

**REAL ESTATE REGULATORY AUTHORITY  
HIMACHAL PRADESH**

**Complaint No.HPRERA2023017/C**

**In the matter of:-**

Dr. Rajnish Sood son of Sh. Kishori Lal Sood, resident of Radha Behari Nikunj, Jakhu Housing Colony Shimla-2, Shimla, Himachal Pradesh, 171002

.....Complainant

Versus

M/s Omaxe Limited its registered office at 7, Local Shopping Centre, Kalkaji, New Delhi 110019

.....Respondent

**Present:** Sh. Vivek Negi Ld. Counsel alongwith Dr. Rajnish Sood complainant through WebEx.  
Sh. Shivank Singh Panta, Ld. Counsel for respondent promoter Omax Parkwood, Baddi through WebEx.

**Date of hearing: 13.05.2024**

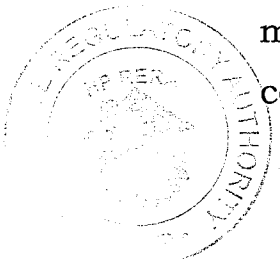
**Date of pronouncement of order: 06.06.2024**

**Order**

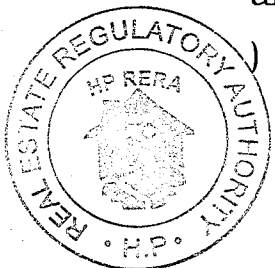
**Coram: Chairperson and Member**

**1. Facts of the complaint:-**

The complainant purchased a plot No.158 in Parkwood II project at Baddi, Himachal Pradesh. It was pleaded that the plot was supposed to be 150 square metres and the entire payment was made in time. It was further pleaded that later he received a communication from the respondent that there is extra land



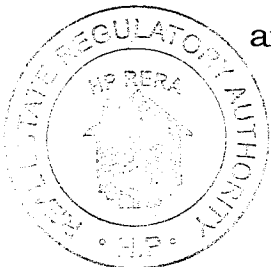
with the plot and therefore the plot size is 181.37 sq. mts (216 Sq yards approx.) for which the complainant has to pay extra money @12500/- per square meter. The additional amount was paid. Complainant went to Baddi to take over the possession of the plot. At the spot the size of the plot was not even 150 sq.mts, when the physical possession of plot was offered. It was pleaded that the plot had an area of about 137 sq. Meters and therefore the complainant refused to take the possession. The complainant was assured by one Mr. Sandeep Bansal from Omaxe that respondent will resolve the issue and will hand over 181.37 sq mts. It was further pleaded that no communication was received from the respondent after that. The complainant visited the Office of Omaxe at Chandigarh several times and Mr. Alok Kapur assured him to offer the possession of the plot after discussion with head office at Delhi and return the extra amount with interest. He told the complainant that the size of the plot on paper is about 151 sq. mts. but again the physical size of the plot is about 137sq.mts. at site. It was pleaded that the complainant now received a letter from Omaxe Parkwood Co. that he may get the registry of the plot done before 15<sup>th</sup>, February 2019. It was further pleaded that the current market price of the land in that locality is about Rs. 33000/- per sq. mt. It was further pleaded that on 24th March 2023 he received an email from customer relations department of Omaxe Parkwood Co. that the plot size is 151 sq yards ( approx.126 sq metres) and is ready for possession and the extra amount will be refunded to him. With these pleadings it was prayed that the physical possession of the plot be handed over of 126 sq metres and the extra amount payment of 55 sq mts approx 65 sq yards with interest at the current market price of Rs.35,000/- per



square meter or the prevailing market price be refunded to him or any alternate plot of area 181.37 sq mt in the same locality be allotted to him. However after the arguments, an application was filed by the complainant (the copy of which was also served to the respondent) wherein he prayed that he wants the refund of the entire amount paid in the case.

## 2. Reply-

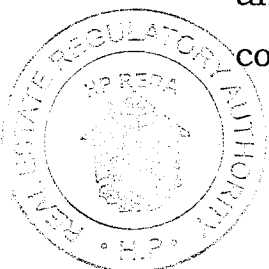
It was pleaded in the reply that the respondent company is a public limited company duly incorporated under the provisions of Companies Act, 1956 having its registered office at Shop No 19-B, First Floor, Omaxe Celebration Mall, Sohna Road, Gurgaon (Haryana) and Corporate office at 7, LSC, Kalkaji, New Delhi (hereinafter referred and mentioned as respondent company) and had developed and constructed the residential project/group housing project namely, Omaxe Parkwood, Baddi only after obtaining necessary and requisite permissions/approvals and NOCs from all the competent and concerned Government bodies, departments and agencies. It was pleaded that the respondent is filing the present reply to the complaint through Sh. Vishal Chawla, who is the authorized representative of the respondent company. It was pleaded that the complainant has shown his interest to purchase/allotment plot of land situated in the revenue estate of Villages Chakkan and Billanwali Gujran, Pargana Dharampur, Tehsil Nalagarh, Distt. Solan. In this regard, an application form was submitted by the complainant for allotment of residential plot in the above mentioned project. At the time of applying for the plot the complainant paid a sum of Rs. 1,22,672/- vide two separate cheques being booking amount/ earnest deposit for allotment of a residential plot. To



