

**REAL ESTATE REGULATORY AUTHORITY  
HIMACHAL PRADESH**

Compliantno.HPRERA2022005/C

**IN THE MATTER OF:-**

Smt. Geeta daughter of Sh. Ram Singh, Resident of, House no. 1461, Sector -  
23 B, Chandigarh

.....Complainant

**VERSUS**

1. Ahlawat Developer and Promoters (Partnership Firm) DSS 320, First Floor, Sector 9, Panchkula-134109
2. Jagjit Singh Ahlawat, Son of Umed Singh, Resident of, Himachal One (Opposite Dr. Reddy laboratories Vill. Malku Majra, Baddi, HP
3. Jagjit Singh Ahlawat, Ahlawat Developers and Promoters, House No. 46, First Floor, Sector 10 Panchkula, Haryana.

.....Respondent(s)

**Present:-Sh. Ranjit Singh Saini Ld. Counsel for complainant alongwith Smt. Geeta**

**Smt. Neha Gupta, Ld. Counsel for respondent alongwith Sh. Jagjit Singh Ahlawat**

**Final date of hearing (through WebEx):03.06.2023**

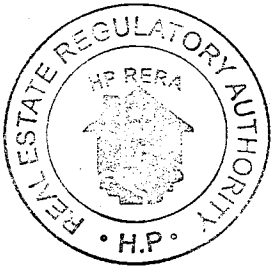
**Date of pronouncement of order: 03.07.2023**

**Order**

**Coram:- Chairperson and Member**

**Facts of the Complaint:**

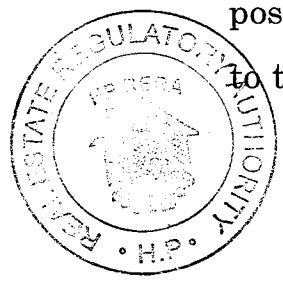
1. That the relevant facts in brief giving rise to the present petition are that a 3 Bed Room Flat no.101, Himachal One situated at Village MalkuMajra, Baddi, Tehsil Nalagarh, District Solan, Himachal Pradesh was purchased



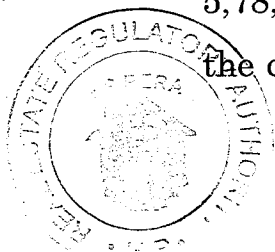
in December 2009 for Rs 21.50 Lakhs plus Rs 1.50 Lakhs for car parking i.e. total amount of Rs. 23 Lakhs vide agreement for sale dated 23.12.2009. The full payment of Rs.23 Lakhs was made on 30.01.2010 and no due certificate was issued. Further additional payment of Rs.2.95 Lakhs was made on 14.04.2012 for electricity charges, EDC, service Tax and Maintenance security as demanded by the promoter vide letter no.ADP/2012 dated 05.01.2012. The possession of the apartment was agreed to be delivered within 30 months. The complainant has stated that , the possession has not been handed over till date and the promoter/respondent is using the flat as a store. Therefore a prayer for refund of the entire amount paid along with interest was made to the Authority.

## 2. Reply-

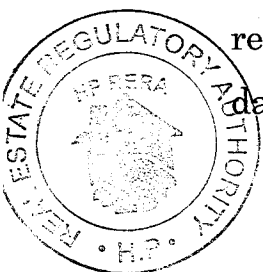
In the reply the allotment and execution of agreement for sale was admitted by the respondent. He has mentioned that the complainant had paid a total sum of Rs 5,75,000/- as the booking amount against the total sale consideration of Rs 23,89,275/- excluding the service tax, car parking charges and other charges as per Para 1(a) of the agreement for sale dated 23.12.2009. That the remaining amount was to be paid as per the Construction Linked Payment Plan provided in Para 1(a) of the agreement for sale. The complainant opted for the Down Payment Plan as against Construction Linked Plan to avail 10% discount on the Basic Sales Price and accordingly, the cost of the apartment was revised from Rs23,89,275/- plus car parking charges of Rs 1,50,000/- (total of 25,39,275/-) to Rs 21,50,000/- plus car parking charges of Rs 1,50,000 (total of Rs 23,00,000/-). It was further admitted that the complainant paid the total amount of Rs 23 Lakhs by the end of January 2010. It was further pleaded that though it was no where stipulated in the agreement for sale dated 23.12.2009 that the promoter shall pay any amount to the buyer before the delivery of possession of the apartment, yet the respondent paid a sum of Rs 3.4 Lakhs to the complainant and her father Sh. Ram Singh @ Rs 10,000/- per month



