

**REAL ESTATE REGULATORY AUTHORITY,  
HIMACHAL PRADESH**

**In the matter of:-**

Vijay Kumar Kansal S/O Late Sh. Shyam Lal, Gupta Niwas,  
Jawahar Park Road, The Mall, Solan, H.P.

.....**Complainant**

Versus

1. The Proprietor/Partner/Managing Director/Branch Manager  
Chester Hills Builders, Near Ambusha Resort, Solan HP,  
corporate office at SCO-829, 2<sup>nd</sup> Floor, NAC Mani Majra,  
Chandigarh-160101.
2. Sh. Sudershan Singla, partner M/s N.G. Estate, a group of  
housing known as Chester Hills, Near Mohan Park, Solan,  
Tehsil and District Solan (H.P.)

.....**Non-Complainants/ Respondents**

**Complaint no. HPRERA/ OFL-2021-31**

**Present:** - Sh. Atul Sharma, Advocate for the complainant  
Sh. Vijay Kumar Kansal through WebEx

Sh. Sanjeev Pathania, Advocate along with Sh.  
Sudershan Singla, Authorised Representative,  
M/S N.G. Estates, respondent promoter of Real  
Estate Project Chester Hills, through WebEx

Sh. Prateek Pal, Law officer, RERA Himachal Pradesh

**Final Date of Hearing (Through WebEx): 21.06.2021**

**Date of pronouncement of Order: 19.07.2021.**



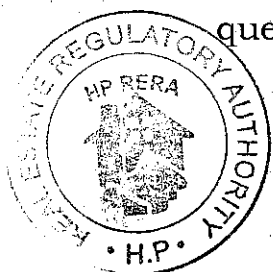
## **ORDER**

### **CORAM: - Chairperson and both Members**

The present matter refers to a Complaint filed under the provisions of the Real Estate (Regulation and Development) Act, 2016, (herein after referred to as the Act.)

#### **1. BRIEF FACTS OF THE CASE :**

That the complainant, Sh. Vijay Kumar Kansal had filed an offline complaint dated 25<sup>th</sup> March, 2021 bearing Complaint no. HPRERA/OFL/2021-31 before this Authority under "Form-M" of the H.P Real Estate (Regulation & Development) Rules, 2017 (hereinafter referred to as the Rules). As per the complaint, the complainant had booked a 1 BHK flat (with one car parking) in the IRIS Block, Flat No. 203, II Floor of "Chester Hills", a group-housing project situated at village Ber Khas Tehsil and District Solan, Himachal Pradesh which has been developed/constructed by the M/S N.G. Estates with the proposed price of Rs. 17,75,000/- (Seventeen Lakhs, Seventy-Five Thousand only). It has been further provided in the complaint that the complainant has paid an initial booking amount of Rs. 1,80,000/- (One Lakh, Eighty Thousand) through cheques. The complainant has alleged that at the time of booking of the flat in question, the sales team of the project in question had told him that the concerned flat will be a 1BHK Flat

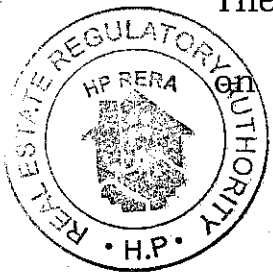


comprising of Bedroom, Hall and Kitchen with 473 square feet area but when partially completed flat was shown to him then it was found to be a single room measuring approximately 309 square feet excluding balcony. It has been further submitted that the said single room was not as prescribed and instead of a kitchen, a single slab has been provided for keeping gas stove over it. The complainant has also asserted that there was no hall in the flat in question and the same does not justify the 1BHK term in any manner whatsoever. Lastly, it has been submitted that the complainant had issued a legal notice through his advocate to the respondent promoter(s) against which an inappropriate reply was received which did not provide any concrete solution for the matter in issue. In view of these submissions, the complainant has sought the intervention of this Authority to direct the respondent promoter(s) to either provide a proper 1 BHK flat with parking to the complainant or to refund the advance amount that has been paid by him at the time of the booking of the flat along with interest at the rate of 18 percent. Further, a compensation of Rs 5,00,000/- (Rupees Five Lakh) has been sought as damages and for mental agony as well as litigation expenses.

