband. After that Joint Development Agreement dated 3.5.2016 the said land of C block has been transferred to his wife Smt. Sakshi Rajdeep with all its titles and interests in the land by Sh. Rajdeep Sharma after sale deed dated 9.5.2014 executed between Smt. Jaswant Kaur and Sh. Rajdeep Sharma respondent no. 2 and joint development agreement executed between respondent no. 2 and respondent no. 1 company.

(b) He has also argued that the Real Estate (Regulation and Development) Act, 2016 is not applicable in this case because as per section 3 (2) of the Act the size of the plot is not exceeding 500 sq. meters and number of units as per plan are also less than eight and therefore Ld. Authority has no jurisdiction to deal with the present case.

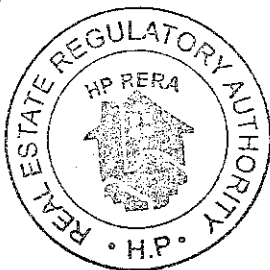


(c) He further contended that the claim of the complainant is under section 14 and 18 of the Act, hence there is applicability of section 71 of the Act.

(d) He stated while referring the proviso of section 71 of the Act that in the present case the complainant has resorted to parallel criminal proceedings by filing the writ petition against the respondent company. He has relied upon the judgment of Hon'ble Apex Court titled as **Meghmala & Other vs G. Narashimha Reddy & Ors. in civil appeal No. 6656-6657 of 2010** decided on 16.08.2010 para-9 "*that the self-same relief to parallel proceedings before two forums cannot be taken*". He has also relied upon the judgment of Hon'ble High Court in **DCM Shriram Industries Ltd vs. HB Stock Holdings Ltd** and others on 28.04.2014 regarding parallel proceedings in different courts "*..... in such circumstances permitting parallel proceedings would amount to permitting meaningless litigation. The expression parallel proceeding must mean a set of proceedings which are perused for identical reliefs, are based on the same cause of action and the subject matter*

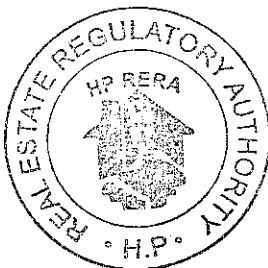


of the case is similar". He has stated that complainant further declared vide point No. 7 of the "Form-M" of the complaint that the matter regarding which this complaint has been made is not pending before any court of law or any other Authority or any other Tribunal. He has further relied upon judgment of Hon'ble Apex Court in **civil appeal No. 6239 of 2019 titled as Wg. Cd. Khan and Aleya Sultana and others vs. DLF southern Homes Pvt. Ltd.** in which the Hon'ble Court directed the respondents to pay an amount calculated @ 6 % per annum to each appellant as compensation. Therefore, the complainant seeking return amount with 18% interest is not permissible under law. He has further quoted rule 15 of H.P. Real Estate (Regulation and Development) Rules, 2017 that interest payable by promoter and allottee is well defined. The Ld. Counsel for the respondents has also quoted the order in the matter of **"Bikramjeet Singh versus State of Punjab & ors."** Dated 13th December, 2017 passed by the Real Estate Regulatory, Authority, Punjab as relied by the respondent vide Annexure R-2 at page 14-35 of

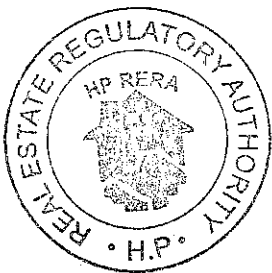


the reply to the complaint that, “ *Firstly, the alleged violations though commencing before the enforcement of the RERA Act, must be continuing till date; secondly, the alleged violations must also constitute a contravention of the RERA Act and the rules and regulations made thereunder; and thirdly, the issue should not have been decided or be pending in any forum/ Court before approaching this Authority. The order reciprocates as under, “Only, if all the three conditions are fulfilled, and the onus would be on the Complainant to prove these, would any alleged violations, that took place before the coming into force of this Act be considered by this Authority.”*

- (e) That the brochure issued by the respondent is just an invitation to buyers for buying the property and has not legal weightage as it itself indicates that the prospective customers should conduct proper due diligence about the property. He has supported his contentions by the principle of Caveat Emptor that let the buyer beware. The principle of Caveat Emptor is a property law principle which puts the buyer at caution and he has

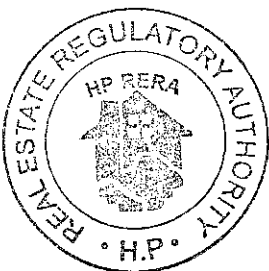


relied on the judgment on this principle of Hon'ble Supreme Court in **Commissioner of Customs "Preventive vs Aflot Textile India Pvt. Ltd. & Others 2009/2011 SST 18.** The party has neither inquired about the title of the property nor cast any aspersions while filling the application form nor making of the payment of 10% of the total amount of consideration amount. The violation of section 51 of Transfer of Property Act, 1882 henceforth is not attracted as the present transaction does not constitute sale of the property in question and question of defective ownership can be raised. In the instant case the property has been transferred in the name of the wife of respondent no.2 Sh. Rajdeep Sharma by family settlement and which further entering into joint development agreement having full rights and titles and it in no manner can be termed as Benami Transaction as per section 3 of Prohibition of Benami Transactions and Benami Transactions (Prohibition) Act, 1988. He has further said that present respondent is Himachali Agriculturist and sale deed has been executed by the Himachali



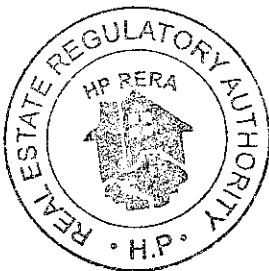
Agriculturist in the plot in question, therefore it is not covered under section 118 of H.P. Tenancy and Land Reforms Act, 1972 as amended up to 2012 Explanation 2 clause (a) which states that "A benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a non-agriculturist" is not applicable in the present case. Since at the very outset the complainant has shown his intentions to exit from the said sale, in such a case the respondents propose to return the amount received after deducting 10% amount as booking amount in mutually decided manner as per timelines. The Ld. respondent counsel has made submissions that the complaint is false, frivolous, vexatious and abuse of process of this Hon'ble Authority , as the complainant has not approached the Hon'ble Authority with clean hands and concealed the material facts, therefore this complainant is liable to be dismissed.