for 34 months from February 2010 till November 2012 when the physical possession was offered in writing. The payment of Rs.10,000/- per month was stopped from December 2012 after the physical possession was offered and the copy of receipts are at annexure 1 with the written Statement. The possession of the said apartment was to be delivered within 30 months from the date of start of construction of the particular tower (Tower A-1). The agreement for sale was signed on 23.12.2009 and the period of 30 months was to complete on 30.06.2012. The respondent wrote to the complainant on 5<sup>th</sup> January, 2012 through speed post no EP142717205IN dated 06.01.2012 that the apartment is ready for possession and requested the complainant to clear the outstanding payments. It was further pleaded that in the letter dated 5.01.2012 it was stipulated that the maintenance charges for upkeep of the building and common services shall commence immediately after handing over the possession of the apartment. A reminder was sent to the complainant on 20.03.2012 through speed post no EH3497552301N dated 21.03.2012 which is annexure 3 with the written statement to pay the outstanding charges/ Govt dues before the possession of the apartment could be handed over to the complainant. The father of the complainant visited the site on 15.04.2012 and handed over the cheque of Rs 2,95,000 dated 15.04.2012 towards the outstanding payments. The complainant was offered possession of the apartment on 26<sup>th</sup> November, 2012 through letter sent through Speed Post No EH417828392IN which is annexure- 4 dated 27.11.2012 with the written statement. The complainant along with her father Sh. Ram Singh visited the site on 1.12.2012 for physical possession / handing over of the apartment. The NOC was issued on the same date and the site engineer was instructed to hand over the physical possession of the apartment. The complainant has already availed the financial benefit of Rs. 3,40,000/- plus Rs 2,38,927/- (total of Rs 5,78,927/-) before the physical possession was offered / flat handed over to the complainant. He also contended that the complainant, after taking over



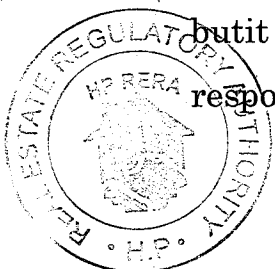
the possession of the apartment, paid a sum of Rs 3,00,000/- to her relative Sh. Jaivir Singh Dahiya who had also booked an apartment No 102 in Tower A-1 adjoining to the apartment No 101 of the complainant for interior work including steel cupboards etc. The respondent was approached by Dr Reddy's Laboratories towards middle of 2013 for taking 20 apartments on lease rent in the fully operational Tower A-1 in the Housing Project 'Himachal One' for their employees. The respondent spoke to the father of the complainant in case they were interested in renting out the flat. It was informed by Sh. Ram Singh that they have kept the flat for his grandson who may study engineering from Baddi. It was further pleaded that the respondent finally rented out 14 flats for Dr Reddy's Laboratories and the copy of the lease deed with Dr Reddy's Laboratories is at Annexure 6 with the written statement. That there was no correspondence from the complainant after 1<sup>st</sup> December, 2012 either regarding status of her flat or any payments due to her by the respondent. The respondent convened a meeting of the buyer / allottees of the flats on 30.10.2021 to initiate the process of registry of sale deed / execution of conveyance deed and the complainant attended the said meeting held on 30.10.2021. The complainant met the respondent separately after the meeting of 30.10.2021 was over and informed that she is not interested in the registry and would rather like to sell the flat. The complainant sent a letter dated 24.11.2021 stating that the physical possession of the flat was not given to her and the reply to the letter dated 24.11.2021 was sent by the respondent on 15.12.2021 (Annexure 9) through Speed Post No EH773430518IN dated 16.12.2021. He again wrote a letter dated 01.01.2022 to the respondent wherein she had admitted the payment of Rs 10,000/- per month and also the payment made to Sh. Jaivir Singh Dahiya for interior works in the flat. In the said letter dated 01.01.2022, the complainant called upon the respondent to get the registry of her flat executed in her favour within 10 days. The respondent replied to a letter dated 01.01.2022 of the