this effect, an agreement for sale dated 04.02.2013 was executed interse the parties for allotment of plot no. 158 in Parkwood Project-II, Baddi having a super area of approximately 149.16 sq. mtrs for a basic sale price @ Rs. 8,200/- per sq. mtrs. totaling to Rs. 12,26,720/- towards the purchase of the plot in issue plus additional charges and preferential location charges as applicable to the said plot. In terms of letter dated 02.01.2013 the complainant was called upon and reminded that he had fallen back on the payment and was requested to make good the due and admissible payment towards the plot in question in accordance with the payment plan as opted by him. In pursuance thereto, a sum to the tune of Rs. 5,27,490/- was paid to the respondent company by the complainant in discharge of his outstanding liability and a cheque dated 24.01.2013 was issued by the complainant in favour of the respondent company and the said amount was duly acknowledged by the respondent company and in lieu thereof, a receipt dated 01.02.2013 was issued thereby, acknowledging that the amount of Rs. 5,27,490/- had been received by the respondent company. It was pleaded that in the interregnum, some internal communications led to the approval of increase in the area and dimension of the respective plots including the plot belonging to the complainant to more than 10% and the area of the plot allotted to the complainant was increased to 181.37 sq. mtrs. Thereafter, in terms of communication dated 13.12.2013, the complainant was called upon to make the payment of remaining due sale consideration within a period of 15 days from the date of issuance of the letter dated 13.12.2013 in order to enable the respondent company to issue /offer letter of possession. Consequently



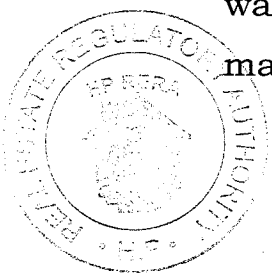
thereupon, a cheque dated 05.02.2014 was issued by the complainant for an amount of Rs. 9.25,000/- in favour of the respondent company towards payment of the remaining/outstanding amount of the plot allotted in his favour for the completion of possession of the plot. A reminder dated 13.02.2014 was sent to the complainant whereby, he was requested to take over the possession of residential plot No. PWB/158 ad measuring 181.37 sq. mtrs. in the residential township project after making payment of full and final dues and completing the necessary and pre requisite formalities. In terms of reminder dated 13.02.2014, the complainant was further requested to get the sale/ conveyance deed registered in his favour. Thereafter the respondent company was compelled to issue another reminder dated 13.05.2014 to the complainant thereby, calling upon the complainant to take possession of the said plot at the earliest after making requisite payment of remaining consideration, if any, to avoid any holding charges. Vide reminder/communication dated 04.08.2014, the complainant was informed that as per payment plan opted by him, a payment of Rs.87,683/- had been pending for long time for the purpose of confirming the booking of the said plot under the payment plan. It was further pleaded that the complainant was put to caveat that in case the payment is not received within the scheduled date in that eventuality, the rebate/additional discount offered in favour of the complainant would invariably stand withdrawn and the booking would be treated under normal payment plan without any additional discount. The reminder dated 04.08.2014 was followed by last and final reminder dated 03.09.2014, vide which the complainant was given the last chance to make the payment of