12. The learned counsel for complainant in a rebuttal contended that the submissions made by the

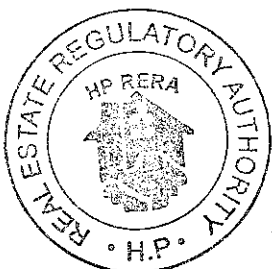


respondent counsel are *prima-facie* not based on actual facts :-

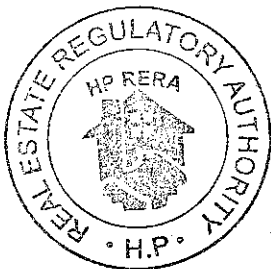
- a) The alleged transfer of land measuring 190 sq. meters by the alleged family settlement dated 14.6.2016 has been fabricated/ concocted and manipulated just to over reach and avoid the provisions of Real Estate (Regulation and Development) Act, 2016 which was enacted on dated 25.03.2016 and came in force on dated 26.03.2016 . The said plot of land comprising khasra no. 5/3 on which block C stood constructed was and is part of the entire project is governed by the provisions of the Act as such fraud of transfer has been done, the same cannot be considered unless it is carried out strictly in compliance to the provisions of section 15 of the Act. Even the respondent promoters have not produced the alleged document of family settlement on record therefore cannot be taken into consideration merely on the oral assertions and pleadings. When the complainant booked flat there existed no Joint Development Agreement between respondent No. 2 and respondent No. 1 company or between Smt. Sakshi Raj



deep. All subsequent transfers of land have been made to play fraud on the complainant and the authorities under Benami Transaction Act, RERA Act and H.P. Tenancy and Land Reforms Act. The Company has received the entire consideration from the complainant and not by Smt. Sakshi Rajdeep respondent no. 3. The respondents have already admitted that they are liable to return the sale consideration received for booking of the floors. Regarding non-applicability and jurisdiction of Hon'ble Authority the contention of the respondent counsel is in total contradiction of reply dated 21.07.2020 filed by respondents to the objection petition on affidavit which shows that respondents have admitted the fact that the block C is built on Khasra no. 5/3 is a part and parcel of their on-going project named as Claridge's Residency , Bharari and no where it is pleaded or stated that the said block C is separate independent project of respondent No. 3, Smt. Sakshi Rajdeep. The claim of the complainant and his brother is clear that they want the return of their entire amount of sale consideration received by respondent no. 1

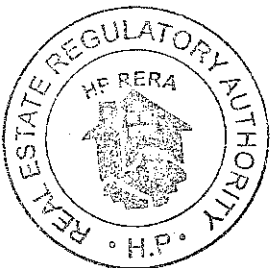


through its Managing Director Sh. Rajdeep Sharma with interest as prescribed by this Authority under the provisions of section 18 of the Act. The complainant has made timely payments to the respondent no. 1 through its Managing Director Sh. Rajdeep Sharma as demanded in time without a single delay. Even extra amount has been paid which was not agreed to be paid as per details given in rejoinder. The complainant wants to withdraw from the project for the reasons on account of defaults of respondent No. 1 to 3 detailed in complaint and rejoinder filed by the complainant. The complainant has not filed any parallel proceedings for return of sale consideration with statutory interest payable under the Act before any Forum and Court. Therefore the proviso of the section 71 of this Act is not applicable to the present complaint. The complainant has only filed one civil suit for specific performance of agreement of sale which was going to be barred by limitations which is also prior to the present complaint and it is maintainable before Hon'ble High Court. The Ld. Counsel also relied upon section 88 of the Act to

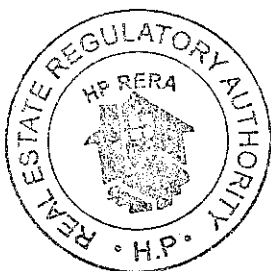


determine the present complaint according to which there is no bar if any parallel proceedings are pending in other court. The Ld. counsel also relied upon the following judgments of **Hon'ble Supreme Court & Hon'ble High Courts: 1. Pioneer Urban and Infrastructure Ltd & another v/s Union Of India AIR 2019 SC 4055. 2. M/S Supertech Ltd V/S SubratSen AIR 2019 Allahabad 19.**

13. It has already been admitted by respondents no 1 & 2 that they are liable to pay the interest at the rate well defined under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules 2017. However the submissions made with regard to rate of interest payable by respondents on amount received by the complainant and that they are liable to return the same to Complainant are totally contrary to the provisions of the Act. He further rebutted that the rate of interest is payable by the respondents on the entire amount which they have received from the complainant under Section 18 (a) of the Act which has been prescribed under Rule 15 of H.P. Rules, 2017 as



aforesaid. The principle of "Caveat Emptor" does not apply in this case because none of the respondents were owners of land when they published brochure and even when they booked for sale of two storeys of block C of ongoing project and respondents No 1 Company through its Managing Director Sh. Rajdeep Sharma received advance sale consideration from the complainant. From bare perusal of terms and conditions of alleged joint development agreements the same are in breach of section 118 of H.P. Tenancy and Land Reform Act, 1972. As per section 118 (1) of the Act the benami transaction shall include *"An authorization made by the owner by way of special or General power of attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with the land in like manner as if he is real owner of that land"*. Therefore, the respondents have no clear title in this behalf which are under the threat of aforesaid provisions of section 118 of the Act. The Ld. Counsel also stated that the case law submitted by respondent counsel is not relevant in the present case.



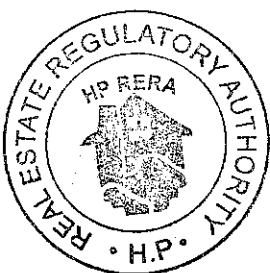
Conclusions in the present Complaint:-

14. We have heard the arguments advanced by the Ld. Counsels for the complainant and respondents and perused the record pertaining to the case. We have duly considered the entire submissions and contentions submitted before us during the course of arguments. This Authority is of the view that there are following issues that require the consideration and adjudication, namely:-

- A. Applicability of the Act.
- B. Jurisdiction of the Authority.
- C. Whether the complainant is entitled to get the refund of money along with interest or not?
- D. By whom the refund of money along with interest is to be paid?
- E. Other issues and directions including imposition of penalty.

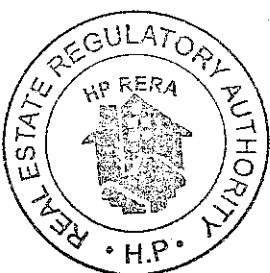
A. Applicability of the Act:

15. Whether the provisions of Real Estate (Regulation and Development) Act,2016 is applicable in the present case, the Ld. Counsel for the respondents has made written



submissions and while making arguments, has contended that in the present case the plot size is 190 Sq. meters which is less than 500 sq. meters, therefore, the Real Estate (Regulation Development) Act, 2016 is not applicable in this case. He based his arguments, in view of the provisions of section-3 of the Act. Section-3 of the Act provides that no registration of a Real Estate project will be required where the area of land proposed to be developed does not exceed 500 sq.mtrs. In the present case, Mr. Rajdeep Sharma, the respondent promoter 2 owned 1416 sq. mtrs. of land in Up muhal Kallestan, Shimla as per revenue record of the jamabandi of the year 2013-14, placed at (page no. 215) of the case file. However, later on, in the family settlement he has transferred a part of this land to his wife, his mother etc. This is clear from the copy of agreement dated 11th August, 2016, supplied by the respondent with his written submissions at P-31 of the rejoinder. At page 2 of the agreement, it is mentioned that:-

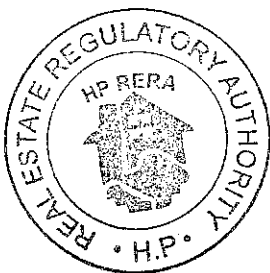
“And whereas the first party was the owner of land comprised in Khata Khatoni No 151/186, Khasra No 5,



measuring 1416.80 Sq. Mtrs situated at Up Muhal Kalleston, Tehsil Shimla (U), District Shimla Himachal Pradesh and at the time of ownership the first party has executed Joint Development agreement with M/S RAJDEEP AND COMPANY INFRASTRUCTURE PRIVATE LIMITED (PAN No. KAAF67444Q) a Private Limited Company having its registered office at 2694, Sector-23 Chandigarh”.