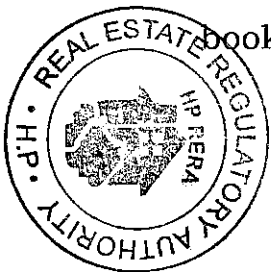
## **2. REPLY TO THE COMPLAINT:**

The respondent promoter(s) have filed detailed reply to the complaint

on 21<sup>st</sup> May, 2021 through email. It has been contended by the



respondent promoter(s) in their reply that the complaint is liable to be dismissed on the grounds that the complainant has failed to mention the provision of the Act *ibid* under which he has invoked the jurisdiction of this Authority. It has been further submitted that the complainant has not approached this Authority with clean hands and are guilty of *suppresio veri suggestio falsi* applies against the complainant and this complaint deserves to be dismissed. It has been submitted that complainant has no locus standi to file and maintain the present complaint and that no cause of action has arisen in his favour and as such also the complaint is liable to be dismissed. On merits, it has been averred that the replying respondent promoter(s) had made an application to the Authority for registration of the project in question which was accompanied with the sanctioned plan, layout plan and specifications of the project, proforma of the allotment letter, agreement for sale, the conveyance deed proposed to be signed with the allottees, the number, type and the carpet area of apartments for sale in the project. It has been submitted that respondents have started construction after getting the maps approved from the competent authority and the construction has been done according to approved maps/plan. It has been further submitted that complainant along with his wife personally visited the project and only after their satisfaction they booked the apartment in question i.e. 1 BHK, 2<sup>nd</sup> Floor, Block- IRIS,



Flat No. 203 having area 473 square feet in the project in question. It was further averred by the respondent promoters that the apartment has been constructed in consonance with contents of the advertisement, allotment letter and the agreement for sale. The replying respondent promoter(s) have mentioned about an allotment letter dated 09.08.2019 issued in the name of the complainant's wife Smt. Rita Rani Kansal wherein, the complainant has agreed as under -

*"I/ we agree to pay the instalments and additional charges as per the payment plan (opted by me/us) as shown in the price list and/or stipulated/demanded by the company, failing which the allotment will be cancelled and the earnest money, if any, shall be forfeited by the company. "*

However, the same allotment letter has not been annexed to the reply. It has been further submitted that the said allottee, i.e. the wife of the complainant has been served with many demand letters dated 20.11.2019, 14.12.2019, 06.01.2020, 03.03.2020, 20.05.2020 and 01.07.2020 through the registered post (the aforesaid demand letters have not been annexed with the reply) for making outstanding payments as per schedule given at the time of the allotment letter but no such payments were made by the allottee (wife of complainant) or the complainant. It has been averred that the agreement of sale has been executed between the complainant



and the replying respondents at the instance and behest of the complainant and his wife and accordingly the name of the allottee has been changed in the aforesaid agreement and therefore, the complainant being a successor in interest is also bound by all the previous terms and conditions. The contentions of the complainant pertaining to the flat/apartment in question not being as per specification as represented to him at the time of the booking of the same, have been specifically denied by the replying respondent promoter(s). It has been submitted that no flat/apartment having one room and hall had ever been offered to the complainant and that when the complainant inspected the flat/apartment with his wife physically, there was neither hall at the spot nor was the same mentioned in the approved plan. It has been further submitted that construction has been made as per the approved plan and there has been no deviation from the same. It has been alleged that the complainant entered into the agreement for sale with his free will and volition after understanding the contents of the same. It has been further stated in the reply that since the complainant has failed to make the requisite payments as per time schedule, the advance amount paid by him has been forfeited. Lastly, it has been alleged that the respondent promoter(s) have faced harassment and monetary loss during the period of default by the complainant for which the complainant is liable to compensate the respondent



prayed for the dismissal of the complaint with costs terming the same to be misconceived, false, frivolous and vexatious.

**3. REJOINDER TO THE REPLY:**

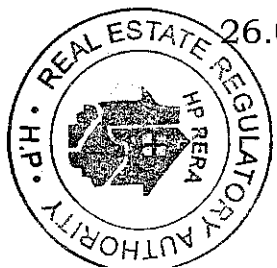
The complainant has responded to the reply so filed by the respondent promoter(s) by filing rejoinder on 3<sup>rd</sup> June, 2021. It has been submitted in the rejoinder by the complainant that when the flat in question was booked, even the excavation work was not initiated and that it was a flat hill. It has been further submitted that concerned flat is just a single room with a slab in the name of kitchen and is in no manner 473 square feet in area as alleged by the respondent promoter(s) rather the actual built up area of the same is 309.46 square feet (including toilet, hall and excluding balcony). It has been further submitted that the complainant has got the measurement of flat done by an architect, whose report is annexed with the rejoinder as Annexure-A1 vide which it is clear that the measurement of the flat is not as per specifications in the allotment letter and agreement for sale. It has been contended that the agreement for sale has been signed by the complainant for 1 BHK apartment and not for the apartment in question being given to him. It has further been stated that respondent promoter(s) have not denied this aspect of the matter in their reply to the complaint and legal notice (Annexure-4 of the complaint). In respect of the allegations of the respondent promoter(s) pertaining to the non-



payment of the balance amount, it has been submitted that the complainant is ready and willing to pay the same if 1 BHK apartment/flat as per standard norms of construction is given to him. The term 1 BHK has been explained to mean as B=Bedroom, H=Hall and K=Kitchen. It has been alleged that the respondent promoter(s) have already deviated from the approved plan by raising buildings in place of approved parks and open spaces. In light of the above, the complainant has prayed that the complaint may be allowed.