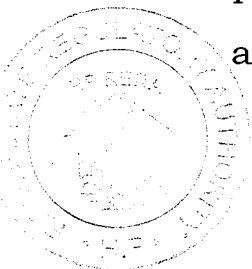
outstanding dues to avoid the cancellation of allotment of plot and forfeiture of earnest money and other amount. The complainant vide letter dated 04.08.2014 was reminded that in order to avoid materialization of the unpleasant eventuality of cancellation of the said plot, he should make the payment of Rs. 40,521/- along with interest amounting to Rs. 47,961/- within a span of 10 days from the date of receipt of the said letter dated 03.09.2014 and in absence whereof, the respondent company would reluctantly be compelled and forced to cancel the allotment made in favour of the complainant of the captioned plot. In compliance thereof, the complainant issued a cheque dated 10.09.2014 for a total amount of Rs.85,409/- to make good the payment which had fallen due towards the payment plan opted by the complainant for allotment of the aforementioned plot in question. In acknowledgment of the same, the respondent company had issued receipts dated 11.09.2014 there by, recognizing and accepting the payment received by the respondent company. The inter office communication dated 11.10.2014 would reveal that when the complainant fulfilled and completed all the requisite and mandated formalities, a communication was sent to the Site In charge (handing over team), Parkwood, Baddi-II for permitting the complainant to enter the premises and allow him to survey/fit-out purpose of his plot. In accordance with letter dated 13.07.2018 followed by reminder dated 23.07.2018 the complainant was informed and intimated that the process for registration of plots situated at "Parkwood Baddi-II" had been initiated therefore, the complainant was invited to get the sale deed of his plot registered by paying the required stamp duty and registration fee through online mode after clearing all



the dues payable. Without prejudice, it is stated here that the letter dated 13.07.2018 and reminder dated 23.07.2018 would go a long way to show that the complainant was invited for registration of the residential plot no. 158 with an area of 151.36 sq. mtrs. It would not be out of place to mention here that no where does either the said letter dated 13.07.2018 or the reminder dated 23.07.2018 anywhere enunciate that the complainant was informed vis-a-vis registration of residential plot having an area of 181.37 sq. mtrs. Instead the letter as well as the subsequently issued reminder only indicate that the complainant was informed about the registration of his plot measuring 151.36 sq. mtrs. instead of 181.37 sq. Mtrs. and apparently there seems to be no demur raised or objection flagged by the complainant in consequence to the issuance to the said letter and reminder in respect of total area/dimension of the residential plot for which the complainant had applied for. The complainant was made explicitly aware regarding the area of the residential plot in question however, the complainant in the year 2018 remained silent and accepted the letter and the subsequent reminder as it is without registering any protest. Another fact which emerges from the perusal of the record is that in sequel to the letter and reminder issued in the year 2018, the respondent company had forwarded a communication dated 24.01.2019 to the complainant calling upon him for registration of conveyance / sale deed for the plot No. PWB//158 having area measuring 151.36 sq. mtrs. in project namely, "Parkwood Baddi-II" situated at Baddi. The complainant was informed that he was warranted to get the sale registered as paying adherence to the mandate of Section 17(1) of the Indian Registration Act, 1908 by

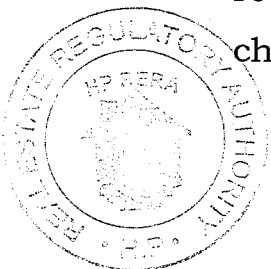


depositing adequate registration charges towards stamp duty. The complainant was made aware about the fact that the registration charges and stamp duty are to be paid to the Government exchequer and the plot needs to be compulsorily registered with the office of sub-registrar. Thereafter vide an e-mail dated 22.11.2019 the complainant was informed that the respondent company was getting the residential plot allotted to the complainant at the site re-measured and he shall be adequately updated regarding the same. In response thereof, the complainant replied vide email dated 04.12.2019 that since he intends to initiate the construction work on the site/plot allotted to him very soon hence, he requested the respondent company to get the re measurement of the plot in question done at the earliest so as to enable him to take over the possession of the plot and the construction work process on the plot could be started. The complainant officially registered his complaint and flagged the concerns which plagued him all this while vide representation dated 27.12.2022 which was submitted to the Manager, Omaxe Parkwood II, Baddi thereby requesting to hand over the possession of the plot after assessing the actual physical measurement and return the extra amount along with interest at the current market price of Rs. 33,000/- per sq. mtrs or in alternative allot some other/different plot having an area equivalent to 181.37 sq Mtrs. in the same locality. In reply, vide e-mail dated 24.03.2023 the respondent company had addressed all the issues, complaints, demur and objections raised and raked up by the complainant in his representation dated 27.12.2022. First and foremost, the complainant was properly informed and assured that after getting the measurement confirmed with the