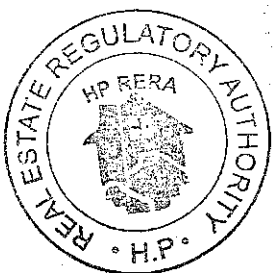
16. Thus, in the present case, it is very clear that Rajdeep being owner of 1416 sq. mtrs. of land at up Muhal Kellastan had executed a joint development agreement with Rajdeep and Co. The joint development agreement dated 16th June, 2014 is registered in the office of Sub Registrar, Solan and copy of which is placed as Annexure R/B of the written submissions, filed by the respondent. The Rajdeep & Co. has developed Block A,B,C and D is being also developed of this project. The only change that has taken place later on, is that Sh. Rajdeep Sharma has transferred ownership of some part of land to his mother and wife.

The proviso to Section 3 (2) (a) the Act reads as follows:



“Where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases”.

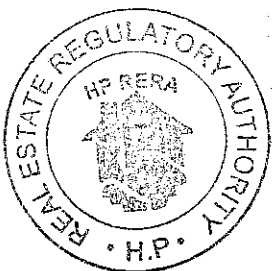
17. Thus, any project which has an area more than 500 sq. meters. including of all phases is to be registered under RERA. It does not matter whether the ownership of land of the project, belongs to one person or more than one person. In the present case, the total area full project being developed by Rajdeep and Company Infrastructure Ltd is 1416 sq. mtrs. Therefore, the project is fully covered under the provisions Act. This is also clear out of the fact that Mr. Rajdeep Sharma has applied for the registration of the project with the Authority on 10th February 2020 and the queries/ observations raised by this Authority remain unattended till date which have been conveyed to the respondent no.2, Shri Rajdeep Sharma on 10th August, 2020 and the ongoing project in question presently stands unregistered till date for which the requisite action is warranted under the relevant provisions of the Act *ibid*. Thus, the Act is applicable on the present project and



complainant is fully authorized to file the present complaint. The Rajdeep and Co. Infrastructure Ltd as well as the owners of the land are jointly promoters in the present case.

B. Jurisdiction of the Authority:-

18. This Authority after careful examination of the statutory provisions of the Real Estate (Regulation & Development) Act, 2016 along with judicial pronouncements of various Courts including the Hon'ble Apex Court derives the matter in issue by discussing various provisions of the Act in this regard. 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. Thus this Section provides that a separate Complaint be lodged with the Authority and the Adjudicating Officer, "as the case may be." Accordingly Rule 23 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 provides the procedure of filing Complaint with the Authority and prescribes 'Form M' for filing a Complaint. In this case the Complainant has filed the Complaint in 'Form-M.'



19. The Section 34 (f) of the Act prescribes that the function of authority shall include

“to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the Rules and regulations made there under”.

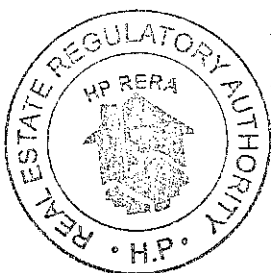
Section 11(4) (a) of the Act prescribes as follows:

The promoter shall—

“be responsible for all obligations, responsibilities and functions under the provisions of this Act or the Rules and regulations made there under of allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings as the case may be to the allottees, or the common areas to the association of allottees or the competent authority as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

Section 19 (4) of the Act provides as under:

“The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building,



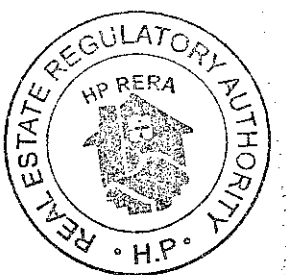
as the case may be in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the Rules or regulations made there under.”

Further Section 38 (1) of the Act says

“The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the Rules and the regulations made there under.”

Thus the Section 34(f) of the Act empowers the authority to ensure compliance of the obligations cast upon the promoters and Section 11(4) (a) (Supra) cast obligation on the promoter to implement “agreement for sale”. Further, Section 37 of the Act empowers the authority to issue directions in discharge of its functions provided under the Act. The Authority also has power to impose penalties under Section 59 to 63 for various contraventions of the provisions of the Act. Moreover, Section 38 (1) of the Act in unambiguous terms empowers the Authority to impose ‘penalty or interest.’

20. Thus from the reading of the above provisions of the Act and case law it is very clear that the Authority has power to adjudicate various matters, including refund and



interest under Section 18 of the Act whereas the compensation is to be adjudged by the Adjudicating Officer under Section 71 of the Act *ibid*.

21 We have also gone through the above case laws relied upon by the respondents Counsel in his written submission in detail. The first case law is Supreme Court India in **Meghmala & ors. vs. G. Narasimha Reddy & ors.** In that case litigant had completed several rounds before the high court. Therefore, the review petition was not considered maintainable. In the present case there are no such circumstances.

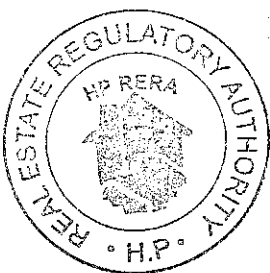
The respondent has also quoted Delhi **HC in DCM Shriram Industries Ltd. Vs HB Stockholdings Ltd. & ors.** In that case, it was contended by the Appellant that respondent no-1 was barred from perusing the petition before the Company Law Board as, some proceedings were going on before the SEBI. The court concluded that proceedings with SEBI will not prevent respondent to peruse his petitions before the Company Law Board. Thus, the facts of the case quoted by Ld. Respondents counsel are different from the present case.



The respondents have also relied upon the judgment of **Hon'ble Apex Court in civil appeal No. 6239 of 2019 titled as Wg. Cd. ArifurRehman Khan and Aleya Sultana and others vs. DLF southern Homes Pvt. Ltd.**

In this case Hon'ble Apex Court has directed the respondents to pay an amount calculated @ 6% per annum to each appellant as compensation. Therefore the present complaint to seek return amount with 18% interest is not permissible under law. In the present case Hon'ble Court has directed to pay the compensation to each appellant @ 6% which is not applicable in this case as the complainant has sought refund alongwith interest and not compensation under the provisions of the Act. Hence the Act is fully applicable in the present case.

The Authority while considering the judgment the relied upon by the respondents Counsel in "**Bikramjeet Singh versus State of Punjab & ors.**" Case as submitted in the reply to the Complaint, it has been transpired that firstly, the order is not of Himachal RERA but of the RERA Punjab. Secondly, the facts of that case are very different than of the present case. In that case, the allegation was



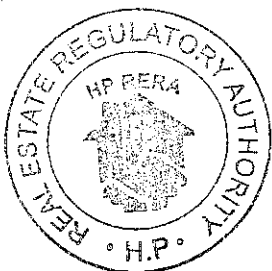
about the violation of provisions of Punjab Apartment and Property (Regulation ACT) 1996. Thus, that case is not relevant for adjudication the present case.