#### **4. ARGUMENTS ADVANCED:**

The final arguments in the case were heard on 21<sup>st</sup> June, 2021. Sh. Atul Sharma, Ld. Advocate representing the complainant has contended before this Authority that when the representatives of the respondent promoter(s) approached the complainant with the proposal of the flat in question, no construction had begun at the spot and the complainant was told that a proper 1 BHK flat measuring 473 square feet will be given to him upon construction. On the basis of this representation, the flat in question was booked on 29.06.2020 vide allotment letter dated 29.06.2020 (Annexure 1 of the complaint) for an amount of Rs. 17,75,000 /- (Rupees Seventeen Lakh, Seventy-Five Thousand). He has further contended that an agreement for sale (Annexure 2) was entered into by the parties on 26.09.2021 for a 1 BHK flat having an area of 473 square feet. He





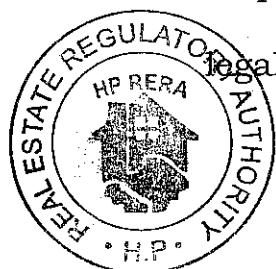
has argued that it was never clarified to the complainant as to what would be the carpet area of the flat in question. To substantiate his claim, he drew the attention of the Authority towards Clause 1(a) of the agreement of sale/apartment buyer's agreement which is reproduced hereunder-

*“(a) That the Promoter hereby agrees to allot to the Purchaser(s) and the Purchaser(s) hereof agrees to purchase one Apartment bearing 1 BHK, 2<sup>nd</sup> Floor, Block-IRIS, Flat No. 203 Area 473 sq. ft in the complex called “Chester Hills” situated at Village BER KHAS Tehsil and District Solan (H.P) (Hereinafter referred to as “the said Apartment”).)”*

On the basis of the above, he has argued that in this clause only the term “Area” has been specified and it has not been clarified as to whether it is “carpet area” or the “super area”.

He has further contended that when the partially constructed flat was visited by the complainant, he found the same to be very congested comprising of one blank hall, a slab and a congested bathroom and it was in no way 1 BHK as per apartment buyers agreement dated 29.06.2020 executed inter se the parties. He has further argued that the factum of flat in question being 1 BHK having an area of 473 square feet has neither been denied/ disputed by the respondent promoter(s) in their reply to the complaint or reply to the

legal notice. He has further argued that there is a proper 1 BHK flat



on a different floor of the same building can be allotted to the complainant who is still ready and willing to pay the balance amount. He has further argued that the complainant got the apartment in question inspected by an architect and report of the same has been annexed as Annexure A1 to the rejoinder. According to the inspection report the complainant has substantially proved the fact that the flat in question contains a hall and a toilet and is not as per the specification agreed. Further, it has been contended by the Ld. Counsel for the complainant that the respondent promoter(s) are not ready and willing to resolve the issue amicably. The Ld. Counsel has further argued that the complainant is still willing to make the balance payment provided a proper 1 BHK flat in terms of apartment buyers agreement is allotted to him.

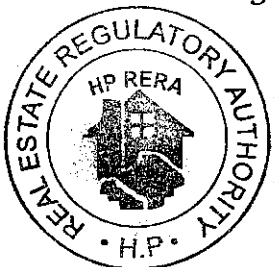
5. Sh. Sanjeev Pathania, Ld. Counsel for the respondent promoter at the outset has argued that the present complaint is frivolous, vexatious and is bad in law since the provision of the Act under which relief is sought for has not been specified in the complaint. The Ld. Counsel has further argued that there was default on the part of the complainant in making regular payments of the balance amount as per schedule therefore advance/booking amount paid by the complainant has been forfeited by the respondent promoter(s) in accordance with the terms of the agreement. He has further argued

that the construction of the flat as well as the project has been



carried out in accordance with the approved plan and that complainant was well aware about the same. On a specific query being put by this Authority as to what is the carpet area of the flat in question, the Ld. Counsel upon instruction from Sh. Sudershan Singla, one of the respondent promoter(s), submitted that the same is around 309 square feet in area. In order to obtain or discover proper facts the Authority asked a specific question as to why the apartment buyer's agreement and the agreement to sell are not as per the provisions of the Act and rules made thereunder. The Ld. Counsel for the respondent promoter further contended that the "area" of 473 square feet as mentioned in the agreement is supposed to mean "super area" and to substantiate this claim he drew the attention of this Authority to clause 1 (b) of the agreement to sell/apartment buyer's agreement (Annexure-2 to the complaint) which is reproduced hereunder-

*"(b) That the built up area shall mean and include the covered area, verandah & balcony inclusive of the area under periphery walls, area under the columns and walls and the Super Area shall include built up area, common stairs of the entire complex, circulation area, lifts, parking area. However, this area shall be tentative and shall be subject to change to the extent of 5% both plus and minus due to exigencies and to unavoidable reason related to project."*

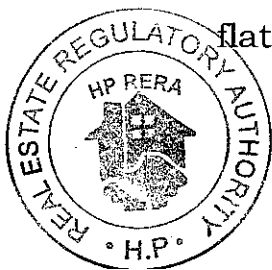


He has further contended that the complainant has not adduced any documentary evidence in favour of his claim.