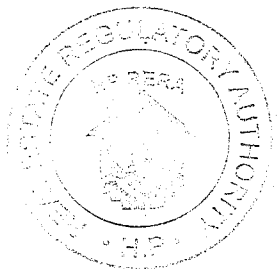
site team, the actual and physical area/dimension of the plot allotted to the complainant turned out to be 151.36 sq. yards and the demarcation of the plot was also carried out on the site. The pictures of the plot were also shared and forwarded to the complainant. So far as the refund of the decreased area is concerned, the reply in terms of e-mail dated 24.03.2023 makes it aptly and palpably clear that the complainant was requested to submit a duly signed official letter along with the canceled cheque, copy of the bank account statement or in alternative, front page of the passbook was required bearing the account holder's name, name of the bank, account number in which the refund is desired tagged alongwith the IFSC code of the branch of the bank to facilitate the respondent company to transfer the amount /money in the account of the account holder/complainant through NEFT/RTGS mode. Therefore, it was pleaded that the present complaint is nothing but abuse and misuse of process of law. It was further pleaded that the complainant raised his issues and submitted his formal complaint with the respondent company only on 27. 12.2022 to which an adequate and proper reply/ response vide e-mail dated 24.03.2023 was provided by the respondent company. The Respondent Company on its own got the plot in question re-measured and only after confirming about the measurement of the same, admitted that the actual and physical area of the plot belonging to the complainant was 151.36 sq. yards. Moreover, the complainant was also informed that the respondent company was willing and ready to transfer the amount towards refund of additional amount / proceeds received on account of decreased area and yet the complainant chose to approach this Ld. Authority. With these pleadings it



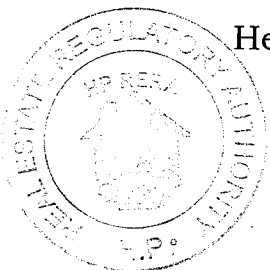
was prayed that the present complaint may kindly be dismissed.

### 3. Rejoinder-

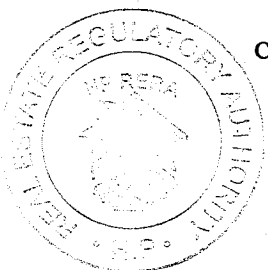
In rejoinder it was submitted that the respondent has intentionally failed to place on necessary and requisite permissions/approvals and NOCs issued in respect of the project in question, as well as the approved map thereof with respect to the project in question in order to ascertain as to how much area had been sanctioned qua the plot in question i.e.. Plot No. 158,OMAXE, Parkwood Baddi-II, Himachal Pradesh, which as per the representation made to the complainant and the map(page No. 7 with the complaint) was 149.6 Square meters(178.92 Square yards). It was submitted that later on the complainant received a communication from the respondent, whereby it was represented that there was extra land with the plot in question and the plot size was 181.37 square meters( 216 square yards) for which the complainant had to pay additional amount at the rate of Rs. 12,500/- per square meters. It is submitted that the respondent realized extra amount from the complainant by misrepresentation as to the area of the plot in question that its size was 181.37 square meters (216 square yards), when on the spot the same was only 137 square meters (163.851 square yards). It was further submitted that the approved drawings clearly show the set back areas in the plots and the complainant is liable to be delivered promised area of 181.37 Square Meters ( 216 Square yards) after making measurement thereof by leaving set back of the plot No. 145 which is right behind his plot No. 158 as shown in the approved drawings or in the alternative of approved area of 149.6 square



meters(178.92 square yards) by the same process and to refund the amount realized qua additional area at current market price i.e., 33,000/- per square meter or refund of additional amount realized qua additional area with interest thereon at the statutory rate. It was further submitted that it is an admitted fact that the complainant made the entire payment qua the plot in question as per the represented increased area of 181.37 square meters (216 square yards) along with interest etc. and fulfilled and completed all mandated formalities. It is, however, submitted that the area of the plot in question on spot was only 137 square meters (163.851 Square yards) during measurement. It is submitted that the area of the plot was not 181.37 square meters (216 square yards), for which the payment had been realized by the respondent along with interest, etc. It is submitted that a perusal of communications dated 13.12.2013. 13.2.2014 and 13.5.2014 would clearly show that the respondent had offered possession of the plot in question measuring 181.37sq.mtrs. (216 square yards) for which they had realized the entire amount along with interest, etc. but later on vide communications dated 13.7.2018. 23.7.2018 and 24.1.2019 they called upon the complainant to have the registration of conveyance/sale deed qua the plot in question with reduced area of 151.36 sq.mtrs only (181.02 square yards). It is reiterated that the area of the plot in question on spot was not even 151.36 sq.mtrs (181.02 square yards), but only about 137 sq.mtrs (163.851 square yards). The aforesaid facts clearly show that the respondent has been guilty of misrepresentation of material facts qua the area of the plot in question, as well as cheating and unfair trade practice. Hence, the plea raised by the respondent that the complainant