So far as the issue governing the parallel proceedings taken as plea by the Ld. defence counsel, the Authority places its reliance upon the following legal pronouncements of the Hon'ble Apex Court and Hon'ble High Court(s) as under:- In **Sh. Vishnu Dutt Sharma Vs. Smt. Daya Sapra; (2009)13SCC 729** the Apex Court has held that :

"13. It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case."

In Kishan Singh (D) through I.Rs. Vs. Gurpal Singh and others; AIR 2010 SC 3624, the Hon'ble Supreme Court relying on the law laid down in P. Swaroopa Rani v. M. Hari Narayana alias Hari Babu; AIR 2008 SC 1884 the Apex Court has held as under :

"It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or



criminal proceedings shall be stayed depends upon the fact and circumstances of each case.... Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute.... It goes without saying that the respondent shall be at liberty to take recourse to such a remedy which is available to him in law. We have interfered with the impugned order only because in law simultaneous proceedings of a civil and a criminal case is permissible."

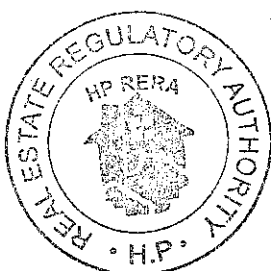
In Devendra & Ors v. State of U.P. & Another [(2009) 7 SCC 495], it is held:

"There cannot, however, be any doubt or dispute whatsoever that in a given case a civil suit as also a criminal proceeding would be maintainable. They can run simultaneously. Result in one proceeding would not be binding on the court determining the issue before it in another proceeding."

Further in M/s Supertech Ltd. V. SubratSen AIR 2019

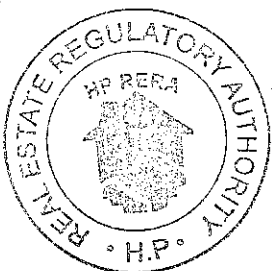
Allahabad 19 (Para 24 is relevant)-it has been held that

"this learned Authority has no jurisdiction to pass decree for specific performance of Agreement of Sale which suit is only competent and maintainable in Hon'ble High Court who has exclusive jurisdiction depending upon the value of the suit for the purposes of court fee and jurisdiction. Similarly, other Civil Courts and the Hon'ble High Court has no jurisdiction



to entertain and decide complaints under RERA Act, therefore both the Forums have totally different jurisdiction and are not overlapping one over the other. The civil and criminal liabilities are totally different.”

The respondents Counsel further relying upon the judgment of Hon'ble Apex Court in **Commissioner of Customs Preventive vs Aflot Textile India Pvt. Ltd. & Others 2009/2011 SST 18**, whereby it has been contended before this Authority that party has neither inquired about the title of the property nor cast any aspersions while filling the application form and making of the payment of 10% of the total amount of consideration amount. We have gone through the aforesaid case law and have reached to the conclusion that the respondent promoters 1 & 2 have booked the 3rd floor block-C for complainant for sale consideration as mentioned above after taking into confidence by advertisement through brochure as already alleged by the complainant. Since the respondents counsel has mentioned through the aforesaid judgement regarding the corresponding duties of the allottee / complainant, the rights of the allottee in the

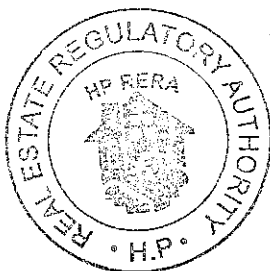


present case have also to be safeguarded under the provisions of section 19 (4) of the Act *ibid*.

The Authority further relies upon the judgment of Hon'ble Supreme Court in the case titled as **Pioneer Urban Land and Infrastructure Ltd. and another vs Union of India AIR 2019 SC 4055 (Para 24)** *The fact that RERA is in addition to and not in derogation of the provisions of any law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional not exclusive remedies*".

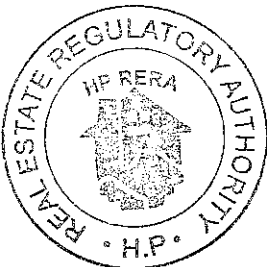
Therefore this Authority is not inclined to agree with the contention taken by the respondents counsel regarding the parallel proceedings going on simultaneously with the hearing of this complaint. As per the provisions of section 88 the application other laws not barred that "The provision of this act shall be in addition to and not in derogation of, the provisions of any other laws for the time being in force."

C. Whether the Complainant is entitled to get the refund of money along with interest or not?



D. By whom the refund of money along with interest is to be paid?

22. Coming to the question that whether the complainant is entitled for relief of Rs. Sixty Seven Lakhs, Sixteen along with interest and compensation, under the provisions of the Act and the Rules made there under. The complainant Sh. Jeetender Sharma in the present case had booked a residential floor with the respondent no. 1 company through its Managing Director Sh. Rajdeep Sharma. It is *per se* admissible from the perusal of the record placed before us in shape of pleadings including the copy of complaint, reply on behalf of respondent promoters and rejoinder thereof that the respondent no. 1 & 2 bounded themselves to complete the construction work and hand over the possession of the floor to the complainant within 18 to 24 months from the date of booking of the floor dated 7th May, 2014. The respondent 1 to 3 failed to do so and none of the reasons given by the respondent promoters are justified.

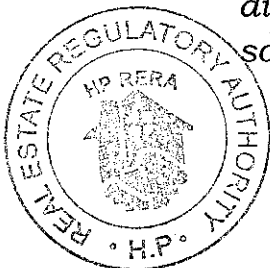


23. Before this Authority adjudicate upon the fact in issue that whether the complainant is entitled to relief alongwith interest, it becomes important to adjudicate upon the fact whether the respondent no. 1 to 3 fall within the ambit of definition of promoter under section 2 (zk) of the Act ibid or not?

Section 2 (zk) defines the term 'promoter' as:-

"Promoter" means,—

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*
- (iii) Any development authority or any other public body in respect of allottees of—*
 - (a) Buildings or apartments as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*
 - (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*



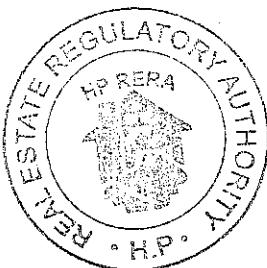
(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) Such other person who constructs any building or apartment for sale to the general public.

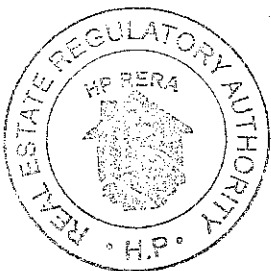
Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made there under.”

24. To substantiate the fact that whether respondent nos. 1 to 3 are promoters within the definition under the Act, this Authority has deliberated upon the issue one by one.