complainant vide letter dated 8<sup>th</sup> January 2022 sent through Speed Post No EH769878185IN dated 08.01.2022 which is annexure 10 with the written statement. It is stated that, the complainant has filed the present complaint just to wriggle out of her liability to pay the maintenance charges and minimum demand charges @ Rs 1000 per month from December 2012 which have to be cleared before the registry of sale deed can be executed in her favour. Further the complainant made attempts to sell the flat but is not getting a good price for want of registration of the flat in her name. The complainant is also aware of the fact that permission under Section 118 of the HP Tenancy and Land Reforms Act 1975 may take a considerable time. A prayer was made to direct the complainant to execute the conveyance deed after clearing all the outstanding payments towards the Flat No 101 in Tower A-1 after obtaining permission under Section 118 of the HP Tenancy and Land Reforms Act 1972. It was further pleaded that the respondent undertakes to execute the registry within 30 days after the submission of grant of permission under Section 118 of the HP Tenancy and Land Reforms Act 1972.

### 3. Rejoinder

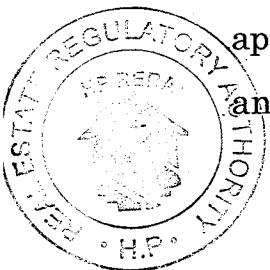
It was pleaded in the rejoinder that respondent has failed to obtain occupation and completion certificate even after a lapse of more than 12 years. That either respondent shall obtain occupation cum completion certificate from the competent authority and possession in accordance with law be handed over to the complainant or the money paid by the complainant shall be refunded. That nothing remains due and payable on behalf of the complainant to the respondent and the entire money stands paid. He further stated that the respondent is time and again asking the complainant to sign the documents for obtaining permission under section 118 HP Tenancy and Land Reforms Act, 1972 from the State Government but it was pleaded that in the absence of occupation certificate which the respondent doesn't possess, the State will not accord permission under



Section 118 of the Act *ibid*. With these pleadings it was submitted that the complaint may be allowed in terms of prayer made in the complaint.

#### 4. Arguments on behalf of complainant-

In the present matter, it was argued that the agreement for sale was executed between the parties on 23<sup>rd</sup> December, 2009. It was further argued that the flat was to be completed within thirty months from the date of execution of agreement for sale. It was further argued that all the amount towards sale consideration of Rs. 23 Lakhs was paid to the respondent. It was further argued that on 05.01.2012 the respondent raised another demand of Rs. 2,95,000/- from the complainant. The same was paid vide Annexure A-4 with the complaint on 14th April, 2012. It was further argued that before the complainant could take the possession of the apartment/flat the respondent converted the apartment as its store and started paying the complainant a rental of Rs.10,000/- per month. It was further argued that on 26th November, 2012 the offer of possession was made. In lieu of the offer of possession the complainant visited the apartment but because it was made a store therefore the possession of the same could not be handed over. It was further argued that thereafter the respondent stopped paying rental of Rs.10,000/- per month to the complainant and a legal notice in respect to the same was served on the respondent on 14.12.2021. Thereafter the present complaint was filed with a prayer to refund the amount paid by the complainant. It was further argued that no completion and occupation certificate has been issued in favour of the project in question by the concerned competent Authorities. Therefore, it was argued that the possession in accordance with law could not be delivered by the respondent. It was further argued on behalf of the complainant that in 2019 when she visited the flat the bathroom fixtures were removed and the almirahs constructed could not be affixed in the apartment because the flat was being used as a store by the respondent and was in his possession. On the query of the Authority how she could