6. Sh.Sudershan Singla, one of the respondent promoter(s) has submitted that the approved plans of the project in question are clearly displayed in their office and everybody has access to them. He further submitted that the advance amount was forfeited only when payment of the instalments was not made by the complainant in spite of numerous demand letters served upon him through registered post. Sh. Sudershan Singla replied in negative/denied the specific query of this Authority as to whether in approved plans, the block in which the flat in question is situated has been named as IRIS Block. He further clarified that the blocks are numbered instead and the term "IRIS" is just a marketing name. On being asked as to whether the agreement to sell is in accordance with the provisions of the Act and Rules thereunder, Mr. Sudershan Singla was not able to give cogent reply.

**7. REBUTTAL ARGUMENTS:**

The Ld. Counsel for the respondent promoter has rebutted the stance of the respondent promoter(s) by arguing that in the apartment buyer's agreement under clause 1 (a) only the term area has been specified and not super area. He further reiterated that the complainant is ready to pay the balance amount if a proper 1 BHK flat in terms of Apartment Buyers agreement is provided to them.

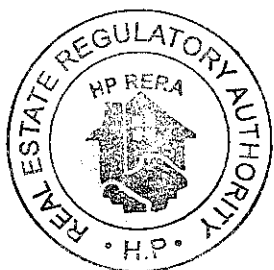


## **8. FINDINGS/CONCLUSIONS:**

We have heard the arguments advanced by the Ld. Counsels of the complainant and Respondent and have perused the record pertaining to the case.

The facts of the case and amount paid as advance by the complaint to the respondent are not disputed. There is also no dispute about the signed allotment letter including the initial allotment letter which lead to the present allotment letter and executed Apartment Buyer agreement. Since there are no dispute about the amount advanced and documents pertaining to the case, in our view, the following issues require consideration and adjudication in the present case:-

- i) Jurisdiction of the Authority and maintainability of the complaint**
- ii) Whether the residential unit for which allotment letter is issued and apartment buyer agreement has been entered into by both the parties can be called/ termed as a 1BHK flat viz-a-viz single room/hall with a kitchenette/ kitchen work top, toilet and a balcony as constructed/ coming up at site?**
- iii) Whether the agreement signed between the parties (referred to as Builder Buyer's Agreement) is in consonance with the provisions of the Act and rules made thereunder?**
- iv) Whether the complainant is entitled to get refund of the money along with interest or not?**



i) **Jurisdiction of the Authority and Maintainability of the complaint**

To decide about the jurisdiction of the Authority, we would like to discuss the various provisions of the Act, in this regard.

Section 31 of the Act prescribes that any aggrieved person can file a complaint before the Authority or the adjudicating Officers as the case may be for any violation of the provisions of the Act. Further, Rule 23 of the Himachal Pradesh Real Estate (Regulation and Development) Rules 2017 provides the procedure of filing complaint with the Authority and prescribes “Form M” for filing a complaint. In this case, the complainant has filed the complaints in “Form-M.”

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

*“to ensure compliance of the obligation cast upon the promoter, the allottee and the real estate agent under this act and the rules and regulation made their under”.*

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

The promoter shall—

- (a) *and functions under the provisions of this Act or the rules and regulations made there under or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent Authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-Section (3) of Section 14, shall continue even after the conveyance deed of all the*



*apartments, plots or buildings, as the case may be, to the allottees are executed.”*

*Section 12 of the Act provides as under:*

*Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this act:*

*Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus or the model apartment plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act*

*Section 19 (4) of the act provides as under:*

*(4) “The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made there under.”*

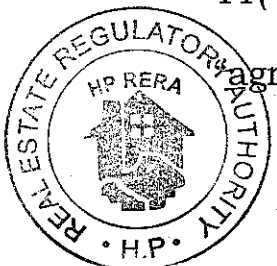
*Further Section 38 (1) of the Act says*

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

*Thus the Section 34(f) of the Act empowers the Authority to ensure compliance of any obligation cast upon the promoter and Section*

*11(4)(a) (Supra) cast obligation on the promoter to implement*

*agreement for sale”. Further, Section 37 of the Act empowers the*



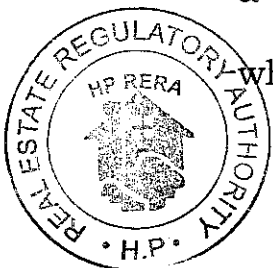
Authority to issue directions in discharge of its function provided under the Act. The Authority also has power to impose penalties under Section 59 to 63 for various contraventions of the provisions of the Act. Moreover, Section 38 (1) of the Act in unambiguous terms empowers the Authority to impose 'penalty or interest.'