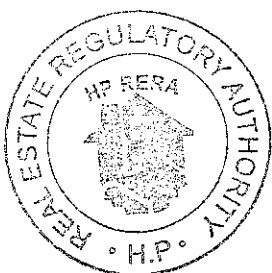
25. That the respondent no. 1 M/S Rajdeep & Company Infra Private Limited Sector-3 Punchkula Haryana through its authorized signatory respondent



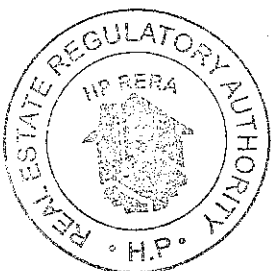
no. 2 Shri Rajdeep Sharma had vested interest in the project by entering into an Joint Development Agreement dated 16.5.2014 ("Annexure C-15 of the rejoinder to the reply at page nos. 57 to 94") where as the owner Shri Rajdeep Sharma as represented and warranted to the developer the company mentioned above who is developing the said property and has a clear and unencumbered title to the said property measuring 1416.80 sq. meters at Bharari situated at Up mohal Kalleston under the ownership of respondent No. 2. (B) Further the owner Shri Rajdeep Sharma represented, confirmed and assured to the developer the respondent no. 1 the entire payment of the said property has been made by it while purchasing and he has not entered into any agreement to sell or joint venture or Joint Development Agreement or agreement of any kind in respect of the said property.(E) The developer shall have the absolute rights to deal with the said property without any difference there in by the owner and developer shall be fully competent to take decision in respect of the present transaction.(F) The



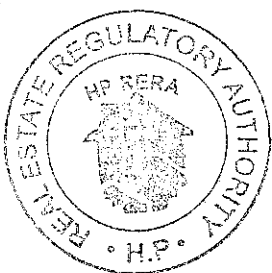
owner has further granted and assigned in perpetuity all its rights to develop and construct and sell flats on the said property.(2.2)In pursuance of having developer being granted absolute rights of development of the project as aforesaid the developer shall also be entitled to execute the sale deeds in respect of all said flats in favor of the respective allottees.(2.3) The income tax including any capital gains or loss shall be accounted individually from both the parties out of their share of revenue itself. (2.5) All the payments from the allottees of the flats in respect of the flats in respect of project will be taken by the developer in their bank account number 3342843393 with Central Bank of India Dera Bassi.(2.7) The consideration from the grant of the present development and sale rights have been settled amongst the parties as owner has become 30% shareholder in the developer company.(4.1) Thus the entire land has been transferred to company respondent no 1 for consideration of 30% shareholding of the company by respondent no 2. The clauses no B, E, F, 2.2, 2.3.,2.5, 2.6, 2.7, 4.1 & 6.6 besides other clauses of the said



Joint Development Agreement “annexure R-B C-15” clearly establish that there is total transfer of ownership and possession of agricultural land to the company respondent no 1 for valuable sale consideration. The complainant Shri Jeetender Bhardwaj and his brother on the assurance of the respondent No.1 & 2 the Managing Director in person have booked flats/floors on 7.05.2014 as alleged in the complaint for purchase and allotment of entire 3rd and 2nd floors of Tower C-Block with super area of 1720 sq. ft. and carpet area 1349 sq. ft. with the sale consideration of Rs. Sixty Two Lakhs and Fifty Thousand out of which the complainant paid the demanded amount of Rs. Six lakhs and Twenty Five Thousand to the respondent No. 1 through its Managing Director Sh. Rajdeep Sharma respondent No. 2 at the time of booking of 3rd floor (Annexure-C 2 of the Application for submission of revised complaint). The total amount paid by the complainant to respondent No. 1 for the purchase of 3rd floor in the C Block is Rupees Sixty seven lakhs and sixteen including extra charges as demanded by the respondent 1 & 2 from time to time.

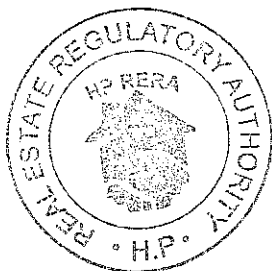


The respondent 1 is a developer of the project including block C as per the clauses mentioned in the joint development agreement dated 16.05.2014 entered into between respondent no. 1 & 2. Respondent no. 1 through its authorized signatory has issued allotment of apartment unit in Claridge's Residency Shimla regarding Flat No. 204, 3rd floor Block C (3 BHK apartment) measuring area approx. 1720 sq. ft. with the sale consideration Rs. Sixty Two Lakhs and Fifty Thousand and the payment plan since from time of booking to the offer of possession had also been entered in this allotment letter. In view of the Authority the respondent no. 1 is the promoter and the developer as well and respondent no 2 is also a promoter as he has purchased land of measuring 1416 sq.ft. for the development of the project and has been developing the project including block-C. In view of the Authority, respondent no.1 is a promoter under Section 2 (zk) of the Act as respondent no.1 & 2 intended to develop the project for the purpose of selling 3rd floor (3BHK) flat to the Complainant in the instant case in the said project

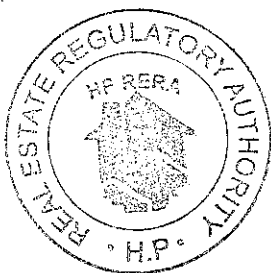


whether with or without structures thereon. The expression for the purpose of selling with or without structures encompasses respondent no.1 as the land developer and duly covered under the definition of Section 2 (zk) and promoter as well as respondent no. 2 also. Thus all dealing of respondent no 1 & 2 in the light of definition of the promoters as prescribed in section 2 (zk) (i) (ii) & (v) read with the explanation in Real Estate (Regulation & Development) Act, 2016 clearly put them as promoters in the present complaint.

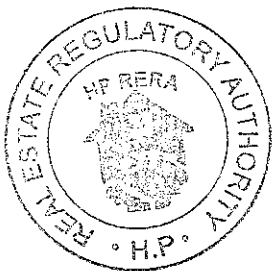
26. That the role of respondent no. 3 Smt. Sakhsi Rajdeep, wife of Shri Rajdeep Sharma in the present case is also important regarding the sale of second floor block C already allotted to Shri Narinder Bhardwaj the brother of the complainant in the year 2014. The land measuring 190 sq. meters in Khasra No 5/3 gair mumkin house has been recorded in the ownership of Shri Rajdeep S/o Shri Sansar Chand S/o Shri Bansi Lal resident of Mohal Jakhar, Tehsil Rohru, Distt. Shimla H.P. in Khangi partition dated May 22, 2017 whereas vide mutation number 562 as per family settlement



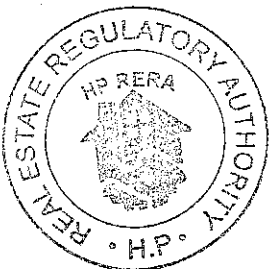
dated 11.08.2016 Khasra No 5/3 measuring 190 sq. meter gair mumkin house has been recorded in the ownership of Smt. Sakhshi Rajdeep w/o Shri Rajdeep S/o Sansar Chand on 15.11.2019. (page-72). The respondent counsel has also submitted an agreement dated 11.08.2016 with written submission on 21.07.2020 entered to between Shri Rajdeep S/o Shri Sansar Chand and Smt. Shakuntla Sharma w/o Sansar Chand, Sakhsi Rajdeep Sharma w/o Shri Rajdeep Sharma and Manoj Kumar Sharma S/o Sansar Chand all residents of Mohal Jakhar, Tehsil Rorhu, Distt. Shimla vide this agreement the first party was the owner of land measuring Khata Khtoni No 151/186 Khasra No 5 measuring 1416.80sq. meters situated in Up mohal Kaleston, Distt. Shimla has executed Joint Development Agreement with Respondent no 1 dated 16.06.2014. The first party Shri Rajdeep Sharma has also transferred land comprised in Khasra no. 5/2 measuring 380 sq. meters in the name of Smt. Shakuntla Sharma, land comprised khasra No 5/4 380 sq. meters and khasra No 5/3 measuring 190 sq. meters at up mohal Kalleston



