

REAL ESTATE REGULATORY AUTHORITY**HIMACHAL PRADESH**

Complaint no. HPRERA2022003/C
Malahat " The New Una Estate"

In the matter of:-

Bhawak Prashar son of Sh. Late Sh. Gajanand Prashar, resident of Narayan Niwas, VPO Ambota, Tehsil Amb, Una, Himachal Pradesh, 177205 and also House no. 506, Zail Singh Nagar, Roper, Punjab, 140001

.....Informant/ Complainant

Versus

Indu Walia wife of Ram Prakash Singh , resident of 108, Basant Vihar, Rakkar, Una road, District Una, Himachal Pradesh, 174303

.....Respondent

Present: Sh. Bhawak Prashar complainant through WebEx
Sh. Akshat Mittal, Ld. Counsel for Smt. Indu Walia,
respondent through WebEx

Final date of hearing:-14.03.2024

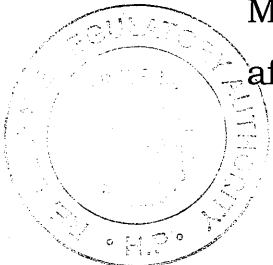
Date of pronouncement of order:-19.04.2024

Order

Coram: Chairperson and Member

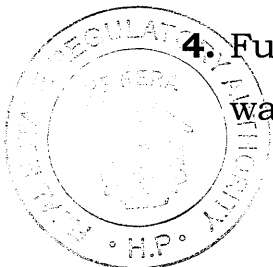
1. Brief facts of the Complaint:

In the present matter, a complaint was filed by Sh. Bhawak Prashar pointing out that Smt. Indu Walia wife of Sh. Ram Prakash Singh (the respondent herein) has been advertising, marketing, booking, selling or offering for sale or inviting persons to purchase in any manner any plot, apartment or building in their project "The New Una Estate" in the planning area Mauja Malahat, Tehsil and District Una, H.P. without registering the aforesaid project with this Authority. The details of plots sold in



area of Malahat were appended. It was further alleged that the lands are being sold after carving out plots totaling 23 nos. in violation of Section 3 of the RERD Act, 2016.

2. This Authority took suo moto cognizance of the same and issued notice under Section 3(1) and Section 59 of the RERD Act to the respondent Smt. Indu Walia. On 20.06.2022 Sh. Ram Prakash Singh husband appeared for Smt. Indu Walia before this Authority and admitted that she had sold about 23 plots having area more than 500 sqr mtr without obtaining registration from this Authority under the RERD Act. He further undertook to get the project registered for which he had sought time from the Authority. On his undertaking to register the project, as plots totaling area more than 500 sq mts have been sold by the respondent he was granted time to get the project registered and was further restrained not to indulge in any sale without first getting the project registered.
3. Further vide order of the Authority dated 11.07.2022, it was observed that 23 mutations have been appended wherein it was averred that the respondent herein has sold more than 23 plots of different shapes and sizes between the year 2016 to 2021 in utter violation of the mandate of the RERD Act. But on the submissions of the respondent that she is in the process of getting the project registered she was granted further time but was simultaneously again restrained from advertising marketing, booking, selling or offering for sale or inviting persons to purchase in any manner any plot apartment or building owned by respondent in the project situated in "Mauja Malahat" district Una without first getting the project registered with this Authority under Section 3 of the Act.
4. Further vide order of the Authority dated 9th February, 2023 it was observed that the respondent had applied online for the



registration and the office of this Authority had reverted with certain observations on 16.09.2022.