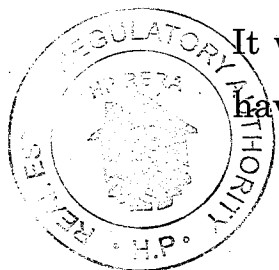


hand over the keys to Mr. Dahiya for construction of an almirahs in the flat when she did not have the keys. She clarified that the keys were taken from the caretaker Sushil and handed over to Mr Dahiya. The complainant further admitted that the amount of Rs.3.4 Lakhs was received from respondent. With these prayers it was argued that the order of refund along with interest be passed in favour of the complainant.

#### **5. Arguments on behalf of Respondent-**

It was argued on behalf of the respondent that as per agreement for sale dated 23.12.2009 the total sale consideration for the flat was Rs. 23,89,275/- . It was further argued that as per clause no. 14 the possession of the apartment was to be delivered within thirty months. It was further argued that offer of possession was made on 5th January, 2012 which is twenty five months from the date of execution of agreement for sale. Therefore, it was argued that the possession of the apartment was offered well within the time as stipulated in the agreement for sale. The payment of Rs. 2.95 Lakhs received from the complainant was admitted. It was further argued that the offer of possession was made well within the time stipulated in the agreement for sale and the complaint filed by the complainant after a lapse of 10 years is barred by delay and laches and therefore it cannot be entertained at this stage. It was further argued that the complainant had cleared the dues and was advised on 1<sup>st</sup> December, 2012 to get the physical possession of the flat. It was further argued that the complainant after lapse of seven to eight years decided to write two letters to the respondent claiming the possession of the apartment. It was further argued that the possession of the flat was never with the respondent. It was further argued that the respondent vide its letter dated 15th December, 2021 had called upon the complainant to get the sale deed executed after obtaining the permission under Section 118 of H.P Tenancy and Land Reforms Act, 1972.

It was further argued that out of twenty flats in Tower-A two sale deeds have been executed in favour of the allottees. It was intimated that



documentation for applying under Section 118 of H.P Tenancy and Land Reforms Act, 1972 was got done after an order was passed by this Authority being order dated 29<sup>th</sup>October, 2022. It was further argued that a request was made to the complainant to submit the documents for applying for permission under Section 118 of the Act *ibid*. It was further argued that there is no clause in the argument for sale to pay Rs. 10,000/- per month to the complainant. However, same was paid to her on monthly basis and a total sum of Rs.3.4 Lakhs was paid to the complainant in this regard. On the query of the Authority to the respondent it was admitted by him that there is no Occupation and Completion Certificate to the project in question. It was further argued that the complainant never raised any grievances with respect to the offer of possession from 2012 till 2019 and this case is only an after thought. It was further argued that the possession was offered way back in the year 2012 and on the direction of the Authority the case for grant for permission under Section 118 of H.P Tenancy and Land Reforms Act, 1972 has also made proceeded with. Therefore the prayer for refund at this stage is not maintainable however the complainant is justified if she asks for execution of sale deed. It was further argued on behalf of the respondent that the payment of Rs. 2,95,000/- over and above the total price consideration of Rs. 23 Lakhs was paid by the complainant only after verifying the status of the flat and therefore it is implied from her acts and conduct that the flat was in habitable condition and ready for the possession to be taken. It was further argued that no prudent allottee would make any payments over and above the total sale price consideration without verifying the status of completion of the flat and therefore it was argued that it does not lie in the mouth of the complainant to turn her stand and say that she never accepted the possession of the flat.