distt. Shimla by the way of family settlement (It is not clear to whom this land has been transferred in present Joint Development Agreement). Smt. Shakuntla Sharma has further transferred her land comprised in khasra No 5/2/1 measuring 190sq. meters in the name of her son Shri Manoj Kumar. Smt. Sakhsi Rajdeep w/o Shri Rajdeep Sharma vide sale deed executed on 22/05/2017 through General Power of Attorney Shri Manoj Kumar S/o Sansar Chand in favor of Smt. Komal Gupta W/o Shri Anil Gupta and Shri Anil Gupta both R/o 5, Lehnu Bhawan, Jakhu, Shimla H.P, whereas seller being absolute owner in possession of land comprised in Khata Khatoni No 159/195 mean, Khasra No 5/3 measuring 190 sq. meters situated At Up mohal Kallseton vide mutation No 555 dated 18/05/2016 has sold flat 203 (3BHK) measuring 117.29sq. meters the entire second floor of the four storeyed building in block C which is built on the part of land comprised in Khata Khatoni No. 159/195 min Kharsa No 5/3, measuring 190sq. meter situated At Up mohal Kallseton, Tehsil Shimla Urban, Distt. Shimla for a total sale



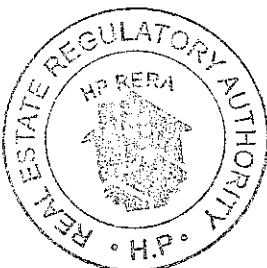
consideration of Rs. Thirty Five Lakhs. The Authority while deliberating on the issue of the respondent no 3 as promoter takes this view that since respondent no 3 Smt. Sakshi Rajdeep is the owner of the property of second floor block C and has further sold the same to Smt. Komal Gupta with the sale consideration as mentioned above, it has also come in the notice of the Authority while adjudicating upon the issues under present complaint further that Smt. Sakshi Rajdeep has also sold the ground floor of Block C to Smt. Kamna vide sale deed dated 15.11.2019 ground floor measuring 103.52 sq. meters approx. being the absolute owner in possession of land comprised in khata khatoni no 159/195 mean, khasra no 5/3 measuring 190 sq. meters situated at Up mohal Kalleston, Tehsil Shimla (Urban), Distt. Shimla with the total sale consideration of Fifty Five Lakhs and Fifty Thousand. It is also clear from sale deeds as mentioned above that respondent no 3 has constructed and developed four storeyed building in Block C of the project. Keeping in view the above said developments it is evident that respondent no 3 comes



under the ambit of definition of promoter of the project in block C. Therefore in light of the definition of the promoter, as prescribed in section 2(zk) of the Act. Smt. Sakshi Rajdeep respondent no 3 is also a promoter in respect of Block C of the project:

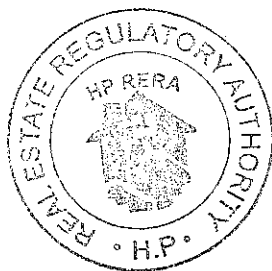
27. The Authority on the basis of the documents, pleadings and contents of the definition of promoter as detailed in Section 2 (zk) is of firm opinion that the respondent no 1 to 3 fall under the ambit of promoter and all obligations as prescribed in Section 11 of the Act read with other relevant provisions of Real Estate (Regulation and Development) Act, 2016 read with the Himachal Pradesh Real Estate (Regulation and Development) Rules 2017 are to be fulfilled jointly and severally by them. The respondents counsel has also not refuted the fact that respondent no. 1 to 3 are not promoters.

28. While taking into consideration that whether the complainant is entitled for relief of refund of amount of Rs. Sixty Seven lakhs and Sixteen along with interest under the provisions of the Act and the rules made there



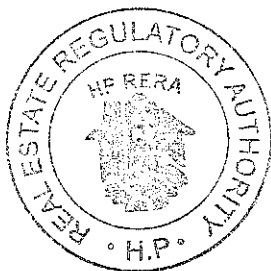
under none of the reasons given by the respondent promoters are justified. In the present case there exists clear and valid reasons for holding down that the flat buying complainant is entitled to refund of the amount advanced to the respondent promoter no. 1 company through its Managing Director Sh. Rajdeep Sharma. There has been a breach on part of the respondent No. 1 to 3 promoters/ developer in complying with the contractual obligations to hand over the possession of the flat/floor. The failure of the respondent No 1 to 3 promoters to hand over possession within the stipulated period amounts to contravention of the provisions of Real Estate (Regulation and Development) Act 2016. The respondent no. 1 to 3 promoters failed miserably in fulfilling all obligations as stipulated in Section 11 and Section 14 of the Act *ibid*. There has been a gross delay on the part of the Respondents no. 1 to 3 promoters in completing construction for almost seven years.

29. The nature and quantum of the delay on the part of the respondent promoters no.1 to 3 are of such a nature that the refund of amount along with interest

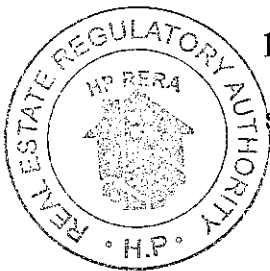


would be grossly insufficient considering the hardship and mental agony that he has been subjected to all these years and Judicial notice ought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the respondent promoters no. 1 to 3 to provide possession within the contractually stipulated date suffers for no fault of the complainant. Having paid a substantial amount of the consideration price to the respondent no. 1 to 3 the purchaser is unable to obtain timely possession of the flat which is the subject matter of present case.

30. The flat purchaser/ Complainant invested hard earned money and it is only reasonable to presume that the next logical step is for the purchaser to protect the title to the premises which has been allotted under the terms of allotment letter. But the submission of the respondents jointly and severally due to their own issues cannot abrogate and take away the rights of the Complainant under the Act *ibid*. The respondents have not only delayed the handing over the possession of the 3rd floor of the block-C to the complainant but also are



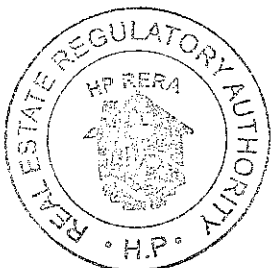
in default to cause change in the sanction plan without the approval of the competent authority. They have further deceived the brother of complainant by changing the ownership and title of the 2nd floor block-C by selling the same to Smt. Komal Gupta w/o Sh. Anil Gupta and Sh. Anil Gupta the purchasers by executing sale deed in their favor. Therefore, we do not find any substance in the pleas raised by Ld. Counsel in favor of the respondent promoter no.1 to 3 thereof. In the present case the Complainant has paid Rs. Sixty Seven lakhs and Sixteen and has asked for the refund due to inordinate delay of possession of the flat. The Hon'ble Supreme Court in case "**Pioneer Urban Land and Infrastructure Ltd. versus Govindan Raghavan, 2019 SCC Online SC 458**", has held that the inordinate delay in handing over the flat clearly amounts to deficiency of service. The Apex Court further held that a person cannot be made to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid by him. None of the



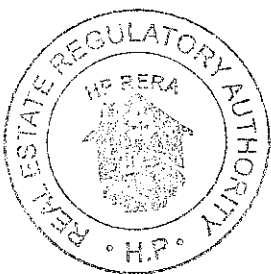
Respondents 1 to 3 has objected to the refund, sought by the Complainant.