5. Further vide order of the Authority dated 20th March, 2023 it was observed that the respondent despite repeated directions had failed to meet the observations as conveyed to her by the Authority while reverting her application for registration. Further, in the same order it was observed that the aforementioned plots were sold by the respondent without having any approval of maps from the TCP Department which was the first and foremost requirement.
6. Further vide order of the Authority dated 20.04.2023 certain penalties were imposed for failing to get the drawings sanctioned from the competent Authority. As prayed by her a time of further two months was granted to the respondent to comply with the online observations of the Authority.
7. Further vide order of the Authority dated 26.07.2023 Sh. Akshat Mittal Ld. Advocate had put in appearance for the respondent and filed two applications firstly for rejection of the complaint being not maintainable and for waiver of the penalties already imposed.
8. By way of the first application MA 41B of 2023 it was submitted that no cause of action has accrued in favour of the complainant as he cannot be said to be an aggrieved person competent to file a complaint under Section 31 of the RERD Act. It was further submitted in the application that the complaint before the Authority can be filed by an allottee or a promoter or a real estate agent. It was further submitted that the complainant herein is neither an allottee nor a promoter or a real estate agent. It was further submitted by way of this application that the complainant has no locus standi and the same has been filed for malafide reasons owing to personal enmity. Another

application MA no. 41D of 2023 was filed wherein it was prayed for waiver of the penalty already imposed by the Authority on the ground that another application questioning the maintainability of the complaint has been filed and it was requested that the same may be decided first.

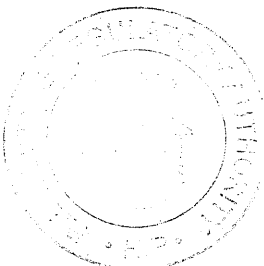
9. Arguments by the promoter-

The respondent filed written arguments and stated that they may be read in her defense. It was argued that the present complaint is not maintainable. It was further argued that the complaint is not filed in proper format as per the rules and format of this Authority. No cause of action has ever accrued in favour of the complainant. The complaint before this Authority can be filed only by an 'aggrieved person'. It was pleaded that the complaint in question was filed against the respondent Smt. Indu Walia in her personal capacity and the company has not been impleaded as a party. It was further argued that the respondent has been alleged to be Director of one "Group Colonizers Pvt. Ltd.", but the said company has not been impleaded in the complaint. It was further argued that the said company i.e. 'Group Colonizers Pvt Ltd,' has been struck off since the year 2019 and there exists no such company as on date. The complainant has no locus-standi to institute the complaint against the respondent. The instant complaint has in fact been filed for malafide reasons owing to personal enmity of the complainant with the respondent. The complainant has also filed complaints against the respondent and her family before the Income Tax Department, E.D., Vigilance, N.G.T. as well as other complaints of criminal nature. The respondent has already applied for RERA registration and has already deposited the required charges/fee qua 100 Kanals area of land. Further, the respondent has already applied for approvals and sub division

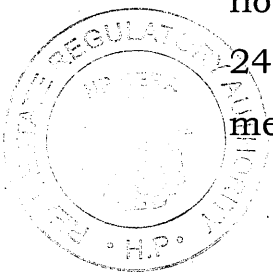
before the Town and Country Planning Department, wherein the said department has raised certain objections/short-comings. Unless the said objections are cleared and approvals are granted by the T.C.P., RERA registration cannot be granted by this Ld. Authority as prior approval of T.C.P. is a mandatory requirement. The premise of the said objections raised by the T.C.P. is based upon the pendency of the matter before the National Green Tribunal, New Delhi. NOC of the departments such as Jal Shakti Vibhag regarding use of ground water, forest department, pollution control board, HPSEBL. and HP PWD are required by the T.C.P. to be submitted by the applicant/respondent. The said NOCs have already been applied for by the respondent but the grant of the same is dependent upon the N.G.T. matter, which is now fixed for 08.04.2024. The said N.G.T. matter has been filed by Sh. Bhavak Prashar the complainant in the present complaint. With these arguments it was prayed for the dismissal of complaint and for removal of all the restrictions imposed.