## 6. FINDINGS OF THE AUTHORITY:-

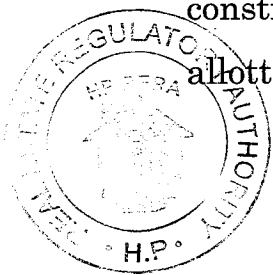
We have heard the arguments advanced by the Ld. Counsels for the complainant & respondent and also perused the record pertaining to the case. We have duly considered the entire submissions and contentions submitted before us during the course of arguments. This Authority is of the view that following is the issue that requires consideration and adjudication namely:-

A. Whether the complainant is entitled to refund of amount paid by him qua Flat no. 101?

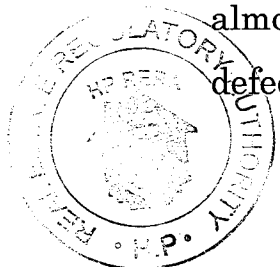
## 7. Whether the complainant is entitled to refund of amount paid by him qua Flat no. 101?

That as per the agreement for sale dated 23<sup>rd</sup> December, 2009 executed between the complainant and respondent qua Flat no. 101 in Tower A-1 the total sale consideration for the flat was agreed to be Rs 23, 89,275/-. There was option of two different payment plans. The complainant as per the reply filed by the respondent, opted for the down payment plan as against construction linked plan to avail 10% discount on the Basic Sales Price and accordingly, the cost of the apartment was revised from Rs 23,89,275/- plus car parking charges of Rs 1,50,000/- (total of 25,39,275/-) to Rs 21,50,000/- plus car parking charges of Rs 1,50,000 (total of Rs 23,00,000/-). It was further admitted in the reply that the complainant paid the total amount of Rs 23 Lakhs by the end of January 2010. A receipt qua the payment of Rs 23 Lakhs is also appended with the complaint which has not been disputed by the respondent. Therefore the payment of Rs 23 Lakhs as total sale consideration is not in dispute.

8. As per clause 14 of the agreement for sale, the possession was to be delivered by the promoter to the allottee within 30 months from the date of sanction of building plan by competent authority or date of start of construction of the particular tower subject to timely payment by the allottee. As held in the aforementioned para the entire sale consideration of

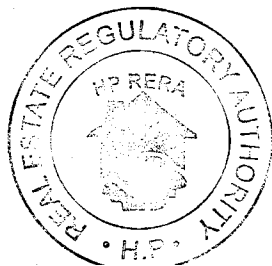


Rs 23 Lakhs was paid to the respondent. The letter dated 5<sup>th</sup> January, 2012 appended by the complainant with her complaint is a letter written by the respondent to the complainant stating there in that the flat in tower A-1 is ready for possession subject to payment of maintenance security @ Rs 75 per sq feet and electricity charges by the complainant. On the basis of the aforementioned letter an amount of Rs 1,18,000/- in lieu of maintenance security and electric charges of Rs 65,000/- (Total Rs 2,95,000/-) was paid by the complainant which fact has been admitted by the respondent. Thereafter on 26<sup>th</sup> November, 2012 ultimately a letter offering possession was made to the complainant and a copy of the same is appended with the complaint. This letter was never refuted in writing or any grievance raised by the complainant within the period of 60 days as per the agreement for sale. The complainant remained silent for about seven years. It was only on 4.11.2019 that the complainant for the first time wrote a letter (copy appended with the complaint) to respondent/ promoter stating that there are certain short comings in the flat and that the flat is being used as store by the respondent. Thereafter reminder letters with respect to the above was also written on 18.12.2019 and 24.11.2021. Further a legal notice was also sent to the respondent on 14.12.2021 raising her claim against the offer of possession made by the respondent in the year 2012. What is not clear is why the complainant waited for almost seven years to state in writing the short comings in the flat. This authority can only rely on the documents appended by both the parties in the case and no presumption or guess work can be done. Fact is that complainant remained silent on the offer of possession within the stipulated time and even thereafter for considerable time. Further this transaction of sale and purchase took place between the parties in the year(s) 2009 to 2012. Here is case, where grievance qua offer of possession was not made by the complainant for almost seven years and on 4.11.2019 for the first time the grievance qua defects in the flat was made. The time to raise grievance as per clause 14 of



the agreement for sale dated 23.12.2009 was 60 days. Clause 14 of the same agreement says that allottee is liable to pay holding charges, if the possession of the flat is not taken within 60 days from the date the offer of possession was made. Although the agreement inter se the parties states levy of holding charges, but this Authority in the case of Sanjay Batra and others versus Omaxe Parkwood complaint no. HPSOCTA11180008 has already held that the promoter cannot claim holding charges relying on the judgment of the Hon'ble Supreme Court in case titled as DLF Home Developers Ltd. and another versus Capital Greens Flat Buyers Association decided on 14<sup>th</sup> December, 2020.