In the present case the complainant has asked for single relief to either receive a 1BHK flat as per terms of the agreement or refund of the amount advanced by him to the promoter along with interest @ 18% and compensation amount. This Authority, having no power to adjudicate the compensation issue, has restricted itself to the adjudication of others issues including refund along with interest.

Further, the respondent promoter(s) in their reply had raised an issue that the complaint is not maintainable as the complainant failed to mention the specific provision under which he had sought the relief in the complaint. On this issue, the Authority has relied on the following judgment of the Supreme court-

In **State of Karnataka versus Muniyalla AIR 1985 SC 470** the Hon'ble Supreme Court has held that mere non mentioning or wrong mentioning of provisions of law will not affect the jurisdiction of the Court if the same can be exercised under some provision of law. As held in **Collector Land Acquisition v. Kati ji (1987 (2) SCC 107)**

a pragmatic approach has to be adopted and when substantial justice and technical considerations are pitted





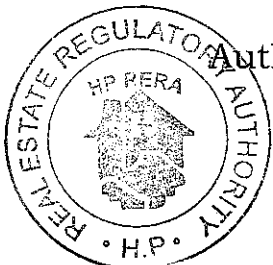
against each other, cause of substantial justice deserves to be preferred. Therefore, the complaint cannot be dismissed on the sole ground of non mentioning of the provisions.

**ii) Whether the residential unit for which allotment letter is issued and agreement has been entered into by both the parties, can be called/ termed as 1BHK flat or single room/ bachelor apartment with a kitchenette, toilet and a balcony**

(A) The allotment letter dated 29.6.2020 annexed with the complaint as annexure-1, as issued subsequent to the original allotment letter dated 09.08.2019, issued in the name of the wife of the complainant, Smt Rita Rani Kansal, has not been disputed and the same has been annexed by the complainant with his complaint. The said allotment letter dated 29.06.2020 mentions following details

- i) Name of the allottee along with his address,
- ii) Total cost of the flat, Rs. 17,75,000/-
- iii) Flat no-203
- iv) Block-IRIS
- v) **Super Area-473 Sft**
- vi) Floor- 2<sup>nd</sup>

The format of the above said allotment letter is not as per format prescribed under the Act and is different from the Performa/ specimen of allotment letter available on the web portal of the Authority. The aforementioned allotment letter was uploaded by the



respondent at the time of registration of the real estate project, “Chester Hills”, and after due consideration of these documents registration was granted by the Authority. There is no mention of the super area in the said Performa of Allotment letter. It is extremely important to mention that it has been made very clear in the H.P Real Estate (Regulation and Development) Act, 2016 that the registered real estate projects will specify only CARPET AREA, as laid down clearly in section 4(2)(h), reproduced here below,

*(h)The number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace area[appurtenant] with the apartment, if any.*

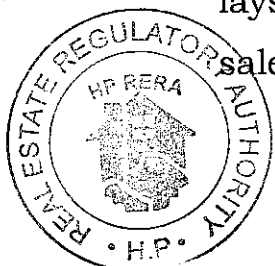
And also laid down clearly in Rule 4 sub rule 3 of H.P Real Estate (Regulation and Development) Rules 2017, reproduced here below,

*(3) The promoter shall disclose the size of the apartment based on carpet area even if earlier sold on any other basis such as super area, super built up area, built up area etc----*

The definition of carpet area has also been provided in section 2(k) of the Act *ibid*.

The mentioned super area of 473 sq.ft in the allotment letter, is in contravention of the provisions of the Act and Rules. The said allotment letter, as such does not mention any other detail of the flat 1BHK.

- (B) The apartment buyer’s agreement, dated 29<sup>th</sup> June 2020, annexed with the complaint as annexure-2, is a very important document that lays down all the terms and conditions of the contract including sale, sale consideration, maintenance, possession, rights and obligations



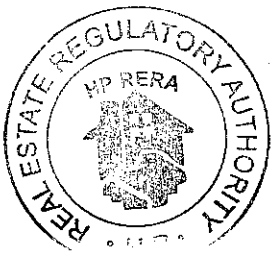
of the purchaser etc as mentioned from clause 1 to clause 13 and the said apartment buyer's agreement has not been disputed so far as contents are concerned.

