

**REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH**

In the matters of:-

Complaint no. RERAHPKUCTA09210046

1. Mrs. Kamal Arjan Mirchandani & Ms. Kanta Arjan Mirchandani,
Resident of 603 Corner View CHS, Corner of 15th& 33rd Road,
Bandra West, Mumbai-400050.

.....Complainant

Versus

Sumit Khanna/Unimexx Builders and Developers, Resident of B-
6/4, 2ND Floor, Commercial Complex, Safdarjung Enclave, New
Delhi - 110029

.....Respondent

Complaint no. RERAHPKUCTA09210047

2. Mrs. Kanchan Sunil Idani through Mrs. Kamal Arjan Mirchandani
(Power of Attorney Holder) Resident of 603 Corner View CHS,
Corner of 15th& 33rd Road, Bandra West, Mumbai-400050

.....Complainant

Versus

Sumit Khanna/ Unimexx Builders and Developers, Resident of B-
6/4, 2ND Floor, Commercial Complex, Safdarjung Enclave, New
Delhi - 110029

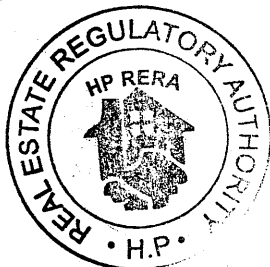
.....Respondent

**Present: Sh. Vikas Rao, Advocate for the complainants
in both the complaints**

**Sh. M.P.S. Kasana, Advocate for the
respondent/promoter in both the complaints**

Final date of hearing (through WebEx): 08.06.2022

Date of pronouncement of orders: 08.07.2022



ORDER**CORAM: - Chairperson and both Members****1. BRIEF FACTS IN THE COMPLAINT:**

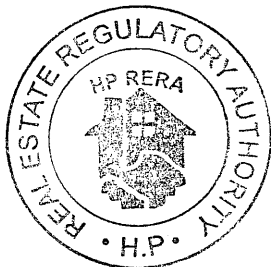
These are two complaints, one filed by Mrs. Kamal Arjan Mirchandani & Kanta Arjan Mirchandani (here-in-after referred to as complainant no. 1) in her individual capacity and on behalf of her daughter Mrs. Kanchan Sunil Idani as General Power of Attorney Holder (here-in-after referred to as complainant no. 2) against respondent/ promoter Sh. Sumit Khanna of Unimexx Builders and Developers under Section 31 of the Real Estate (Regulation and Development) Act, 2016.

2. It was pleaded in the complaints that sometime in April 2018, the respondent/ promoter Sumit Khanna, presenting himself as a proprietor of Unimexx Builder and Developer, approached the complainants in Mumbai and sold them two apartments bearing No. L-2/201 & L-2/204 in his RERA approved project "The Himalayan Habitat" in Bajaura, District- Kullu, Himachal Pradesh (hereinafter referred to as the 'said apartments') for a sale consideration amount of Rs 65,00,000/- each which allegedly was fully paid by both the complainants in each case separately. It was further

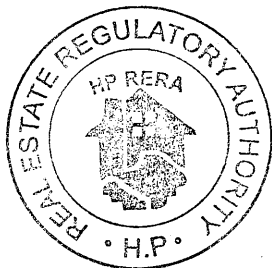


pleaded that the respondent/ promoter also assured a payment of Rs.63,000/- as rent per month in each case separately till the possession of the 'said apartments' were delivered. It was alleged that the possession of the 'said apartments' was to be delivered on or before April2021.

3. It was further pleaded that the allotment letter dated 14.04.2018 (Annexure C-1) to this effect clearly mentioning that the payment was received in full by the respondent for the 'said apartments' was issued by the respondent in favour of the complainants which allotment letter is on record. It was pleaded that the consideration was taken by the respondent in the form of the barter wherein, the complainant was lured into selling her residential apartment in Mumbai in exchange for two apartments in the respondent's project "The Himalayan Habitat". It was further pleaded that an agreement for sale dated 10.04.2018 and a MOU dated 14.04.2018 (Collectively Annexure C-2) was executed between the complainants and the respondent to the effect of the barter scheme stating that the value of the complainant's flat in Mumbai of Rs 1,30,00,000/- against which the respondent agreed to sell his two apartments in the project " The Himalayan Habitat" having a consideration price of Rs.65,00,000/- each i.e. total Rs.1,30,00,000/-.



4. That it was further pleaded that that the complainant had paid an amount of Rs.3,00,000/- per apartment, towards parking charges for the 'said apartments' vide cheque no. 000085 & 000085 drawn on HDFC Bank account number 00161000044621 of Mrs. Kanchan on 17.04.2018 and the copy of statement is Annexure C-3. It was further pleaded that the respondent demanded GST of Rs.11,50,000/- per flat. It was further pleaded that the complainants paid Rs.7,49,000/- by four cheques towards GST for the said apartments and the copies of which are on record as Annexure C-4.
5. It was further pleaded that the respondent had expressly promised and assured the possession of the 'said apartments' within 36 months of the agreement for sale dated 10.04.2018. Further it was also pleaded that the respondent also guaranteed and assured a payment of Rs.63,000/- per month per flat to the complainant still the possession of the said apartments was delivered to them. However it was further pleaded that the respondent had issued five cheques for an amount of Rs.60,000/- each to the complainants stating that he was out of cheque leaves and further stating that the balance Rs.3,000/- per month i.e. Rs.36,000 would be paid at the end of the year. It was further pleaded that only two out of



those five cheques were honored and the other three were returned unpaid due to insufficient funds. It was further pleaded that the respondent never paid the unpaid amounts of the cheques nor did he pay to the complainant, the promised amount of Rs.63,000/- per month any further.