10. Findings of this Authority

This Authority has gone through the record in detail and has minutely examined the contentions raised by the respondent. From the perusal of the record it transpires that the respondent has sold total 23 nos of plots of different shapes and sizes after the commencement of Section 3 of the RERA Act, 2016. The details are that the respondent had sold vide sale deed no. **242** on 8.2.2019 land measuring 0-07-68 (**768 sq mts**) out of total land measuring 0-71-56 in khewat no. 23, khatauni no. 28, khasra no. 3423/2875; sold vide deed no. **153** on 28.1.2019 land measuring 0-01-92 (**192 sq mts**) out of land measuring 0-71-56 in khewat no. 23, khatauni no. 28, khasra no. 3423/2875; sold vide deed no. **154** on 28.1.2019 land



measuring 0-03-84 (**384 sq mts**) out of total land measuring 0-71-56 in khewat no. 23, khatauni no. 28, khasra no. 3423/2875; sold vide deed no. **155** on 28.1.2019 land measuring 0-03-84 (**384 sq mts**) out of total land measuring 0-71-56 in khewat no. 23, khatauni no. 28, khasra no. 3423/2875; sold vide deed no. **156** on 28.1.2019 land measuring 0-03-84 (**384 sq mts**) out of total land measuring 0-71-56 in khewat no. 23, khatauni no. 28, khasra no. 3423/2875; sold vide deed no. **123** on 21.1.2022 land measuring 0-04-00 (**400 sq mts**) in total land measuring 0-71-56 in khewat no. 23, khatauni no. 28, khasra no. 3423/2875; sold vide deed no. **421** on 12.3.2018 land measuring 0-23-04 (**2304 sq mts**) in total land measuring 0-71-56 in khewat no. 23, khatauni no. 28, khasra no. 3423/2875; sold vide deed no. **2282** on 18-12-2018 land measuring 0-02-30 (**230 sq mts**) in total land measuring 0-44-99 in khewat no. 23, khatauni no. 28, khasra no. 3667/2858; sold vide deed no. **2147** on 18.8.2017 land measuring 0-01-92 (**192 sq mts**) in total land measuring 0-44-49 in khewat no. 399, khatauni no. 603, khasra no. 2858/6; sold vide deed no. **2148** on 18.8.2017 land measuring 0-01-92 (**192 sq mts**) in total land measuring 0-44-49 in khewat no. 399, khatauni no. 603, khasra no. 2858/6; sold vide deed no. **1957** on 28.12.2021 land measuring 0-00-40 (**40 sq mts**) in total land measuring 0-06-48 in khewat no. 23, khatauni no. 28, khasra no. 3667/2858; sold vide deed no. **404** on 6.3.2019 land measuring 0-01-20 (**120 sq mts**) in total land measuring 0-06-68 & land measuring 0-01-80 (**180 sq mts**) in total land measuring 0-44-99 in khewat no. 23, khatauni no. 28, khasra no. 3665/2858, 3667/2858; sold vide deed no. **673** on 24.4.2019 land measuring 0-02-00 (**200 sq mts**) in total land measuring 0-06-48 in khewat no. 23, khatauni no. 28, khasra