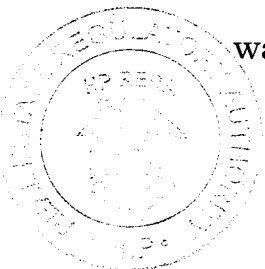
was invited for registration of residential PlotNo. 158 with an area of 151.36 sq.mtrs. (181.02 square yards) and not 181.37 sq.mtrs. (216 square yards) is totally misconceived. It is submitted that when the complainant came to know about the factum of reduction in area of the plot in question on the spot, he admittedly requested for re-measurement of the plot done at the earliest and also addressed communication in this behalf. Therefore, the plea being raised by the respondent that no demur had been raised or objection flagged by the complainant is without any basis. It is submitted that after realizing the entire amount along with interest etc. qua plot measuring 181.37 sq. mtrs. (216 square yards) the respondents are precluded from raising such frivolous pleas. It is submitted that in the above facts and circumstances the complainant could not have been expected to have the conveyance/sale deed qua the plot having area of only 137 sq.mtrs. (163.851 square yards) registered. It was further submitted that the respondent has made an admission regarding the physical area/dimension of the plot at site being 151.36 sq.yds(which comes to 126.55 Square meters), which is well below the promised/approved area. It was further submitted that after realizing the entire amount along with interest etc. qua the plot measuring 181.37 sq. mtrs. (216 square yards) from the complainant the respondent could not have shirked its responsibility by offering much lesser area and only offering to return the additional amount realized by it. It was submitted that the respondent is liable to be directed to deliver the possession of the agreed area or in the alternative of the area approved by RERA and to refund the additional amount at the current market price along with interest as prayed for in the



complaint. It was further submitted that the respondent is also liable to be heavily penalized as per the provisions contained in the Real Estate (Regulation and Development) Act, 2016 for unfair trade practice. It was submitted that the complainant cannot be expected to take possession of the plot/have the conveyance deed registered qua reduced area of the plot. Thus in the end it was prayed that the complaint filed by the complainant may kindly be allowed.

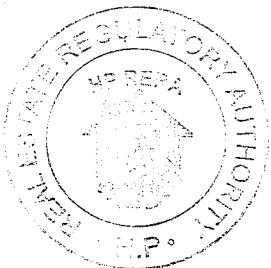
**4. Arguments by the complainant-**

It was argued that the complainant had purchased Plot No.158 in Omaxe Parkwood Baddi II and the area which was represented initially was 149.6 sq. Mtrs. which comes to 178.92 sq yards and subsequently they said that larger area of the plot is available which is 181.37 sq. mtrs i.e. 216 sq. yards. It was argued that the respondent asked the complainant to pay sum of Rs.12,500/- per sq. mt. extra which was paid. It was further argued that the issue of the respondent taking payment from the complainant qua plot area of 181.37 i.e. 216 sq yards has not been disputed by the respondent. It was further argued that the respondent proposed to give the possession on spot to the complainant of the area i.e. 137 sq mtrs i.e. 163.85 sq yards which is much below the initially promised area as well as the subsequently enhanced area. Here a question was put by the Authority as to what is the area of the plot in sanctioned plan. In the reply it was submitted that the sanctioned map is of plot measuring 149.6 sq mtrs but the complainant has paid for 181.37 sq mtr as subsequently the respondent said that larger area is available on the plot for which complainant has to make additional payment. However it was argued that on the spot the area is only 137 sq mtrs. It



was argued that when the respondent are calling complainant for the registration of plot they are reducing the area. Further it was argued that as per page no. 23 of the rejoinder it is very clear that plot no. 158 is behind plot no. 145 in sanctioned plan and there are dotted lines that is the set back area. It was argued that in plot no. 145 and 158 there are dotted lines which are the set back areas because plot no. 145 has a setback area towards rear side as well as on the opposite side. The plot owner of plot number 145 has not left any set back towards plot no. 158. It was further argued that there is no set back in between plot nos. 157 and 158 which are adjoining but there is a common wall. So far as plot nos. 158 and 145 are concerned both the plots have the set back areas. It was further argued that after leaving the set back area of plot no. 145 the area of plot no. 158 has to be measured. It was argued that the respondents are saying that the area of plot no. 158 shall start immediately from the building in plot no. 145 who has left no set back. The plot area on the spot is 137 sq mts. The additional area for which they realized from the complainant sum of money @ of Rs.12,500/- per sq mtr and now the price of plot is Rs.33,000/-per sq mtrs. These facts are relevant for imposing compensation. The current price is Rs.33,000 which they have not denied. It was argued that the respondent was required to handover possession as per the sanctioned plan but they sought money for an area which was much more than the sanctioned area which ultimately was paid to them but the area on the spot is even less than the area as per the sanctioned plan.