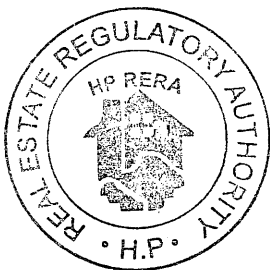
6. It was further pleaded that the respondent with malafide intention had also lured the complainant no. 1 to sign some blank papers stating that this was to avoid any inconvenience to the old lady. It was further pleaded that on the pretext of registering the sale deed of her Mumbai apartment, the respondent got another agreement for sale (Annexure C-6) registered on 18.04.2018 with no mention of the earlier barter scheme as consideration for the 'said apartments' sold to the complainants in the project "The Himalayan Habitat". It was further pleaded that subsequently, a sale deed was executed between the complainant and the respondent in respect of flat of complainant no. 1 in Mumbai on 29.06.2018. It was also pleaded that a criminal case has been filed against the respondent with Mumbai police under relevant provisions of the Indian Penal Code, 1860. It was further pleaded that despite reminders the flats in the project of the respondent 'Himalayan Habitat' were never delivered by the respondent. Further it was pleaded that



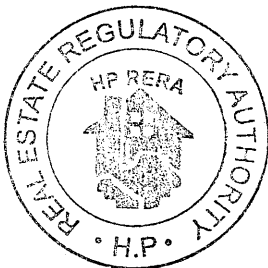
subsequently, the complainant no. 1 visited the site of the respondent's project and was shocked and surprised to see that the project is nowhere in completion. In view of the above, it was prayed in the complaint that the respondent shall be directed to pay rent amounting to Rs 21,48,000/- along with 18 % interest in both the case separately, a further prayer for refund of sale consideration was also made of Rs 65,00,000/- each in both the cases and complainant no. 1 in her complaint also prayed for refund of GST amount paid by her amounting to Rs 7,49,000/- @ 18 % interest. A further compensation of Rs 20 lakhs was also sought on account of mental agony, hardships and harassment caused to the complainants in both the cases.

7. Reply

The respondent filed reply and had taken preliminary objections qua maintainability, no cause of action, lack of credibility of facts etc. It was further pleaded by the respondent that the present matter involves intricate, contradictory, and complicated questions of law and fact which would require a detailed and elaborate trial along with voluminous evidence, which is possible only in regular proceedings before a Civil Court and cannot be effectively, properly and judiciously adjudicated in present proceedings.

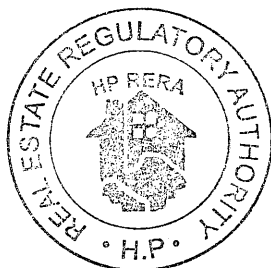


8. It was further pleaded by the respondent that the entire deal between the complainant and the respondent was made and executed with due consent of both the parties. It was further pleaded that there was no manipulation and mis-representation on the part of the respondent. It was further submitted that the complainant was completely aware of all the terms of the documents which she signed. It was further pleaded that the respondent has not lured or cheated the complainant in any way.
9. It was further pleaded that the initial agreement between the complainants and the respondent was a Barter Agreement dated 10.04.2018, in which both the parties agreed to exchange their ownership of flats to each other. It was further pleaded that respondent agreed to exchange Flat No. L-2/201 and L-2/204 in the project named "The Himalayan Habitat" Arun Hills, NH -21, Village& Post Office Bajaura, Kullu, Himachal Pradesh and in return the complainant no. 1 agreed to sell her Flat No. 14, 3rdFloor JUHU, Sangeeta Apartment, C.H.S Ltd., Juhu Road, Santa Cruz West, Mumbai – 400049.
10. It was further pleaded by the respondent that owing to the Barter Sale Agreement, the respondent even issued two Allotment letters dated 14.04.2018 of the two flats L-2/204 and L-2/201 in the



project name "The Himalayan Habitat", to both the complainants in which he mentioned about the receipt of full payments of the flats which was made in consideration of the Barter Agreement. It was further submitted that the aforesaid two allotment letters show the bonafide intention of the respondent in the entire transaction that took place inter se. It was further pleaded that owing to the demand of the complainant, it was mutually decided by both the parties that the aforesaid Barter Agreement stands cancelled and instead of the two flats in the project named "The Himalayan Habitat", the complainants demanded for the amount of sale consideration of the Flat in Mumbai, i.e. Rs. 1,30,00,000/-. It was further pleaded by the respondent that the complainant no. 1 wanted to cancel the aforesaid Barter Agreement, as they required the money in hand because of some unforeseeable incident faced by her daughter complainant no. 2. It was further pleaded by the respondent that keeping in consideration the amicable relation between the respondent and the complainants, the Barter Agreement was considered to be cancelled but due to mutual trust the barter agreement was never officially cancelled.

11. That it was further pleaded by the respondent that the complainant no. 1 and the respondent then executed a Sale Deed dated

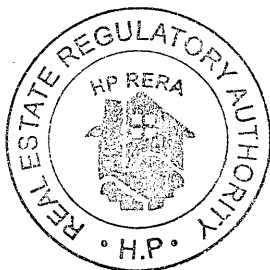


29.06.2018 with revised terms and conditions. It was further pleaded that according to this abovementioned deed, it was mutually decided that the respondent would purchase the Flat No. 14, 3rd Floor JUHU, Sangeeta Apartment, C.H.S Ltd., Juhu Road, Santa Cruz west, Mumbai - 400049 for the total consideration of 1,30,00,000/- and as per the above said deed, the complainant no. 1 would transfer all ownership rights of the Flat to the respondent. It was further pleaded that that owing to the above said sale deed, the respondent paid the consideration amount of Rs 1,30,00,000/- for the Mumbai flat in cash to the complainant in front of the Registrar. It was further pleaded that the copy of the signed receipt with respect to the receiving a total consideration of Rs 1,30,00,000/- is also placed on record as Annexure A-2.

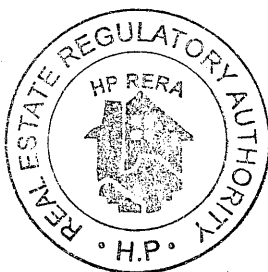
12. That it was further pleaded by the respondent that the complainant developed a malicious intention and, in her greed, she filed the present complaint depicting that the initial Barter Agreement that was verbally cancelled is still a valid agreement. It was further pleaded that the complainants have falsely accused the respondent saying that the respondent never paid Rs.1,30,00,000/- as total consideration of the above said flat in Mumbai and it was further pleaded that respondent was falsely accused for not transferring



the ownership of the two flats in project named "The Himalayan Habitat" in Himachal Pradesh. The respondent admitted that complainant have also got registered a FIR against respondent in Mumbai. It was denied by the respondent that the consideration amount for the two flats in Bajaura District Kullu was fully paid by the complainants and it was further denied that the respondent also assured a payment of Rs.63,000/- per flat as rent per month till the possession of the 'said apartment'. It was further pleaded that no such consideration was ever paid by the complainants to the respondent. It was further pleaded that the respondent never gave builder buyer agreement to the complainants. It was further submitted that the respondent executed and handed over the Allotment letters of the Flat L-2/204 & Flat no. L-2/201 dated 14.04.2018 in the name of complainants. It was further pleaded that after the mutual decision to cancel the Barter agreement, it was made clear that according to new agreement, the ownership of the Flat L-2/204 & Flat no. L-2/201 will not be transferred to the complainants. It was further pleaded that the allotment letter dated 14.04.2018 was in respect to the consideration decided as per the Barter Agreement dated 10.04.2018, which was mutually cancelled by both the parties at the time of execution of new agreement for