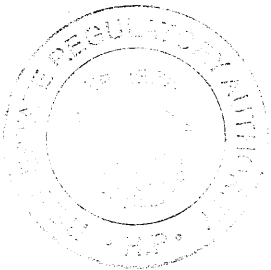


no. 3665/2858; sold vide deed no. **886** on 28.7.2020 land measuring **50 sq mts** , **50 sq mts** in khewat no. 23, khatauni no. 28, khasra no. 367/499, 2863/3665/2858; sold vide deed no. **906** on 1.6.2019 land measuring 0-15-34 (**1534 sq mts**) in khewat no. 23, khatauni no. 28, khasra no. 2860; sold vide deed no. **633** on 16.4.2019 land measuring **2688 sq mts** in khewat no. 45, khatauni no. 51, khasra no. 2895; sold vide deed no. **1675** on 3.10.2019 land measuring **1536 sq mts** in khewat no. 45, khatauni no. 51, khasra no. 2895; sold vide deed no. **52** on 12.1.2021 land measuring **786 sq mts** in khewat no. 23, khatauni no. 28, khasra no. 3153/2874; sold vide deed no. **53** on 12.1.2021 land measuring **960 sq mts** in khewat no. 23, khatauni no. 28, khasra no. 3153/2874; sold vide deed no. **286** on 15.2.2020 land measuring **50 sq mts** in khewat no. 367, khatauni no. 499, khasra no. 2863; sold vide deed no. **296** on 22.2.2018 land measuring **8000 sq mts** in khewat no. 796, khatauni no. 913, khasra no. 2937/1352; sold vide deed no. **2461** on 18.09.2017 land measuring **63 sq mts** in khewat no. 150, khatauni no. 167, khasra no. 2807/1351; sold vide deed no. **1711** on 9.10.2019 land measuring **20000 sq mts** in khewat no. 792, khatauni no. 937, khasra no. 2206/1358.

- 11.** The corresponding jamabandi's have been appended along with the record. The Authority is convinced from the record that the respondent is owner of land in Mohal- Malahat District Una and has sold 23 plots of different shapes and sizes totaling **area 41687 sq mts** in between the year 2017 to 2023 in violation of the RERD Act, 2016.

Section 3 of the RERD Act is as under-

"(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any



planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made there under, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) **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:**

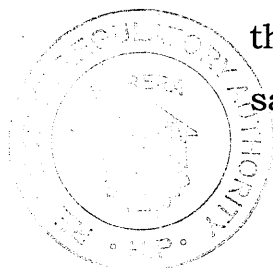
Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) *where the promoter has received completion certificate for a real estate project prior to commencement of this Act;*

(c) *for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.*

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

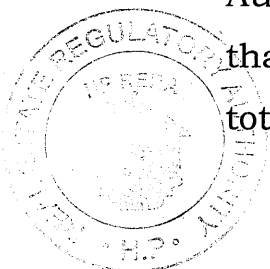
12. The provisions of section 3 of the Act *ibid* are very clear that no promoter shall advertise, market, book, sell or offer for sale or invite persons to purchase in any manner any plot having



area more than 500 sq. mtrs. or flats more than eight in any planning area without registering the project with the Authority. As per proviso one to sub clause 1 of Section 3 of the RERD Act, 2016 three months period from the date of commencement of the Act was granted by the legislature to the ongoing projects to get the same registered. The commencement of Section 3 of the RERD Act, 2016 was from 1.5.2017. Therefore the respondent was required to apply for registration on or before 1.8.2017.

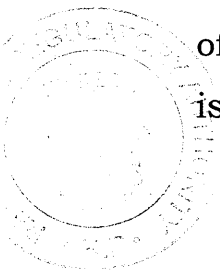
13. In the present case the respondent has sold about twenty three plots totaling area **41687 sq mts** without obtaining registration from this Authority under the provision of Real Estate (Regulation and Development) Act, 2016. It is clear that the respondent has flagrantly violated the aforesaid provisions and the violations are writ large.

14. The most astonishing thing that strikes us is that all the aforesaid plots have been sold without even approval of plans from the TCP Department. Further all the sale deeds have been executed by Smt. Indu Walia therefore the issue of summoning the Company "Group Colonizers Pvt. Ltd." does not even arise. More so when it is the statement of the respondent in written arguments that the company is no more in existence. Otherwise also from the record available the ownership of the land is of Smt. Indu Walia and she has entered into the sale of land in violation of Law therefore she is the violator in the present case. The respondent cannot escape the rigours of law by saying that complainant herein has personal enmity with her because the fact ultimately remains is that she has caused serious violations of the RERD Act, 2016 and any person is open to inform this Authority of the violations. We are further of the considered view that a person who has already violated the law by selling plots totaling area **41687 sq mts** without getting the project registered