31. In the present case there is an inordinate delay of almost seven years in the delivery of the flat/floor. Further, as per site inspection report dated 17/02/2020 by the Members of this Authority the complainant brought in notice that the second floor Block C already allotted to his brother has been sold to Smt. Komal Gupta and Sh. Anil Gupta. The representatives of the respondents assured to correct the mistake in registry but no action has been taken by the respondents. In the said complaint on spot Sh. Janesh Gupta representative of complainant informed that Sh. Jeetender Bhardwaj and his brother booked two flats on 3rd and 2nd floors of Block-C in the said project but promoter has already sold the second floor flat to Sh. Anil Gupta and his wife Smt. Komal Gupta the sale deed of which was executed vide No. 263/2017 dated 22.5.2017 which was produced as an evidence.

32. The Authority also has relied upon the direction of Hon'ble National Green Tribunal in O.A. 121/2014-

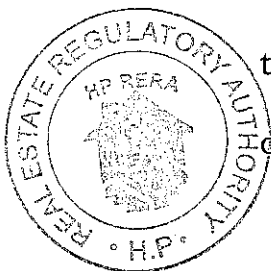


Yogendra Mohan Sen Gupta vs Union of India and others dated 16.11.2017 whereby it has been clarified by the Law Department of H.P. Secretariat vide notification dated 1st February, 2018 that, “ *the operation of the judgment dated 16.11.2017 is in form of directions to the State Government and its instrumentalities and hence are to be followed in future. The most of the directions especially to the extent of regulation of construction plans appears to have applications to future cases/transactions i.e. which will take place after 16.11.2017, the date on which the “ Said Judgment” has been passed. Thus, it can be inferred that the aforesaid directions do not appear to be attracted in such cases as such all pending applications qua approval/revision/sanction of map/plans prior to passing of the “ Said Judgment” can be considered/processed accordingly with due deliberations in accordance with the Law/Rules occupying the field before 16.11.2017. Regarding cases where completion plans with certain deviation are under consideration, the same can be considered for approval with the compounding charges as per the existing Bye*

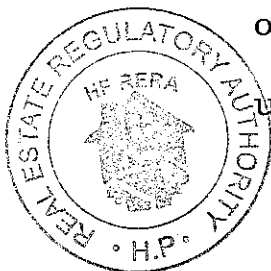


Laws. Also cases where construction is going on as per plan sanctioned before 16.11.2017. In those cases the deviation up to the extent of permissible limits are also required to be considered at the relevant point of time as per bye laws prevalent before 16.11.2017. Regarding construction plans which are sanctioned and the sanction has been conveyed before the judgment and construction has been completed partly, in such cases the judgment does not appear to be attracted. The cases, where construction has not yet been started at the site and the building owners are citing various reasons as such cases construction can be allowed to be continued/started”.

33. Since the aforesaid direction dated 16.11.2017 is applicable in respect of future cases, the contention of the respondents regarding delayed possession of the floor in the present case is not tenable. The respondents have further contented that the concerned floor has not been handed over to the complainant due to “Force Majeure” condition. We are not agree with this view of the respondents because as per Explanation to section 6 of the Act ibid the “Force Majeure” condition does not

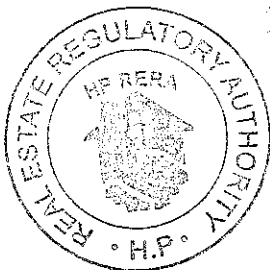


apply in the present case as the respondents have not completed the project and handed over the possession due to the reasons as mentioned above. The Explanation to section 6 as mentioned above reads as under:- *“For the purpose of this section, the expression “Force Majeure” shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the Real Estate Project”*. Moreover the plea of respondent that the layout of the block in question is approved as the same has been submitted for a revision under the retention scheme but it has been challenged and litigation thereto is pending before Hon’ble High Court Shimla H.P. does not seem to be accurate as the case of retention policy has already been rejected by the Hon’ble High Court H.P. and again it is pending for a revision under the Ld. Court. Therefore it is clear from the above said contentions of the respondents that they have taken about seven years to handover/complete the project by one reason or the other and have continued violations under the provision of the Act *ibid*. The promoter cannot

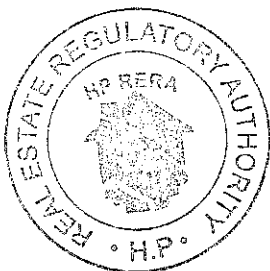


escape liability under the provisions of section 14 of the Act *ibid* vide which he had to adhere to the sanctioned plans and project specifications . As per section 14 (1) of the Act *ibid*, *“the proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications approved by the competent authorities.”* The promoters in the present case have violated the provisions of the Act by allotting the third floor to the complainant without the ownership and title of third floor of block C and any approved sanctioned plan. Further they have also sent the revised plan of third floor of block C as submitted by respondents counsel in written submissions to Municipal Corporation, Shimla which is construed that the aforesaid plan has been submitted with changes made therein to the competent authority violating thereby the provisions of section 14 of the Act *ibid*.

34. The issue is about the interest that the Complainant has sought @ 18% with refund of the total sale consideration made to the respondent No. 1 from the dates the payments have been made. The Hon'ble



Bombay High Court in the landmark judgement of “**Neel Kamal realtors**” in para 261” has held that “*In my opinion 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, not unreasonable to require the promoter to pay interest to the allottees whose money it is when the project is delayed beyond the contractual agreed period...*” 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 Himachal



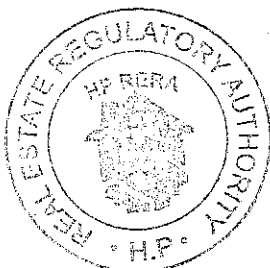
Pradesh Real Estate (Regulation and Development) Rules, 2017 that clearly states that the rate of interest payable by the promoter to allottee or by the allottee to the promoter, as the case may be, shall be the highest marginal cost of lending rate of SBI, plus two percent.