sale dated 18.04.2018 and sale deed dated 29.06.2018. Thus, it was pleaded that the allotment letters dated 14.04.2018 also stand cancelled. It was further pleaded that no receipt has ever been issued by the respondent because he never received any amount from the complainants. It was further pleaded that the complainant has already received the entire sale consideration of Rs.1,30,00,000/- qua the Mumbai Flat. It was further denied by the respondent that the consideration was taken by the respondent in the form of a barter wherein, the complainant was lured into selling her residential apartment in Mumbai in exchange for two apartments in the respondent's project "The Himalayan Habitat" situated in Himachal Pradesh. It was further pleaded that the complainants have failed to place any proof of payment by them qua Bajaura flats. It was further pleaded by the respondent that the cheque amount in total as allegedly stated by the complainant is not in relation to the current matter. It was further denied in the pleadings by the respondent that he assured the possession of these two apartments within 36 months of the agreement for sale dated 10.04.2018. It was further pleaded that it was mutually decided by both the parties that the aforesaid Barter Agreement of the two Flats in the project named "The Himalayan Habitat" stands



cancelled because the complainant demanded the sale consideration of the flat in Mumbai, i.e. Rs.1,30,00,000/- in cash. With these submissions the respondent prayed for dismissal of the complaint.

13. **Rejoinder**

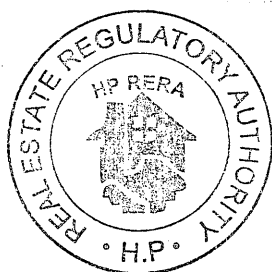
The complainants in the rejoinder have re-iterated the submissions made by them in their pleadings. It was pleaded that to the knowledge of the complainants only agreement for sale dated 10.04.2018 and MOU dated 14.04.2018 were executed. It was further pleaded that it is denied that the complainant wanted to cancel the Agreement dated 10.04.2018 as she required cash to meet out some unforeseeable incident faced by her daughter. It was further submitted that barter agreement was never cancelled by the parties. It is further pleaded that the Respondent has failed to honor the Agreement and deliver the possession of the flats to the Complainant. It was further pleaded that the complainant never received the consideration amount of Rs.1,30,00,000/- in cash and signed the receipt with respect to the flat. It was further submitted that the complainant(s) neither received the possession of flat allotted to her and her daughter by the respondent nor has she received back the consideration paid to the Respondent. It was



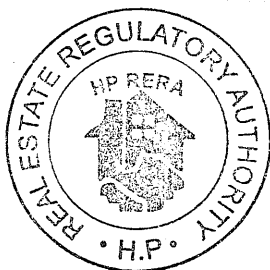
further pleaded by the complainant that the Respondent has admitted to receiving the said Parking charges of Rs.3,00,000/- and Annexure C-4 is the proof of parking charges paid by the complainant. It was further pleaded in the rejoinder that the complainant paid Rs.7,49,000/- by four cheques towards GST for the said apartments and the copies of account statements are on record as Annexure C-4(Colly).It was further pleaded in the rejoinder that the respondent lured and tricked the complainant into signing some blank papers on the pretext of helping "the old lady" and to avoid her inconvenience. With these pleadings it was prayed that the complaint in terms of the prayers made therein may kindly be allowed.

14. **Arguments by the Complainant**

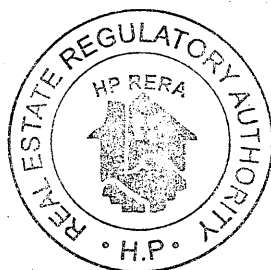
Primarily the facts narrated in the complaint were re-iterated on behalf the complainant while arguing the matter. It was argued on behalf of complainant that this complaint has been filed against a project that is registered under the Act ibid with this Authority. It was further argued on her behalf that somewhere in April, 2018 respondent approached the complainant and offered her two flats in his project 'Himalayan Habitat' in Kullu and in return intended to purchase the flat of the complainant situated in Mumbai. On the



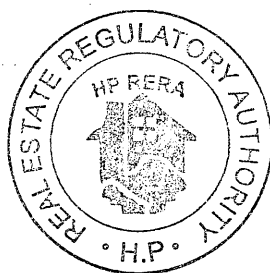
basis of this an agreement for sale dated 10.04.2018 and MOU dated 14.04.2018 took place between both the parties wherein it was agreed that for the purchase of two flats in Bajaura, Kullu project the flat of the complainant in Mumbai would act as the consideration. It was basically a Barter/exchange agreement. The total consideration of the Mumbai flat was agreed between the parties to be Rs 1,30,00,000/- and in return the cost of two flats agreed to be sold by the respondent was Rs 65,00,000/- for each flat. It was further argued on behalf of the complainant that the possession of the flat in the project situated in Bajaura, Kullu was agreed to be delivered by 36 months. It was further argued on behalf of the respondent that respondent also agreed to pay Rs 63,000/- per month per flat as rent till the possession of the two flats was delivered by the respondent i.e. for 36 months. It was then argued that allotment letters dated 14.04.2018 were issued by the respondent which stated that the consideration/ payment has been received in full by the respondent for the flats situated in Kullu project. It was further argued that according to the agreement for sale dated 10.04.2018 and MOU dated 14.04.2018 the sale of Mumbai flat by complainant and purchase of two flats in Bajaura, Kullu was in form of Barter/exchange agreement. It was



re-iterated that the sale consideration of Rs 1,30,00,000/- for the purchase of two flats in project 'Himalayan Habitat' was paid in kind through barter/ exchange by way of sale of Mumbai flat by the complainant which was agreed to be sold for same consideration i.e. Rs1,30,00,000/-. It was further argued on her behalf that Rs 3,00,000/- for each flat was paid as parking charges to the respondent for which as a matter of proof the bank statements have been appended by the complainant. It was further argued that a sum total of Rs 7,49,000/- has been paid in lieu of GST charges by the complainant and in support of her submissions she has appended the bank statements. It was further submitted on her behalf that payments were made by complainant towards GST from September, 2018 to October, 2018 which shows that the barter/exchange agreement qua purchase of two flats in Bajaura, District Kullu for sale of one flat in Mumbai is valid, existing and still alive. It was further argued on behalf of the complainant that subsequent payments qua parking charges and GST made by complainant and received by respondent coupled with the fact that in the subsequent agreement for sale dated 18.04.2018 and sale deed dated 29.06.2018 there is no mention of mode and manner of receipt of payment which all facts taken together goes to show that