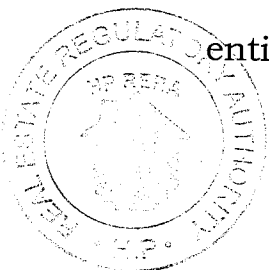
##### **5. Respondent Arguments-**



It was argued by the respondent that the dimension and measurement of the plot was always 151.36 sq mtrs. It was argued that an email was sent to the complainant by the respondent on 24/03/2023. It was submitted by the Ld. Counsel for the respondent that the area has wrongly been mentioned as 151.36 sq yards in the reply whereas actually it was 151.36 sq meters. On the query of the Authority as to how can the respondent allot area more than with area permissible under plot no.158 to the complainant. The respondent could not give satisfactory answer to this query. It was further argued that the plot size mentioned in the advertisement and the application form is 149.16 sq mtrs. The basic sale price is Rs.12,26,720/- after including all the ancillary costs total price is Rs. 13,21,986/-. Further it was argued that in pursuance to mutual communication between both the parties the respondent offered complainant of the same plot 181.37sq mtrs on own volition. In pursuance thereto the complainant has made payment of Rs.9,25,000/- and 13th February,2014 the complainant was offered possession of plot admeasuring 181.37 sq mtrs. It was further argued that the total money paid by the complainant to the respondent in lieu of plot is Rs. 16, 60,660/-. It was further argued that the respondent is ready and willing to return the extra amount taken for the extra plot size offered to be sold to the complainant with proportionate interest.

**6. Conclusion/ Findings of the Authority:-**

We have heard the arguments advanced by both the Ld. Counsels for the complainant & respondents 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 the point of determination that requires the consideration and adjudication, namely:-

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

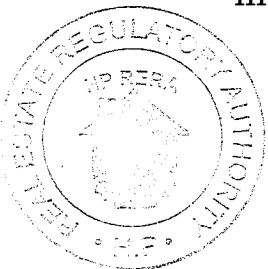
7. The present project is a RERA registered project. The agreement for sale in this case was executed between the parties on 4<sup>th</sup> February, 2013 and the complainant was allotted plot no. 158 in Omaxe Parkwood, Baddi, District Solan H.P. for an area of 149.16 sq mts as given in the agreement for sale. As per the sanctioned plan the copy of which has been appended with the case file the approved area of plot no. 158 is 149.6 sq meters.
8. The basic sale price of the plot was @ of Rs 8,200/- per sq mts which comes out to Rs 12,26,720/- and after adding some other charges the total sale consideration was Rs 13,21,985/-. This total sale consideration gets verified from the application form submitted by the parties. However the receipts attached with the complaint at page 22 to 26 the total amount paid by the complainant to the respondent comes out to Rs 16,60,660/-. The reason for this additional amount being paid by the complainant to the respondent is that vide letter dated 13.12.2013, 13.02.2014, 13.05.2014 the respondent increased the area of the plot to 181.37 sq mts and offered possession of the enhanced area subject to payment of additional cost. From the perusal of the reply of the respondent and the documents appended therewith the entire payment of Rs 16,60,660/- has been received and the receipts qua the same are also admitted. This payment includes the cost of additional area offered by the respondent and the complainant paid an amount of Rs



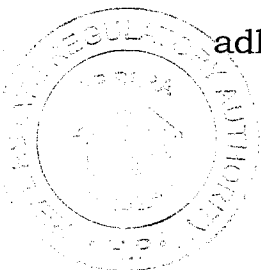


3,38,674 over and above the initial sale consideration for the additional area of plot offered by the respondent which was beyond the sanctioned area of the plot. This additional amount was also received by the replying respondent. Therefore it is safe to conclude that an amount of Rs 16,60,660/- has been paid in total by the complainant to the respondent and it includes the extra money demanded by the respondent for the increase in area which is beyond the area prescribed in the sanctioned plan.

9. The date of possession as per clause 28(a) of the agreement for sale was within 30 months from the date of execution of the agreement for sale subject to further extension of six months. The date of execution of agreement for sale was 4<sup>th</sup> February, 2013 therefore maximum time within which the possession was to be offered was within three years maximum. Although in the agreement for sale instead of plot the word flat has been inadvertently mentioned but that typographical mistake does not change the language or meaning of the clause. Therefore the possession of the plot in accordance with the sanctioned plan of area measuring 149.6 sq mts was to be offered by 4<sup>th</sup> February, 2016. From the receipts appended with the complaint which have been also relied and admitted by the respondent it is clear that entire payment was made upto 11<sup>th</sup> September, 2014. However from the record appended with the reply it transpires that on 13.12.2013 the respondent increased the area of the plot to 181.37 sq mts. The reminders dated 13.2.2014 and 13.05.2014 were issued to the complainant to take the possession of the plot of increased area 181.37 sq mts.