The said agreement mentions following important points, In clause 1 titled as "SALE" , sub clause 1(a) clearly lays down

- (i) *That the promoter hereby agrees to allot to the purchaser(s) and the purchaser(s) hereof agrees to purchase one apartment **bearing 1BHK, 2<sup>nd</sup> floor, Block-IRIS, flat no 203 area 473 sqft** in the complex called "Chester Hills" situated at village BER KHAS Tehsil and Distt Solan-(HP), hereinafter referred to as "the said Apartment". The clause 1(b) mentions about the built up area which reads*
- (ii) *That the built up area shall mean and include the covered area, verandah and balcony inclusive of the area under periphery walls, area under columns and walls and the super area shall include the built up area, common stairs of the entire complex, circulation area, lifts, parking area. However this area shall be tentative and shall be subject to change to the extent of 5% both plus and minus due to exigencies and due to unavoidable reasons related to the project*

The above stated signed agreement between the parties clearly mentions the term 1BHK, 2<sup>nd</sup> floor, Block-IRIS, flat no 203 area 473 sq.ft. The said agreement, as such does not mention any term pertaining to area whether the mentioned area is carpet area, or built up area or super area or super built up area.

- (C) The allotment letter as well as signed agreement mentions the name of the floor as second floor and name of the block as IRIS block. The Authority has gone through the original drawings of the project as uploaded on the web portal of this Authority along with the copy of the revised approved map of EWS block as annexed by the promoter along with his reply and it has been observed that the name of the



block, as approved by the competent authority is EWS i.e. economically weaker section, as against the name IRIS given by the promoter, for the purpose of marketing, as conveyed by him during arguments. The change in the name of the block makes it difficult for allottee(s) to cross check the details of the apartment on the web portal of the Authority.

It has also been observed that the accommodation for EWS units in the original approved drawing comprised of one room, one kitchen, one toilet and one balcony whereas in the revised approved drawing, the internal design has been changed and the EWS units on the second floor comprises of one pantry slab, one long room with two nomenclatures , living room for the portion next to entrance and bed room portion between living room and toilet, one toilet and one balcony. There is no partition or wall of any kind between the living room portion and bed room portion, and the complete space can be termed as one long room or one hall. Both the designs cannot be termed as 1 BHK unit which strictly means 1 bed room, one hall and one kitchen in common parlance in real estate sector throughout the world. The toilet being a necessity but balcony is optional.

We have also taken note of the sketch/ plan of the apartment no 203, marked as Annexure A-1, though not clearly legible, submitted by the complainant along with the rejoinder and not disputed by the



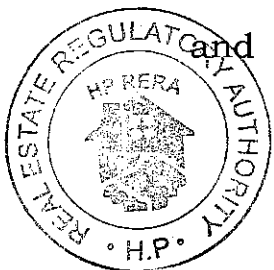
respondent, which shows that there is one hall, one pantry slab/ worktop, one toilet and a balcony.

- (D) In light of all the above factors we have no hesitation in holding that the used term 1BHK in the apartment Buyer's agreement can only mean 1 bed room, one hall and one kitchen as is the general expression in the real estate projects all over the world.

The design of the apartment executed at site, under reference of complaint, bearing no 203, 2<sup>nd</sup> Floor, IRIS block, Chester Hill Solan, cannot be held to be a 1BHK apartment but at best is a studio apartment having one long room/ hall, one pantry slab, one toilet and one balcony.

- (E) The carpet area detail as uploaded on the web portal of the Authority by the promoter is cumulative carpet area of all 28 units originally approved in the EWS block and no balcony area was filled in the table meant for the purpose. The carpet area of EWS unit, as mentioned in the original proposed drawing of EWS block, is 29 Sq. mts which is 312.04 sq.ft and 33.00 sq.mts in the revised drawing which makes it 355.08 sq.ft as against the allotted super area of 473 sq.ft. The actual carpet area of the unit under reference is approximately 355 sq.ft as against allotted area of 473 sq.ft as per allotment letter and apartment buyer's agreement. It has also been observed that the approved carpet area of the apartment was 312.04 sq.ft when the allotment was made

and agreement was signed between the parties and there was a

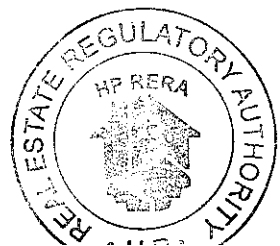


staggering difference of 160.96 sq.ft between the offered super area and actual carpet area, whereas it was mandatory for the promoter to disclose the carpet area as per the provisions of the Act, Rules and performa of agreement for sale "L".

The Authority has gone through the various periodical progress reports submitted by the promoter for the under reference real estate project, Chester Hill, with the Authority as is required, and it has been observed that the promoter has consistently submitted the performa of Agreement for Sale as has been provided in the rules and has also submitted the undertaking that all the executed agreements are in conformity with the prescribed agreement for sale and area stated is also carpet area. The promoter has entered into about 250 agreements as per the submitted periodical reports and it is yet to be ascertained if the same violations have been done in remaining agreements also.

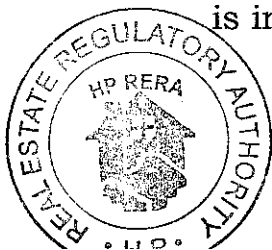
We, on the basis of the above referred facts, hold that the area mentioned in the Apartment Buyer Agreement is super area, as also mentioned in the allotment letter and not carpet area as is required under the provisions of the Act, Rules and Agreement for Sale which is a glaring violation of the legal provisions.