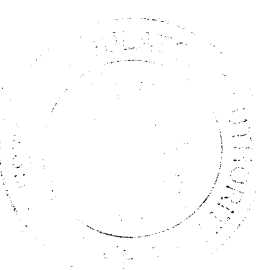
with this authority cannot later take the plea of force majeure as she was required to take all the approvals as pointed by her in her arguments particularly approval of sanction plans before selling even a single plot. After selling about 23 plots and when being caught by the Authority, she cannot turn around and say that the time required for taking approvals shall be excluded. By taking the pretext that the complaint is not maintainable she cannot be permitted to flout the legal provisions of RERD Act 2016. Further the narration given by the respondent that she is not getting permissions from various departments, this Authority is surprised that how has the respondent engaged in sale and purchase of plots without having any approval from any of the competent authorities. It is very clear that the registration application submitted to this Authority by the respondent in absence of approved sanctioned plans which is the basic requirement of law is an eye wash.

15. So far as the issue of locus standi raised by the respondent before the Authority is concerned it is pertinent to mention here that any person can apprise this Authority about any violations of the provisions of the Act *ibid* because this Authority has *suo moto* powers under Section 34 (f) & (g) to deal with any of the violations under the Act and to ensure compliance of obligations cast upon various stakeholders under the Act. Further so far as the contention of the respondent *qua* the complainant not falling in the definition of aggrieved person is concerned, this Authority is of the considered view that the definition of aggrieved person is relevant for the purpose of filing complaint under Section 31 and not for providing information of violation of Section 3 of the Act and any violation of the section can be brought to the notice of this Authority by anybody. The definition of aggrieved person is not applicable for violation of Section 3. The *suo motu* powers



of the RERA have been enlisted under section 35 and 38 of the Act. The RERA can take action on its own accord in matters pertaining to calling for information or conducting investigation. This Authority has clear powers to call for information and conduct investigation.

16. Since the respondent had undertaken before this Authority to get the project registered for which he had sought time from the Authority on 20.06.2022. Her application was reverted online with certain observations by the office of this Authority **on 16.9.2022**. Since then she has not complied with the observations. Sufficient time has already been granted to the respondent to comply with the observations of this Authority and get the project registered. A person cannot be permitted to sit over the registration of the project by merely applying the same and then not reverting back for almost about two years. For her delay and failure to comply with the orders of this Authority she was imposed penalty total amounting to Rs 7,86,000/- for which a recovery certificate has already sent to the concerned District Collector. However, she has not paid the aforesaid penalty amount till the date of passing of this order. The penalty imposed earlier was small amount keeping in view the quantum of land involved in the sale of plots in violation of Section 3 of the Act. The execution of the aforesaid sale deeds have otherwise been admitted by the respondent vide order dated 20.6.2022, but her defense was that she was not aware of the mandate of Section 3 of the RERD Act, 2016. The well known maxim is that 'ignorantia juris non excusat' meaning ignorance of law is no excuse but keeping in view her admission she was directed to register the project. The respondent was only restrained to the extent that she was barred/restrained from advertising, marketing, booking, selling or offering for sale or inviting persons



to purchase in any manner any plot, apartment or building owned by respondent in Mauja Malahat, District Una, H.P. without getting the project registered with the Authority as per Section 3 of the Act *ibid*. This direction is in accordance with the mandate of Section 3 of the RERD Act, 2016. Further powers of the Authority to call for information and conduct investigations is given under Section 35 of the RERD Act, 2016.

Section 35 Powers of Authority to call for information, conduct investigation -*(1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.*

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under subsection (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) issuing commissions for the examination of witnesses or documents;

(iv) any other matter which may be prescribed.