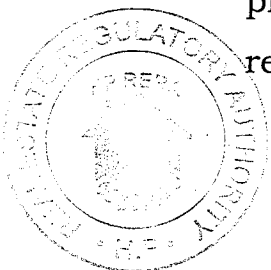
10. Thereafter vide letter dated 13.7.2018 and reminder dated 23.7.2018 the complainant was informed to get executed the sale deed of the plot in question for an area of 151.36 sq mts but vide email dated 22.11.2019 the complainant was informed that respondent company was getting the residential plot re measured on the site and that he shall be updated regarding the same accordingly. From the aforesaid it transpires that even the respondent was doubtful about the actual size of the plot. In addition to this the complainant vide email dated 4<sup>th</sup> December, 2019 and also the letter appended at page 89 of the case file written by complainant to the respondent it was intimated that plot size on the spot was even less than the area of 149.6 sq mts. approved in the sanctioned plan
11. From the discussion made herein above it is clear that possession of the plot in accordance with sanctioned plan was never offered to the complainant even till the date.
12. It is evident that the sanctioned plan plays a crucial role in determining the permissible area for sale by a promoter. The promoter is bound by the sanctioned scheme and approved layout plan, and any deviation from it may lead to violations of the law. The provisions of Section 14 (1) of the RERA Act, 2016 emphasizes the importance of adhering to the sanctioned scheme and not selling any additional area beyond what is approved. It is clear that builders must strictly adhere to the sanctioned layout plans and schemes for construction of projects. Any unauthorized changes or deviations from the approved plans can lead to violations of the law and may impact the rights of allottees. Transparency and compliance with legal requirements are essential to ensure fairness and adherence to regulatory standards in the real estate sector.



13. In **Pawan Gupta v. Experion Developers Pvt. Ltd.** the National Consumer Disputes Redressal Commission, New Delhi in consumer case NO. 285 OF 2018 decided on 26 Aug 2020 has held as under

*“17. The complaints have been filed mainly for two reasons. The first is that the opposite party has demanded extra money for excess area and second is the delay in handing over the possession. In respect of excess area, the complainant has made a point that without any basis the opposite party sent the demand for excess area and the certificate of the architect was sent to the complainant, which is of a later date. The justification given by the opposite party that on the basis of the internal report of the architect the demand was made for excess area is not acceptable because no such report or any other document has been filed by the opposite party to prove the excess area. Once the original plan is approved by the competent authority, the areas of residential unit as well as of the common spaces and common buildings are specified and super area cannot change until there is change in either the area of the flat or in the area of any of the common buildings or the total area of the project (plot area) is changed. The real test for excess area would be that the opposite party should provide a comparison of the areas of the original approved common spaces and the flats with finally approved common spaces/ buildings and the flats. This has not been done. In fact, this is a common practice adopted by majority of builders/developers which is basically an unfair trade practice. This has become a means to extract extra money from the allottees at the time when allottee cannot leave the project as his substantial amount is locked in the project and he is about to take possession.”*

14. Further the RERD Act, 2016 makes it mandatory on the part of the builder to stick with sanctioned maps and layout plans approved by the competent authorities prior to starting a real estate project. The promoter must develop the project in



accordance with such sanctioned plans and in normal circumstances builder cannot deviate from the same and cannot arbitrarily demand extra payment from allottees for excess area without providing a proper justification and comparison with the originally approved plans. This is considered an unfair trade practice as was held by the Hon'ble Supreme Court in **Experion Developers Private Limited VS Himanshu Dewan And Sonali Dewan** 2023 0 AIR(SC) 4503; 2023 5 Supreme 735.

15. Therefore it is more than clear from the discussion made herein above and also in view of the admission made by the respondent in para XVIII of their reply that they had charged for area more than as prescribed in sanctioned plan and offered possession of the plot area 181.37 sq mts of plot no. 158 where as the approved sanctioned area of the plot was 149.6 sq mts and for the same the promoter is liable to be penalized.
16. Further a prayer for refund was made by the complainant by way of an application dated 21.05.2024, the copy of which was also supplied to the respondent. Since the possession in accordance with law and approved sanctioned plan was not offered to the complainant therefore he has every right to refuse the same. Section 18 (1) of the RERD Act, 2016 reads as under

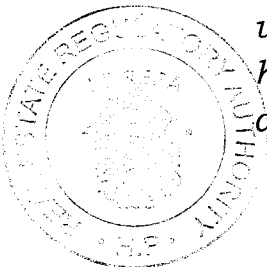
*Section 18 Return of amount and compensation.*