9. Further it is well known principle of legal jurisprudence that "**Vigilantibus Non Dormientibus Jura Subveniunt**" meaning there by that law assists those who are vigilant and not those who are sleeping over their rights. The complaint has been filed after a lapse of ten years and why complainant never raised this issue earlier has not been explained. In such a situation the respondent cannot be burdened, if the complainant/ allottee fails to take over possession of the apartment in question within time agreed in the agreement for sale. Further, no refund or delayed possession at this stage can be granted, as possession was offered in time. It was the duty and obligation of the complainant to have rebutted in writing, the letter for offer of possession served upon him in the year 2012, within the time agreed in the agreement for sale. Therefore, her argument that there were certain defects in the flat cannot be entertained now. However keys of flat if any, with the employee(s) of the respondent promoter shall be handed over to the complainant.
10. Further, this Authority is of the view that once construction of an apartment is complete, during the time frame given in the Agreement for sale, refund should not be allowed as a general rule, except there are other legal issues.



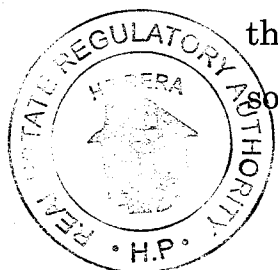
11. Now another important point in this case is that, the sale deed has not been executed till now, which is one of the duty cast upon the respondent under Section 11(4)(f) of the RERD Act, 2016. The Authority had vide its order dated 29.10.2023 recorded that the respondent had submitted the documents pertaining to the complainant qua obtaining permission under Section 118 of the Act *ibid*. But since the complainant is a non-agriculturist in Himachal Pradesh therefore she has to apply for permission to buy the flat and seller being a non agriculturist has to apply for permission to sell under Section 118 of the HP Tenancy and Land Reforms Act, 1972. Grant or rejection of permission under Section 118 of the HP Tenancy and Land Reforms Act, 1972 is not in the domain of either of the parties. At this stage both the parties are directed to pursue the case for grant of permission under Section 118 of the Act *ibid* with the State authorities promptly and sincerely.

12. Further it is admitted by the respondent that there is no part or full completion cum occupation certificate obtained by him with respect to the apartment in question. It is the duty of promoter under Section 11(4)(b) of the RERD Act, 2016 to obtain occupation cum completion certificate and for his failure to do so he is liable to penalty under Section 61 of the RERD Act, 2016.

### 13. Relief

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

- a. The complainant and respondent both being non-agriculturist, in the State of HP were directed during the course of the proceedings on Oct 29<sup>th</sup> 2022, to jointly apply for grant of permission under Section 118 of the HP Tenancy and Land Reforms Act, 1972. They have already done so. Therefore, the parties are directed to pursue the case for grant of



permission under Section 118 of the Act ibid with the concerned authorities, promptly and sincerely. If the required permission as mentioned above is not granted in next five months, then this Authority will re-hear the case and pass appropriate final orders.

- b. Authority may write to the Principal Secretary (Revenue) to the State of Himachal Pradesh to expedite the approval under section 118 of the HP Tenancy and Land Reforms Act, 1972 in this case.
- c. The respondent shall obtain completion and occupancy certificate in favour of flat allotted to the complainant i.e. Flat no. 101 in Tower A-1 of real estate project Himachal One Baddi within 30 days from the passing of this order failing which he shall be liable to pay a penalty of Rs. one Lakh under Section 61 and 63 of the RERD Act, 2016.
- d. The case is adjourned for hearing on 2<sup>nd</sup> December at 11 AM through webex.

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

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