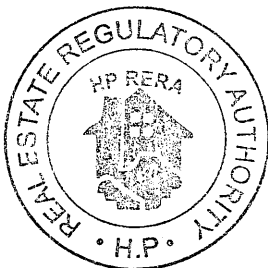
the barter agreement was still valid and alive. It was then argued on behalf of the complainant that respondent fraudulently duped the complainant into executing another agreement for sale dated 18.04.2018 and ultimately he also got executed the sale deed dated 29.06.2018 of Mumbai flat fraudulently. It was further argued on behalf of the complainant that the subsequent agreement for sale which virtually did not mention anything about the barter scheme was not intended to be so by the complainant. It was further argued on behalf of the complainant that the sale deed and agreement for sale dated 14.04.2018 did not show how the money was paid to the complainant for the Mumbai flat by the respondent. It was further argued on behalf of the complainant that onus is on the respondent to prove as to how and in what manner he made payment to the complainant qua Rs 1,30,00,000/-, when he says that his commitment to sell two flats in Bajaura project was cancelled by way of execution of subsequent agreement dated 18.04.2018 and he paid the entire money of Rs 1,30,00,000/- in cash as per the demand made by the complainant. It was further submitted on behalf of the complainant that sale deed dated 29.06.2022 without mention of barter agreement has been got fraudulently registered by the respondent. It was further argued on



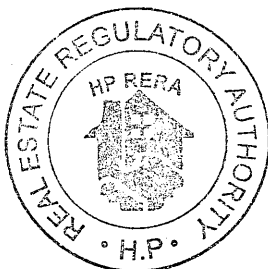
behalf of the complainant that the reply filed by the respondent is silent qua the fact as to how money was paid and it was further argued by her that the receipts appended by respondent qua receipt of Rs 1,30,00,000/- are fake and have been obtained after exercising fraud on the complainant. With these arguments he submitted that the two complaints one in his individual capacity and other as General Power of Attorney holder may kindly be allowed in terms of the prayers made therein.

15. **Arguments by the Respondent-**

The facts pleaded in the reply filed by respondent were reiterated and reaffirmed on his behalf during the course of arguments. It was further argued on his behalf that certain disputed questions of facts are involved in the case which require detailed investigation and evidence, therefore this Authority exercising quasi judicial powers will not be able to adjudicate upon the present dispute. It was further argued on his behalf that barter agreement was admittedly executed between the parties for sale of Mumbai flat for sum of Rs 1,30,00,000/- and in return the respondent agreed to sell two flats in his project 'Himalayan Habitat' in Bajaura each having price of Rs 65,00,000/- . Initially it was agreed that the flat in Mumbai will serve as consideration for the two flats in Bajaura



District Kullu. For this purpose agreement for sale dated 10.04.2018 was executed but it was argued on behalf of the complainant that later on the this agreement was cancelled on the insistence of the complainant who demanded a sum of Rs1,30,00,000/- in cash from the respondent for sale of Mumbai Flat. Therefore it was argued that a new agreement for sale dated 18.04.2018 was executed between the parties revoking the earlier agreement and in the latter agreement no barter scheme was mentioned. It was further argued on behalf of the respondent that both the parties acted upon the agreement dated 18.04.2018 and executed a sale deed on 29.06.2018 qua the Mumbai flat and along with the sale deed and agreement for sale, a receipt duly signed by the complainant qua receiving of Rs.1,30,00,000/- has also been appended. Therefore it was argued on behalf of the respondent that it does not now lie in the mouth of the complainant to insist for the delivery of the Bajaura flats as the agreement dated 10.04.2018 was cancelled by the subsequent execution of agreement dated 18.04.2018. It was further argued on behalf of the respondent that full consideration amount has been received in cash by the complainant qua the Mumbai flat and it was submitted that this fact has been admitted by the complainant in several documents



including agreement for sale dated 18.04.2018 and sale deed dated 29.06.2018. It was further argued that the possession letter has also been issued by the complainant in favour of the respondent and therefore she is was fully aware of the individual sale of Mumbai flat that belonged to her and it was also argued that she is estopped from taking a u-turn and saying that she never intended to sell the Mumbai Flat for cash consideration. It was further argued that complainant is precluded from saying that the barter agreement was cancelled in view of subsequent execution of sale deed and other documents by her. It was further argued on behalf of the respondent that sale deed has been executed before a sub-registrar and presumption of truth and genuineness is attached to the same and no amount of oral submissions can permit this Ld. Authority to dis- believe the sale deed and the contents mentioned therein. On the query of the Authority it was admitted on behalf of the respondent that there is no formal cancellation of barter agreement for sale dated 10.04.2018 and he further admitted that there should have been a cancellation letter qua the same. On the query of the Authority, it was further admitted on behalf of the respondent that the respondent has received Rs 7,49,000/- qua GST charges and Rs 6,00,000/- as parking charges from the

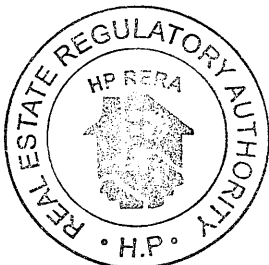


complainant and it was fairly submitted on his behalf that these payments cannot at all be disputed. On a query put by the Authority, it was further admitted on behalf of the respondent that admittedly there has been no correspondence from his side to the complainant for the demand of principle money of Rs 65,00,000/- each for the sale of flats and it was also fairly admitted on his behalf that only GST and parking charges amount has been demanded and received.

16. **CONCLUSION/ FINDINGS OF THE AUTHORITY:-**

We have heard the arguments advanced by the Ld. Counsels for the Complainant(s) & Respondent and also 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 three issues that require the consideration and adjudication, namely:-

- A. Jurisdiction of the Authority.
- B. Whether the Complainant is entitled to get the refund of the money along with interest or not?
- C. Other Issues and directions including imposition of Penalty.



17. **A. Jurisdiction of the Authority.**

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 *ibid*. 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.’

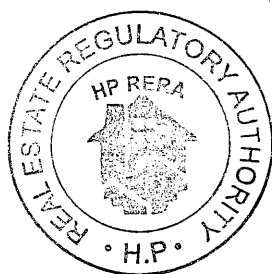
The Section 34 (f) of the Act prescribes that the function of Authority shall include

“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 or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings as the case may be to the allottees, or the common areas to the association of allottees or the competent authority as the case



may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-Section (3) of Section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

Section 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.”

18. Thus 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 function 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.'