*(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without*



*prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

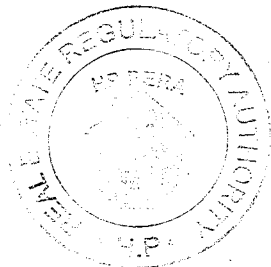
*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

17. Further the Hon'ble Supreme Court in the case of **Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P.** and Ors MANU/SC/1056/2021

*"22. If we take a conjoint reading of Sub-sections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable Under Sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.*

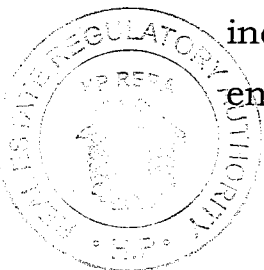
*23. Correspondingly, Section 19 of the Act spells out "Rights and duties of allottees". Section 19(3) makes the allottee entitled to claim possession of the apartment, plot or building, as the case may be. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund of amount paid along with interest and compensation in the manner prescribed under the Act.*

*24. Section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both these provisions recognize right of an allottee two distinct remedies, viz., refund of the amount together with interest or interest for delayed handing over of possession and compensation.*

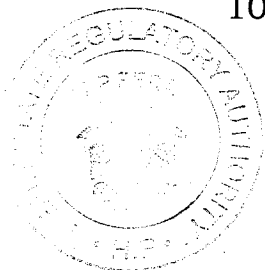


25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

18. The ratio of the aforesaid judgment is that conjoint reading of Sub-sections (1), (2) and (3) of Section 18 of the RERD Act, 2016, is that the allottee has the liberty, if he intends to withdraw from the project he is entitled to refund along with interest at rate as may be prescribed. Right to seek refund in terms of the aforesaid judgment is unqualified and is not dependent on any contingencies or stipulations thereof and is also regardless of unforeseen events or stay orders of the Court/Tribunal, which in either way is or are not attributable to the allottee.
19. 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. 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. The flat or



- plot buyer is entitled to seek a refund of the amount paid, along with appropriate compensation
20. 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.
21. Further RERD Act, 2016 is a special Act and the rate of interest has been prescribed in the Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 formulated therein as under:
- Rule 15 -Interest payable by promoter and allottee  
*The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent as mentioned under Section 12,18 and 19 of the Act:*  
*Provided that in case the State Bank of India marginal cost of lending rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix, from time to time for lending to the general public.*  
*Provided further if the allottee does not intend to withdraw from the project, he shall be paid by the promoter an interest which shall be the State Bank of India highest marginal cost of lending rate*
22. The SBI marginal cost of lending (in short MCLR) as on date of passing of this order is 8.85 %. Hence the rate of interest would be 8.85% + 2% i.e.10.85% per annum. Therefore, interest on the return of the amount received by respondent qua the plot in question shall be charged at 10.85% per annum at simple rate of interest.

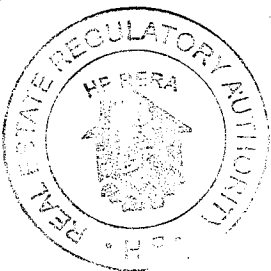


23. The respondent is liable to pay penalty for charging excess payment and offering plot area more than the area prescribed in the sanctioned plan. Further the respondent has harassed the complainant by neither giving possession of full area of the sanctioned plan nor refunding the amount since the year 2014.

24. **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 Complaint is allowed. The respondent promoter is directed to a refund of Rs. 16,60,660/- (**Sixteen Lakhs, Sixty Thousand, Six Hundred and Sixty 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 8.85 % hence the rate of interest would be 8.85 %+ 2% i.e. 10.85 %. It is clarified that the interest shall be payable by the respondent from the dates on which different payments were made by the complainant to the respondent till date the amount and interest thereon is refunded by the respondent.
- ii. The refund along with interest is to be paid by the respondent/promoter to the complainant within 60 days from the date of passing of this order failing which respondent is further liable under Section 63 of the RERD Act, 2016 for a per day penalty of Rs 10,000/- till such default in making refund of the entire amount continues.





- iii. The respondent under Section 61 of the RERD Act, 2016 is directed to pay a penalty of Rs Five Lakhs within 60 days for the unfair trade practice of selling area more than the area prescribed in the approved sanctioned plan as discussed herein above.
- iv. For seeking compensation the complainant is at liberty to approach the Adjudicating Officer under Section 71 and 72 of the Act Ibid.

*Badalia*  
**B.C. Badalia**  
**MEMBER**

*skand*  
**Dr. Shrikant Baldi**  
**CHAIRPERSON**