E. Other issues & directions including imposition of Penalty:-

35. The Authority has taken serious view of the development pertaining to issue of possession and ownership of the Block C. Since the flat was booked on 7th May 2014 and at that time the respondent No 2 was not the owner of the Block C as alleged by the complainant. The total area of the flat no. 204 third floor which was agreed in allotment letter apporx. 1720 sq. ft. has also been minimized to 947.33 sq.ft. The total payment as sale consideration has been received by the respondent no 1 through its Managing Director Sh. Rajdeep Sharma respondent promoter No. 2 with other charges not mentioned in the allotment letter. The land comprising 190 sq. meters. in khasra no. 5/3 block C has been transferred in name of his wife Smt. Sakshi

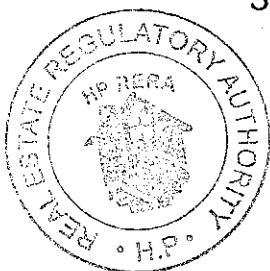


Rajdeep by respondent no 2 later on in the year 2016 after the booking of the flat/floor to the complainant with the gap of 2 years. Moreover, the Smt. Sakshi Rajdeep after attaining ownership in the above khasra no. in block C has sold the second floor of block C to other purchasers with negligence on the part of the respondents. The respondents further deceived the Complainant without having any sanctioned plan of the 3rd Floor already allotted to him in the year 2014 and taking undue advantage by making false promises to deliver the possession after grabbing the huge amount of money from the Complainant causing thereby non delivery of floor to the Complainant and his brother who had already made the full payment of the second floor. The respondent promoters 1 to 3 have not shown any sincerity in delivering the possession of floors to the complainant and his brother but have miserably delayed the possession of third floor without any sanctioned plan and changes purported to be done by the respondents in the revised plan submitted to the Municipal Corporation, Shimla and have also changed



the ownership and title of the 2nd floor by selling it to the third party. And all this while the respondents were busy in protecting their commercial interests to satisfy their greed for more money. The Authority is of this firm view that the respondent promoters 1 to 3 have done an Act of fraud on complainant and forced him to run from pillar to post to recover his hard earned amount and for the same these respondent promoters must be held accountable and penalised under Section 61 of the Act *ibid* for their failure to fulfil their obligations as promoter as prescribed in Section 11 read with Section 14 of the Act *ibid* which should act as a deterrent for all the respondent promoters for repeating such act with any other allottee/ prospective buyer in future in any of their existing or proposed real estate projects in future. In this case, there are glaring violations of Section 11 & 14 of the Act *ibid*, committed by the respondent promoters 1 to 3 that calls for imposition of a penalty under Section 61.

36. Relief:-

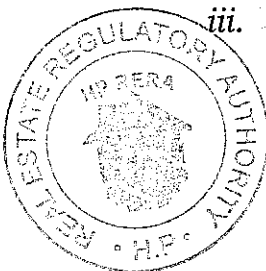


- i. Keeping in view the above mentioned facts, this Authority in exercise of power vested in under various provisions of the Act issues the following orders/directions:-

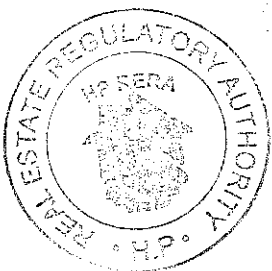
The Complaint is allowed and the respondent promoters number 1 to 3 are directed to refund a sum of Rs. Sixty Seven Lakhs, and Sixteen (Rs.67,00,016/-) along with interest at the SBI highest marginal cost of lending rate plus 2 % as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules 2017. The present highest MCLR of SBI is 7.3 % hence the rate of interest would be 7.3 %+2 % i.e. 9.3%. It is clarified that the interest shall be payable from the dates on which different payments were made by the Complainant to the respondent no. 1 to 3.

- ii. The refund along with interest is to be paid by the respondent promoters no.1 to 3 jointly and severally to the Complainant within 60 days from the date of this order.

- iii. Section 61 of the Act, prescribes that the maximum penalty that could be imposed for the contravention of

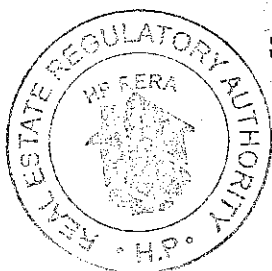


any other provision of the Act other than Section 3 and 4, as five percent of the total cost of the project. The total estimated cost of the project in this case, when calculated on the basis of average price of Rs. Forty lakhs for the six flats on the lower three floors of the block 'A,' average price of Rs. 80,00,000 for the two flats on the top floor with attic, of block A', four flats of block 'C' at an average price of Rs. 68 Lakhs and approximately Rs. 32,00,000 for the RCC frame and site development of Block 'D' comes to approx. Rs. 7.04 Crores and a penalty at a rate of five percent of the total estimated cost works out to Rs. Thirty five lakhs and twenty thousand. The respondent promoters have miserably failed to hand over the possession of flat no. 204 located at 3rd floor of block-C of the project in the stipulated period even after the lapse of almost seven years. The respondents have also carried out deviations from the approved sanctioned plans, thereby contravening the statutory obligations under Section 11 & 14 of the Act *ibid*. The Authority was at pain to see that the respondent promoters have collected huge



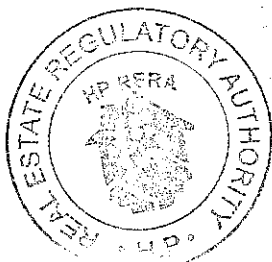
amount from the complainant but failed to hand over possession to the complainant. The Authority, considering all facts of the case, deems appropriate to impose a penalty amounting to Rs. fifteen Lakhs under Section 61, 69 read with Section 38 of the Real Estate (Regulation & Development) Act, 2016 on the respondent promoters 1 to 3 for failing to meet their obligations as prescribed under Section 11 and 14 of the Act *ibid*. The penalty imposed shall be borne jointly and severally by the respondent promoters 1 to 3 and shall be deposited in the bank account of this Authority, operative in the name of "Himachal Pradesh Real Estate Regulatory Authority Fund" bearing account no. "39624498226", in State Bank of India, HP Secretariat Branch, Shimla, having IFSC Code SBIN0050204, within a period of two months, failing which the amount of penalty shall be enhanced to Rs. Twenty five lakhs.

- iv.* Non-compliance or any delay in compliance of the above directions shall further attract penalty and interest on the ordered amount of refund under Section 63 and Section 38 of the Act *ibid*, apart from any other action of




the Authority may take under Section 40 or other relevant provisions of the Act.

- v. It is further ordered that the respondents are barred from selling/leasing/allotting/booking any remaining flats/land in the present project or any of their projects in Himachal Pradesh, till the compliance of this order. Further, no withdrawals from the bank account of the projects to be made till payment as ordered is made to the complainants and penalty is deposited into the account of Authority. Further, there shall not be any alienation of any movable and immovable assets of this project and any other project of the respondents in HP, till compliance of this order.
- vi. The promoter no.2, Sh. Rajdeep Sharma has applied online on the official website of the Authority for the registration of real estate project "Claridge's Residency" on 10.02.2020 under section 3 of the Real Estate (Regulation and Development) Act, 2016. Certain deficiencies / observations have been pointed out to him regarding the same on 10.08.2020, which have not been rectified till date. Therefore a show cause notice be

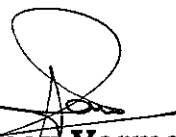


issued to him under section 59 of the Act ibid by the office of this Authority.

- vii. The Authority has also come to know that respondents have other real estate projects in State of Himachal Pradesh namely Mashobra Hills at Mashobra & Himalaya Hills/Residency Himalayas at Bharari, Shimla which have not been registered/ applied for registration under Real Estate (Regulation & Development) Act,2016 with this Authority. Therefore, the Authority directs Town and Country Planner of this Authority to inquire into the matter and submit the status report regarding these projects within one month to take further action in the matter.
- viii. All the respondent promoters are directed to intimate the details of their bank accounts pertaining to this project within fifteen days.


B.C. Badalia
MEMBER


Dr. Shrikant Baldi
CHAIRPERSON


Rajeev Verma
MEMBER