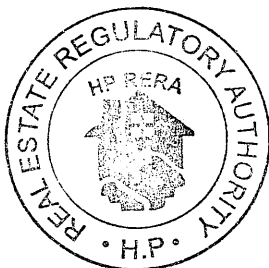
19. In the case of **Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors MANU/SC/1056/2021** it was held by the Hon'ble Supreme Court in para 86 of the judgment as under:

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint....”

20. Thus, from the reading of the above provisions of the Act as well as law laid down by the Hon'ble Supreme Court, it is very clear that the Authority has power to adjudicate various matters, including refund and interest under Section 18 of the Act and imposition of penalty under the Act whereas the compensation is to be adjudged by the Adjudicating Officer under Section 71 of the Act *ibid*.

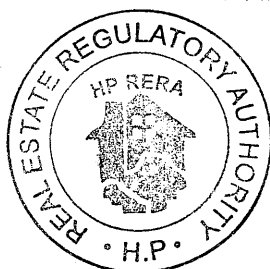
21. **B. Whether the Complainant is entitled to get the refund of the money along with interest or not?**

Coming to the question that whether the Complainant is entitled for the relief of refund of amount of Rs. 65,00,000/-, in both the cases separately and for refund of Rs 63,000/- per month for 34



months (total amount of Rs 21,48,000/-) in both the cases separately as agreed rent which was to be paid by respondent to the complainant and for further refund of Rs 7,49,000/- in Kamal Arjan Mirchandani's case which was towards GST charges. The facts of the present two cases which are connected and interlinked are that somewhere in April 2018, a barter/ exchange agreement for sale dated 10.4.2018 was executed between the parties wherein complainant agreed to sell her Mumbai Flat to respondent for Rs 1.30 crore, which would act as barter/exchange for the purchase of two flats L-2/201 & L-2/204 having sale consideration of Rs 65 Lakhs each in the project 'Himalayan Habitat' of respondent in Bajaura District Kullu, HP. To this effect an agreement for sale dated 10.04.2018 was executed inter se between the parties and allotment letter qua the two flats was issued on 14.04.2018 by the respondent to this effect.

22. It was further the case of the complainant that as per the agreement for sale it was assured that the possession of the flat in the project in question will be delivered in 36 months i.e. on or before April 2021. It was further assured by the respondent to the complainants that till the possession is delivered a payment of



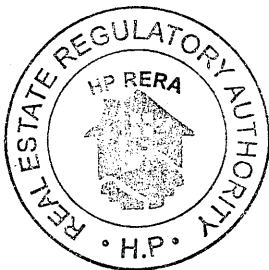
Rs.63,000/- per month per flat will be paid to the complainant as rent.

23. It was further the case of the complainant that apart from parting with the ownership and possession of her Mumbai flat on 29.06.2018 she has paid an amount of Rs.3,00,000/- per apartment, towards the parking charges for the 'said apartments' vide cheque no. 000085 & 000085 drawn on HDFC Bank account number 00161000044621 of Mrs. Kanchan on 17.04.2018 and the copy of statement is filed as Annexure C-3. It was the case of the complainant that on the demand of the respondent a sum of Rs 7,49,000/- was paid as GST charges which fact is corroborated by bank statement appended as annexure C-4 in one of the complaints.
24. During the course of arguments and also in written synopsis it was admitted by the respondent that a sum of Rs Six Lakhs as parking charges and Rs 7.49 Lakhs towards GST has been received by the respondent from the complainant.
25. After hearing both sides and going through the record it is clear that there are two agreements for sale dated 10.4.2018 and 18.04.2018. The first agreement mentions the barter/ exchange scheme of sale of Mumbai Flat for buying two apartments in the



project Himalayan habitat, and this fact is further fortified from the MOU dated 14.04.2018 and the allotment letters dated 14.04.2018 issued by the respondent, in favour of the complainants.

26. Subsequently a new agreement for sale dated 18.04.2018 and the sale deed dated 29.06.2018 were executed.
27. In the present case, both the parties have admitted about the execution of agreement dated 10th April,2018 as well as 18th April, 2018 along with execution of sale deed dated 29th June,2018 of Mumbai flat. Both the parties have also admitted about the payment of Rs 6 Lakhs and payment of Rs 7.49 Lakhs made by complainants to the respondent. Thus, there is no dispute about the documentary evidence adduced by both the parties. However the major point of dispute/difference between the parties is that the complainants allege that the consideration received shown in the sale deed dated 29th June,2018 is in the form of barter /exchange where as the contention of the respondent is that the complainants required money, so the amount of consideration qua Mumbai flat was paid to complainant in cash. Now, to arrive to a conclusion, we need to go through the chain of events, supported by documentary proof. The following events have taken place between both the parties:-



- (1) Agreement for sale was entered between both the parties on 10.04.2018, the relevant excerpts are as follows :-

“AND WHEREAS the first party is the owner of Residential Property No Building 5A, Flat No. 14, Third Floor, JUHU, Sangeeta Apartment, C.H.S. Ltd., Juhu Road , Santa Cruz West Mumbai 400049.

Whereas the Second party is the owner of Flat No. L2/201 and L2/204 in the project named “ The HIMALAYAN HABITAT” ARUN HILLS, NH 21 V& P.O. Bajaura, Kullu, Himachal Pradesh which is in developing motion.

Whereas under barter scheme, both parties have agreed to exchange their ownership flats to each other

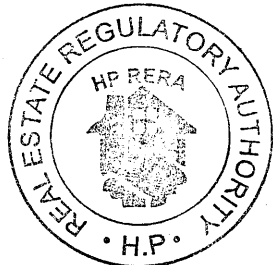
The First Party has approached to Second Party for the sale of their ownership residential Building 5A, Flat No. 14, Third Floor, JUHU, Sangeeta Apartment, C.H.S. Ltd., Juhu Road , Santa Cruz. West Mumbai -400049 for a sale consideration of Rs. 1,30,00,000/- (Rupees One Crore Thirty Lakh Only) and agreed to purchase units no. L2/201 in the project named “THE HIMALAYAN HABITAT”, ARUN HILLS, NH-21, V&P.O. Bajaura , Kullu, Himachal Pradesh for a sale of Rs. 65,00,000/- (Rs. Sixty five Lakh only) exclusive other charges. That the second party has also agreed giving a rent cheque of Rs. 63,000/- per month per flat for first parties especially till 36 months.”