17. Further in case titled as **Praveen Chhabra V. Real Estate Appellate Tribunal W.P.(C) 14552/2021** pronounced on

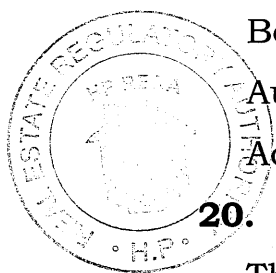
26.05.2022 the Hon'ble Delhi High Court in para 18 it was held as under

*“18. Turning then to the provisions which deal with the constitution and powers of the Authority, **it is manifest that it is obliged to regulate real estate projects**, to ensure compliance of obligations placed on promotees, allottees and real estate agents. In terms of Section 35, where a complaint is received by it in respect of any real estate project, it is empowered to call upon the promoter, allottee or real estate agent to furnish information in writing or explain its affairs to the Authority. **The powers exercised by the Authority under Section 35 can be set in motion either on a complaint or by the Authority itself acting suo moto. Section 35(2) confers on the Authority the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908** insofar as they pertain to discovery and production of books of account and documents, summoning and enforcing the attendance of persons, issuing commissions for the examination of witnesses or documents and other matters which may be prescribed. **Section 36 empowers the Authority to issue interim orders by way of restraint against a promoter, allottee or real estate agent injuncting it from carrying on any act** which is complained of or noticed until the conclusion of the enquiry initiated under Section 35. **This very provision also empowers the Authority to issue interim orders ex-parte.** The Authority in terms of **Section 37 is invested with the power to issue directions from time to time to any promoter, allottee or real estate agent** and prescribes that all such directions would be binding on parties concerned.’*

18. Therefore the Authority has powers to investigate and call for information and in pursuance to the powers, this Authority was investigating the violations committed by the respondent and the complainant herein is a provider/supplier of the information just to assist this Authority to catch hold of the violators of the Act. Therefore this is not a complaint filed under Section 31 of the Act and for such information no format is

prescribed. This Authority after due application of mind and from the perusal of the record in the shape of copies of sale deed, jamabandis etc. supplied by the complainant from which it is apparent that the respondent has consecutively violated Section 3 of the Act and after due satisfaction has passed restraint orders to the respondent not to engage in any selling activity till she registers her project with the Authority. By merely applying the respondent is not absolved of her liability to get the project registered and she has to ensure that registration is obtained by her in a time bound manner.

19. Section 5 of the RERD ACT 2016 mandates that on receipt of application of registration under section 4, the Authority shall decide the application within a period of 30 days. Therefore we are mandated to take a decision on grant of registration within 30 days. However, in this case the respondent after applying for the registration is not supplying the requisite information since 16-9-2022. The respondent is willfully not providing the information and documents required for registration under RERD Act,2016 and HP RERD Rules, 2017. Because of this inordinate delay by the respondent, this Authority is not able to discharge its duty under section 5 of the Act.



20. Orders/ Directions-

The Authority considering all the facts and circumstances of the case hereby passes the following orders/ directions.

- I. The application(s) of the respondent MA no. 41 B of 2023 on the issue of maintainability of the complaint and MA 41 D of 2023 for waiver of penalty are hereby dismissed being devoid of any merits.
- II. It is reiterated that the respondent shall not advertise, market, book, sell or offer for sale or invite persons to purchase in any

manner any plot, apartment or building without first getting the project registered with this Authority as per the mandate of Real Estate (Regulation and Development) Act 2016.

- III. The respondent is again directed to pay the interim penalty of Rs. 7,86,000/- already imposed by this Authority during the course of proceedings at the earliest.
- IV. A further period of one month as last opportunity is granted to the respondent to get the project 'The New Una Estate' registered with HP RERA under Section 3 of the Act by providing all the requisite documents and information online on HP RERA web portal, failing which the respondent is hereby imposed a penalty of Rs 20,000/- per day which may cumulatively extend upto ten percent of the estimated cost of the project till registration is granted under section 5 of the RERD ACT 2016. The time taken by the Authority to process her application for registration shall be excluded for the purpose of computing the penalty.
- V. All the pending applications are disposed of in aforesaid terms.


B.C. Badalia
MEMBER


Dr. Shrikant Baldi
CHAIRPERSON