- iii) Whether the signed agreement between the parties (referred to as Builder Buyer's Agreement) is in consonance with the provisions of the Act and rules made thereunder?**

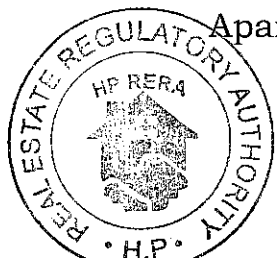


The format of the above said agreement is different from the Performa/ specimen of "Agreement for Sale" on the web portal of the Authority which was uploaded by the respondent when the registration of the real estate project, "Chester Hills", was applied for and registered by the Authority. There is no mention of the super area at any place in the said performa of "Agreement for Sale" as has been uploaded on the web portal of the Authority. It is extremely important to mention that it has been made very clear in section 13(2) of the HP Real estate (Regulation and Development) Act, 2016 that any agreement between the promoter and the allottee shall be in such form as prescribed. The prescribed "Agreement for Sale" has been provided for in rule 17(1) of H.P Real estate (Regulation and Development) Rules, 2017 in the **Form "L"**. The Clause "G" of the FORM L makes it obligatory for the promoter to disclose/ specify the carpet area along with other details of the apartment. The agreement for sale further provides for the disclosure of total price of the apartment based on carpet area, as specified in clause 1.2 of the aforementioned FORM and clause no 1.7 of the proforma agreement also talks about recalculation of consideration in case of change/ alteration in carpet area.

The format of the agreement as used in Apartment Buyer's Agreement between both the parties is in a format devised by the promoter which is in contravention of the Act and Rules and is entirely different from



the prescribed "Agreement for sale" as provided in the Act and rules. The foundation of the relationship between promoter and allottee is primarily based on transparency and for the same reason the performa of Agreement for Sale has been prescribed in rules which requires all necessary details to be filled in at the time of signing of the agreement disclosing all the requisite information and to mitigate any kind of ambiguity. The agreement for sale is the sacrosanct document and has to be adhered to as is required legally under the provisions of the Act and rules as described above. Any deviation or departure from the prescribed document of agreement for sale will render the said agreement null and void. In this case, there is altogether different format of agreement for sale which is a blatant violation of the Real Estate (Regulation and Development) Act and rules, and cannot be accepted as a legally tenable document. The Authority has gone through the various periodical progress reports submitted by the promoter for the real estate project under reference, Chester Hill, with the Authority as is required, and it has been observed that the promoter has consistently submitted the performa of Agreement for Sale as has been provided in the rules and has also submitted the undertaking that all the executed agreements are in conformity with the prescribed agreement for sale and area stated is also carpet area. Thus for the reasons stated above we hold this Apartment buyer's agreement is *void ab initio* and further hold that





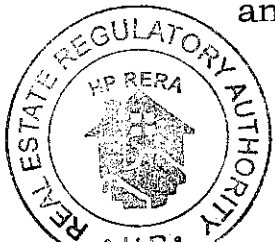
none of the disclosed information, along with any/ all terms and conditions are legally tenable and are not enforceable in this Real estate project known as Chester Hills .

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

The complainant had booked and looked forward to get the possession of 1 BHK flat measuring 473 sq.ft as per the apartment buyer's agreement but found an entirely different apartment on visiting the spot comprising of one room, one kitchen slab/ worktop, one toilet and one balcony. It has been held above by the Authority that the terminology of 1 BHK means 1 bed room, one hall and one kitchen as per the norm in the real estate sector. Moreover, in the approved drawing also the name of the block is EWS, and under no pretexts, 1BHK apartment can be termed as EWS. The promoter would not have named the block as EWS had it actually been 1BHK apartment. The complainant has pleaded that sales team assured him and his wife that everything was right in the project in accordance with the advertisement, approved map and specifications etc and on the basis of such false statement which he believed to be true at that time bought/ booked one apartment. The allotment letter mentioning the area of 473 sq. ft was issued to him and subsequently the apartment buyer's agreement was signed which was termed as just a formality by the promoter. The



complainant did not provide any advertisement in any form except admitting that the drawings were displayed in the office of the promoter. When he visited the site of work, the sales team explained all details and made certain statements pertaining to the specification of the apartment in question, which he later realized to be false. Further when he visited the spot again, the construction work was in progress and he found an entirely different apartment from the one agreed, having only one hall and no other room, a work top slab as against the proper kitchen, one toilet and one balcony. The said apartment was not at all a 1BHK apartment which had been booked by the complainant. In fact, what is being offered is a bachelor apartment which is also called a studio apartment, with one kitchen work top, one room, and one toilet with a balcony. The respondent though has denied these facts but could not rebut the assertions made by the complainant by bringing on record any substantial evidence about his sale team not making such promises. The social media advertisement/ marketing of the promoter does not disclose any EWS block as has been approved by Department of Town and Country Planning, Solan. In fact respondent promoters have been using the nomenclature as IRIS block as against the EWS block throughout which is a false statement. The use of 1BHK terminology in apartment buyer's agreement is factually incorrect and false and mentioning of super area in allotment letter instead of