- (2) The respondent issued allotment letter on 14-04-2018, the relevant excerpts are as follows :-

“Dear Sir,

*We take pleasure in welcoming you for being a part of our upcoming prestigious project “ The Himalayan Habitat” we are please to confirm your allotment of Flat No. L-2/201. One BHK APPT in “ The Himalayan Habitat” Bajaura , Kullu Admeasuring approx. Super Area of 850 Sq fts. We received full payment **Exclusive Other Charges.***

This rate is exclusive of stamp duty registration charges, proportionate taxes and proportionate charges for provision of any other items/ facilities not specifically mentioned herein as may be



any authorities or considered appropriate by the Developer shall also be Payable.”

(3) MOU dated 14.04.2018 of barter system, the relevant excerpt is as

under :-

MOU

“I Sumit Khanna Proprietor of UNIMEXX BUILDERS AND DEVELOPERS, ADDRESS: B-6/4, 2nd floor, Commercial Complex, Safdarjung Enclave, New Delhi-110029 (First party) and Mrs. Kamal Arjan Mirchandani W/o Mr. Arjan Mirchandani and Mrs. Kanchan Sunil Idnani W/O Sunil Mohan Idnani R/o 21, Corner View Apartment Corner of 15th and 33rd Road Bandra West Mumbai Maharastra- 400050 , Absolute owner of flat no. 14 building No. 5-A, JUHU SANGEETA CO-OPERATIVE HOUSING SOCIETY LIMITED, Juhu Road, Santa Cruz (West) Mumbai- 400049.

(Second Party) are hereby entered into a barter Scheme M/s UNIMEXX BUILDERS & DEVELOPERS is absolute owner of flat no. L-2/201 and L-2/204 (One BHK) THE HIMALAYAN HABITAT

Now value of both parties property has been decided Rs. 1,30,00,000/- (One Crore Thirty Lakh only) and both have agreed to transfer its flats ownership to each other.

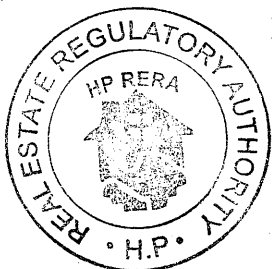
Now UNIMEXX BUILDERS AND DEVELOPERS, ADDRESS: B-6/4, 2nd floor, Commercial Complex, Safdarjung Enclave, New Delhi-110029 has become the absolute owner of the flat no. 14 building no. 5-A, JUHU SANGEETA CO-OPERATIVE HOUSING SOCIETY LIMITED, Juhu Road, Santa Cruz (West) Mumbai- 400049 and second party Mrs. Kamal Arjan Mirchandani W/o Mr. Arjan Mirchandani and Mrs. Kanchan Sunil Idnani W/O Sunil Mohan Idnani R/o 21, Corner View Apartment Corner of 15th and 33rd Road Bandra West Mumbai Maharashtra- 400050 Have becomes the absolute owner of the Flat No. L-2/201 and L-2/204 (ONE BHK) in THE HIMALAYAN HABITAT ,Bajura, Kullu (Himachal Pradesh)

Both parties have confirmed the payment under barter scheme.”

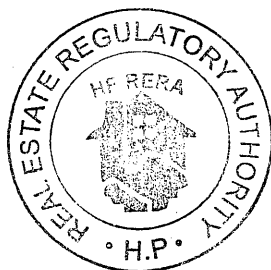
(4) Rs.3 Lakhs in each case were paid by both the complainants as

parking fee as per the bank statement appended with the complaint

to the respondent on 17.04.2018.

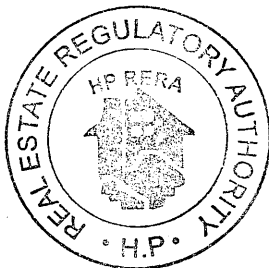


- (5) Agreement for sale dated 18.04.2018 was executed and got registered before Joint Sub- Registrar , Andheri, whereas detail of mode of payment of Rs 1.30 crores, in the document was left blank and there is a receipt enclosed with this agreement qua the same amount, in which also the details of mode of payment was kept blank.
- (6) The sale deed was executed for Mumbai flat vide registered sale deed dated 29.06.2018. The receipt enclosed with sale deed mentions the receiving of Rs 1.30 Crores towards full and final sale consideration of Mumbai flat, but there is no mention of manner of payment mentioned, in that document.
- (7) In September/ October, 2018 a total of Rs 7.49 Lakh were paid by the complainants to the respondent as GST charges qua Bajaura flats.
28. From the above documentary evidence, we have to discern whether, cash payment was made as consideration for the Mumbai flat by the respondent to the complainant or the payment was in the shape of barter / exchange for two flats in Bajaura in the project? Let us first examine, whether there is sufficient evidence to conclude that the payment was made in cash for the purchase of flat at Mumbai by the respondent or not. From perusal of record it

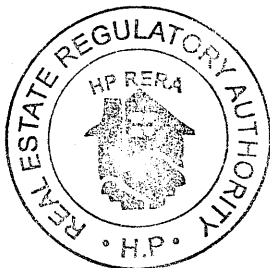


is observed that, the agreement dated 18.04.2018 keeps the payment details of cheques blank and in the receipt attached with the sale deed, there is no mention about the mode of payment. Both the parties have not adduced any concrete evidence to enable the Authority to believe that such a huge amount was paid in cash instead of making payment through cheque or other electronic mode, therefore on the basis of the above it is difficult for the Authority to conclude whether payment was made in cash or not.

Now, let us examine whether the consideration shown as received in the sale deed for Mumbai flat, was in the form barter/exchange transaction or not. The agreement dated 10.04.2018, in which both the parties agreed to exchange their ownership of flats to each other, mention a sale consideration of Rs.1.30 crores for purchase of two flats in Himalayan Habitat and sale of residential flat in Juhu, Mumbai. The allotment letter dated 14.04.2018 issued by the respondent (Unimexx) states that we have received full payment of flats in Bajaura, exclusive of other charges. Further, in the MOU dated 14.04.2018 also it has been mentioned that payment has been made under barter scheme. The agreement dated 10.04.2018, MOU dated 14.04.2018 and allotment letter dated 14.04.2018 have never been revoked. Further, non-mention of mode of payment in

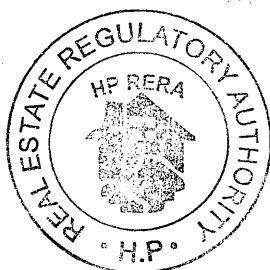


the subsequent agreement dated 18.04.2018 and sale deed dated 29.06.2018 lead us to believe, that the mode of payment is likely to be barter/exchange because other mode of payment has not been expressly mentioned nor any evidence had been adduced by the respondent in this behalf. This view is further fortified vide the subsequent conduct of both the parties, as the respondent had issued five cheques of Rs. 60,000 each purported to be rent of Bajaura flats as had been agreed in the agreement dated 10.04.2018 and MOU dated 14.04.2018. Further, the complainants have paid Rs Six lakhs qua parking charges for Bajaura flats and Rs 7.49 lakhs as GST charges for purchase of Bajaura flats. The allotment letter of Bajaura flats, clearly mention that sale consideration **is exclusive of other charges**. Thus, the complainants in shape of "other charges", written in the allotment letter have paid the amount of parking and GST charges. If it was not the case and respondent had already paid the consideration of Mumbai flat in cash then he would have ought to have first demanded the principal amount of Rs 1.30 crore, qua two flats at Bajaura, from the complainants. The respondent has not shown us any evidence that he ever demanded the principal amount from the complainant, after the sale deed of Mumbai flat was executed in



June, 2018. On the contrary, he accepted the other charges like parking and GST from the complainants for the Bajaura flats, which overwhelmingly suggest that both the parties were working in the direction of barter/ exchange. This conclusion is also supported by the fact that respondent issued five cheques of Rs. 60,000/- each to the complainants purported to be rent in lieu of Bajaura flats. Moreover, the consideration mentioned in the sale deed of Mumbai flat is of equivalent value of the two flats in Bajaura and Thus, this authority concludes, that this was a barter transaction, as comes out from the harmonious construction of various documents submitted by both the parties as well as chain of events mentioned above.

29. Now if the barter/ exchange agreement for sale dated 10.04.2018 is valid, then the next issue is what was the time undertaken or agreed by the respondent to complete the flats and deliver possession. As per law laid down by the Hon'ble Supreme Court in **Fortune Infrastructure versus Travor Dlima (2018) 5 SCC 442** wherein it was held that a person cannot be made to wait indefinitely for the delivery of possession of Flat and possession of the Flat should have been given within a reasonable time period of three years. It was further held that:



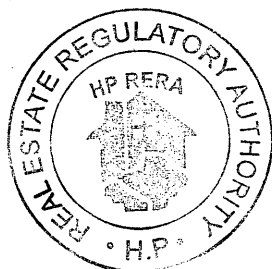
“when no time of possession is mentioned in the agreement the promoter is expected to hand over the possession within reasonable time and the period of three years is held to be reasonable time.”

The flats have not been delivered within the time prescribed by the Hon'ble Supreme Court in aforementioned case. Thus according to the discussion made here in above the promoter has failed to deliver the flats in the agreed time. 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 of the flat clearly amounts to deficiency of service.

30. The Authority in its order delivered in the complaints filed against the same promoter in case titled as Kanwarjeet Singh versus Sumit Khanna and others Complaint no. RERA/HP/OFL/2019-04 decided on 21.09.2020 in para 4 (xii) has held that --

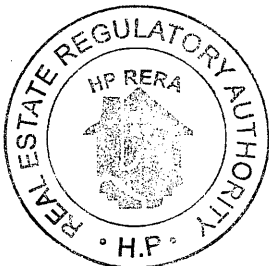
“ That even after making such huge payment there has not been much development at site of work and very little work was executed which is exhibited in the report received from the Department of Town and Country Planning that comprises of a few foundations and RCC frame Skeleton of one block and even after that the actual construction at site never started in full steam and project remained almost stranded”.

31. Thus, there is no construction of flats offered as barter by the respondent in lieu of sale of flat at Mumbai. Further, there is no



chance of construction of these flats as whole project is under litigation. In view of this, the respondent is required to refund Rs. 65 Lakhs each to both the complainants (total Rs 1.30 crore) as flat at Mumbai has been further sold by the respondent to a third party.

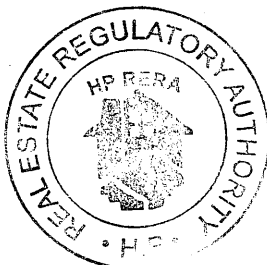
32. The Authority has perused annexure C-4 which is the bank statement of complainant's account that shows that a sum of Rs 14,000/- & Rs 1,00,000/- was paid on 26.09.2018, Rs 1,00,000/- was paid on 06.10.2018 and Rs 5,35,000/- was paid on 30.10.2018 by complainants to respondent through electronic mode. The respondent neither disputes nor specifically denies this amount in his pleadings and rather while making arguments on the specific query put by this Authority, had admitted the receipt of this amount of Rs 7,49,000/- as GST charges and has further also admitted the receipt of an amount of Rs. 6 lakhs as parking charges. He further in written synopsis also admits payments of the aforesaid amounts. Otherwise, also in terms of the law of pleadings particularly Order 8 Rule 3 & 4 of the code of Civil Procedure, 1908 there cannot be evasive denial of the facts and the denial has to be specific and if the respondent is denying any fact in the complaint he must answer the point of substance and not do so evasively.



33. Further, the complainant have also claimed sum of Rs 21,48,000/- in both the cases separately as refund of rent amount agreed to be paid by respondent to complainant. This Authority cannot adjudicate upon the issue of rent as it has no jurisdiction to adjudicate the same as recovery and non- payment of rent is subject matter of rent laws applicable in the State which in the State of Himachal Pradesh is the H.P. Urban Rent Control Act, 1987.

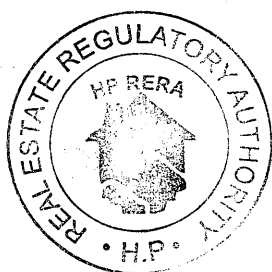
34. The issue is about the interest that the Complainant has sought before this Authority in addition to refund of amount. The Hon'ble Bombay High Court in the landmark judgement of "**Neel Kamal realtors**" in para 261 of judgment has held that

"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.

35. The functions of this Authority established under the Act is to safeguard the interest of the aggrieved persons, may it be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The respondent promoter cannot be allowed to take any undue advantage of his dominant position and to exploit the needs of the home buyer. This Authority is duty bound to take into consideration the legislative intent i.e. to protect the interest of consumers/allottees in real estate sector. Thus, the contentions of the respondent promoter are ex-facie one sided, unfair and unreasonable, which constitute the unfair trade practice on the part of the respondent. The Complainant had already parted with his Mumbai flat and other hard earned money but the respondent has utterly failed in fulfilling his obligation to deliver the two flats in his project 'Himalayan Habitat'. It is clarified that the interest on the sale consideration of Rs Sixty Five Lakhs shall

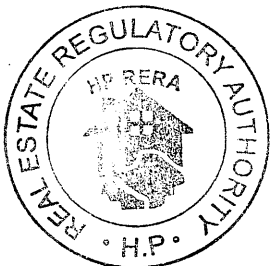


accrue from the date when the complainant parted with the possession of the Mumbai Flat i.e. 29.06.2018, till date the amount and interest thereon is to be refunded. Further, qua the interest on Rs 7.49 Lakhs and Rs 6 Lakhs the same shall be payable from the dates on which different payments were made by the Complainant to the respondent till date the amount and interest thereon is to be refunded.