carpet area is dehors the provisions of Act and rules made there under and is thus illegal. Therefore, the necessary particulars/ description of the apartment in apartment buyer's agreement are false, misleading and incorrect which go to the root of the dispute. We thus have no reasons not to accept that false statements were expressly and impliedly made by the respondent promoters during the course of events and particularly the expressions used in allotment letter as well as apartment buyer's agreement are incorrect and a clear violation of section 12 of the Act.

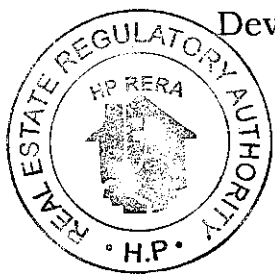
The entire gamut of economic activities, relationship of buyers and sellers and whole of trade and commerce runs on the basis of lawful agreements made between the parties. The provisions of the lawful agreement and contracts ordinarily have to be treated sacrosanct. The system of rule of law protects lawful agreements. However, if there is any unconscionable provision in the agreement for sale, which are contrary to the provisions of the Act, its effect can be mitigated by this Authority. The sellers are at a strong bargaining position compared with buyers. They enter into standard form of agreements leaving little choice to the buyers. In such situation this Authority is empowered to tone down the effect of the oppressive provision of such agreements and declare them illegal. As already stated above, the provisions of the apartment buyer's agreement dated 29.06.2020 in so far as they are contrary to the provisions of



this Act, rules and specifically the model agreement as prescribed in FORM L are being held illegal and accordingly its effect has been mitigated. The Act empowers this Authority to declare such provisions of the agreement as void. The allottee as a result of false, incorrect and mis leading statements made by the respondent promoter has been wrongly induced to enter into the agreement which had been held to be in contravention to the provisions of the Act and rules as held by this Authority in para supra. The allottee, for the reasons stated above and in accordance with the provisions of the Act as provided for in section 11(4) read with section 12 and section 19(4) and also on the basis of principle of natural justice, is well within his rights to seek refund of the advance paid along with prescribed rate of interest.

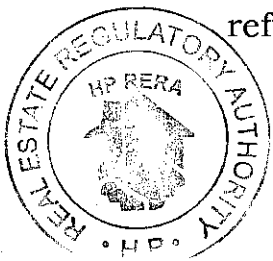
9. Keeping in view the above-mentioned facts, this Authority in exercise of power vested in it, under various provisions of the Act issues the following orders/directions:

- i. The complaint is allowed. The respondents are directed to refund the amount of Rs. 1,80,000/- (Rupees one lakh and eighty thousand only) as paid by the allottee to the promoter along with interest at the SBI highest marginal cost of lending rate plus 2 % as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules, 2017. The present highest MCLR of SBI is 7.3



% hence the rate of interest would be 7.3 %+2 % i.e. 9.3%. It is clarified that the interest shall be payable from the dates on which different payments were made by the Complainant to the respondent.

- ii.* The refund along with interest is to be paid by the respondent promoter firm including all directors, jointly and severally to the Complainant within 60 days from the date of this order.
- iii.* The Authority, considering all facts of the case deems appropriate to impose a penalty amounting to Rs. One Lakh under Section 61, 69 read with Section 38 of the Real Estate (Regulation & Development) Act, 2016 on the respondent promoters for failing to meet their obligations as prescribed under Section 11,12 and 13 of the Act *ibid*. The penalty imposed shall be borne jointly and severally by the respondent promoter firm and its directors and shall be deposited in the bank account of this Authority, operative in the name of “Himachal Pradesh Real Estate Regulatory Authority Fund” bearing account no. “39624498226”, in State Bank of India, HP Secretariat Branch, Shimla, having IFSC Code SBIN0050204, within a period of two months failing which the amount of penalty shall be enhanced to Rs. three lakhs.
- iv.* Non-compliance or any delay in compliance of the above directions shall further attract penalty and interest on the ordered amount of refund under Section 63 and Section 38 of the Act *ibid*, apart from



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

- v. It is further ordered that the respondents are barred from selling/leasing/allotting/booking flat no 203, 2<sup>nd</sup> floor IRIS block Chester Hills Ber Khas Solan, H.P, till the compliance of this order.
- vi. All the respondent promoters are directed to intimate the details of their bank accounts pertaining to this project within fifteen days.
- vii. The complainant is at liberty to approach the Adjudicating Officer under Section 71 of the Act ibid to claim compensation.

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

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

*Rajeev Verma*  
**\*Rajeev Verma**  
**MEMBER**