36. This Authority in para 23 of the judgment delivered in Kanwarjeet's case mentioned supra has already held respondent to be the promoter in the project 'Himalayan Habitat'

37. C. Other Issues and directions including imposition of Penalty.

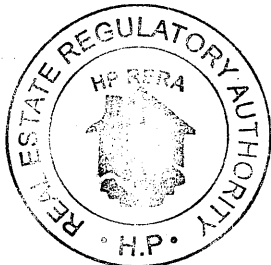
The Respondent Promoter has not shown any sincerity in delivering possession of the two flats agreed to the complainants in lieu of barter/exchange of complainant's Mumbai Flat. The Authority is of this firm view that Respondent Promoter must be held accountable and penalised under Section 61 of the Act *ibid* for his failure to fulfil his obligations as promoter as prescribed in Section 11 and 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 his existing or proposed real estate projects in future. In this case, there are



glaring violations of Section 11, 12&14 along with other enabling provisions of the Act *ibid*, committed by the Respondent promoter that calls for imposition of a penalty under Section 61 of the Act *ibid*.

38. The Hon'ble Apex Court in **Writ Petition (C) no. 940 of 2017 along with connected matters titled as "Bikram Chatterji & ors. Versus Union of India &ors."** **Vide its judgment dated 23rd July, 2019** has observed as under:-

"Para 141. It goes to indicate how at large-scale middle-class home buyers have been defrauded of their hard-earned money, taken away by the affluents and the officials in connivance with each other. Law has to book all of them. We are hopeful that law will spread its tentacular octave to catch all culprits responsible for such kind of fraud causing deprivation to home buyers. It is shocking and surprising that so many projects have remained incomplete. Several Lakh of home buyers have been cheated. As if there is no machinery of law left to take care of such situation and no fear left with the promoters/builders that such acts are not perceivable in a civilised society. Accountability is must on the part of everybody, every institution and in every activity. We fail to understand the standard of observance of the duties by public authorities has gone so down that such frauds take place openly, blatantly, and whatever legal rights exist only on papers and people can be cheated on such wide scale openly, brazenly and with the knowledge of all concerned. There is duty enjoined under the RERA, there has to be a Central Advisory Council as well as the role of the State Government is not ousted in order to protect against such frauds. We direct the Central Government and the State Government to take appropriate steps on the time-bound basis to do the needful, all

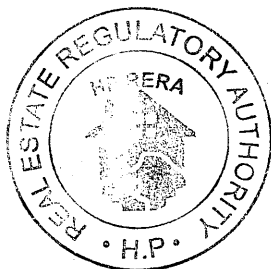


other such cases where the projects have remained incomplete and home buyers have been cheated in an aforesaid manner, it should be ensured that they are provided houses. The home buyers cannot be made to suffer when we are governed by law and have protective machinery. Question is of will power to extend the clutches of law to do the needful. We hope and trust that hope and expectation of home buyers are not going to be belied.”

39. RELIEF:-

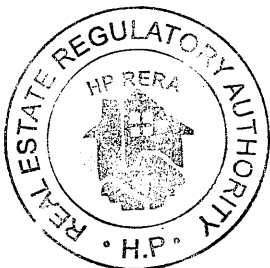
Keeping in view the abovementioned facts, this Authority in exercise of powers vested in it under various provisions of the Act issues the following orders/directions:

- i. The Complaints are allowed.
- ii. In the complaint no. RERAHPKUCTA09210046 titled as Mrs. Kamal Arjan Mirchandani and another versus Sumit Khanna/ Unimexx Builders, the respondent promoter is directed to a refund of Rs. Sixty Five Lakhs and Rs. Seven Lakhs and Forty Nine Thousand (total amounting to Rs. Seventy Two Lakhs and Forty Nine Thousand only) 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 7.7 % hence the rate of interest



would be 7.7 % + 2 % i.e. 9.7%. It is clarified that the interest on the sale consideration of Rs Sixty Five Lakhs shall accrue from the date when the complainant parted with the possession of the Mumbai Flat i.e. 29.06.2018 till date the amount and interest thereon is refunded. It is further clarified that the interest on the amount of Rs Seven Lakhs and Forty Nine Thousand shall be payable from the dates on which different payments were made by the Complainant to the respondent, till date the amount and interest thereon is refunded.

- iii.* In the complaint no. RERAHPKUCTA09210047 titled as Mrs. Kanchan Sunil Idani versus Sumit Khanna/ Unimexx Builders, the Respondent promoter is directed to refund of Rs. Sixty Five Lakhs and a sum of Rs. Six Lakh (total amounting to Rs. Seventy One Lakhs only) 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 7.7 % hence the rate of interest would be 7.7 % + 2 % i.e. 9.7%. It is clarified that the interest on the sale



consideration of Rs Sixty Five Lakhs shall accrue from the date when the complainant parted with the possession of the Mumbai Flat i.e. 29.06.2018 till date the amount and interest thereon is refunded. It is further clarified that the interest on the amount of Rs Six Lakhs shall be payable from the dates on which different payments were made by the Complainant to the respondent, till date the amount and interest thereon is refunded.

- iv.* The refund along with interest is to be paid by the respondent promoter to the Complainants within 60 days from the date of passing of this order.
- v.* That in view of Section 61 of the Act which prescribes the maximum penalty that could be imposed for the contravention of any other provision of the Act other than Section 3 and 4, as five percent of the total cost of the project. The Authority, considering all facts of the case, deems appropriate to impose a penalty of Rs. Ten Lakhs in each case separately for contravention of the provisions of the Act especially Section 11, 12, 14 and 18 of the Act *ibid*.



- vi.* That in case the respondent promoter fails to or does not fully comply with the aforesaid orders within sixty days from the date of passing of this order, then exercising powers under Section 63 of the Act *ibid* the respondent promoter will be liable to pay additional penalty of Rs five thousand per day for every day, for both cases separately till such default continues (after sixty days), till compliance of the orders.
- vii.* The Complainant shall be at liberty to approach the Adjudicating Officer for compensation under Section 71 of the Act *ibid*.


B.C. Badalia
MEMBER


Dr. Shrikant Baldi
CHAIRPERSON


Rajeev Verma
MEMBER

