

REAL ESTATE REGULATORY AUTHORITY

HIMACHAL PRADESH

IN THE MATTERS OF:-

Savita Goyal, D/O Sh. Manmohan Lal Garg, Resident of S-485
Ground Floor, Greater Kailash-1, South Delhi, 110048

Versus

HIMUDA through its CEO-cum-Secretary, Resident of Nigam Bihar
Shimla, Himachal Pradesh, 171002

ComplaintNO.-HPRERA2022020/C

Present: Dr. Savita Goyal complainant along with Sh.
Somesh Goyal

Sh. Jeevesh Sharma, Advocate for the
respondent/promoter

Final date of hearing (through WebEx): 23.07.2022

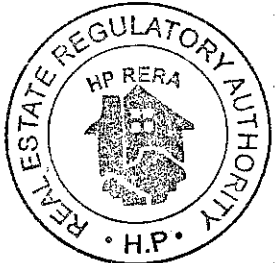
Date of pronouncement of orders: 23.08.2022

Order

Coram:- Chairperson and both Members

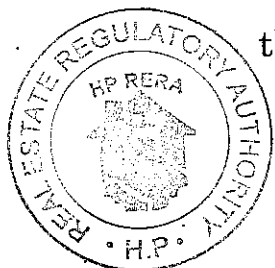
1. BRIEF FACTS IN THE COMPLAINT:

The facts of the present case are that complainant was allotted after draw of lots dated 08.02.2019, a category- 1, Plot no. 4 measuring 240 sq. mts in the partially self-financing scheme in Housing Colony at Dharampur, District Solan, HP on 27.02.2019. The total cost of the plot was Rs 47,04,000/- The allotment letter is appended with the complaint. It was



further pleaded that on 09.04.2019 a sum of Rs 5,02,640/-, on 26.08.2019 a sum of Rs 2,35,200/-, on 26.02.2020/- a sum of Rs 2,35,200/-, on 6.04.2021 a sum of Rs 2,56,270/-, in October, 2021 a sum of Rs 2,56,270/- and on 19.2.2022 a sum of Rs 2,60,000/- was paid. Therefore, it was pleaded that the complainant had so far made payment of a sum of Rs. 17,45,580/- against the total sale consideration.

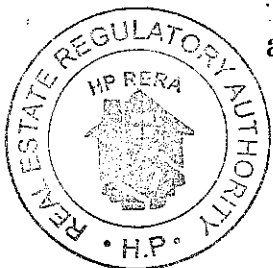
2. The agreement for sale was never executed by the respondent with the complainant. As per the allotment letter the due date of possession was three years from the date of allotment. It was further pleaded that the complainant has made several visits to the site of the project in question to see the progress on the ground but have come back disappointed each time. It was further pleaded that on 27.11.2020 the complainant had written a letter to the respondent narrating the facts that at the site there is virtually no development works going on and it was pleaded that a copy of the same was also sent to this Authority for necessary action. It was further pleaded that complainant had written a letter on 23.02.2021 to respondent for early possession of the allotted plot and on 24.04.2021 had also submitted drawings of the proposed house to the architect of HIMUDA for approval which were returned with the reply that "no possession in respect of Cat -1, Plot No. 4 in Housing Colony at Dharampur can be offered presently". Thereafter it was pleaded that the due date of delivery of possession was in the month of February, 2022 but when the complainant visited the site in question in February 2022 she was surprised to



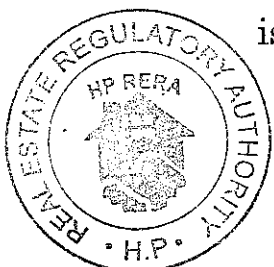
know that the plots are not ready for delivery as no development works like road, electricity, water and sewerage etc. exist on the site. Further it was pleaded that no shopping complex, community center and parks have been constructed. Since the project was undertaken to be a gated colony, no such gates have been constructed for the past more than three years. It was further pleaded that the complainant had invested in this plot to construct a house post retirement but the dream of building a house at Dharampur has been shattered due to such delay. It was further pleaded that the complainant had to incur huge financial expenditure in settling down in Delhi because of the false promises made by respondent. It was further pleaded that respondent being a State builder is expected to abide by the Real Estate (Regulation and development) Act, 2016 and honor its commitments. With these pleadings it the complainant prayed for refund of the amount paid.

3. Reply-

The HIMUDA filed reply and admitted the allotment of plot in favour of the complainant. It was further pleaded that the development works are going on at the site and the respondent had already sold around 52 plots in Housing Colony at Dharampur. It was admitted that the letter dated 27.11.2020 sent by complainant narrating its grievances with respect to the pace of work was received by the respondent. It was further pleaded in the reply that the complainant was allotted the plot in question on tentative basis with a



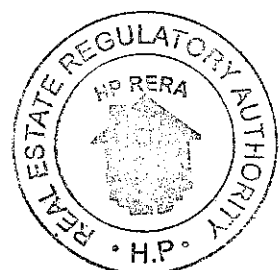
condition that if the possession of the plot is offered before the date of completion of the payment schedule up to 50% of the tentative cost as mentioned above, the balance cost up to 50% of the tentative cost plus the difference between tentative cost and final cost on the date of offering possession, allottee will have to pay the same in lump-sum before executing of Hire Purchase Tenancy Agreement. It was further pleaded that for development of colony in Dharampur it will take time and as per the field report, construction work is in progress, road work will be completed in the month of November 2022 approximately. It was further pleaded that cement and steel work is awarded to the contractor from HIMUDA store & if material will be timely procured, then the aforesaid works can be completed. It was further pleaded that estimates of water supply & sewerage stands submitted to competent authority vide letter dated 22-02-2022 and accordingly tender will be invited and it was pleaded that possession can only be offered after completion of basic amenities such as water and sewerage. It was further pleaded that the completion of project & delivery of plot is tentative and final allotment letter/possession will be issued after completion of development work at site. It was further pleaded that development of project has been delayed due to Covid-19 pandemic in the year 2020 and 2021 but now it was pleaded that development work is going on in good speed. It was further pleaded that as per copy of registration certificate issued by RERA, HP the registration of the project is valid



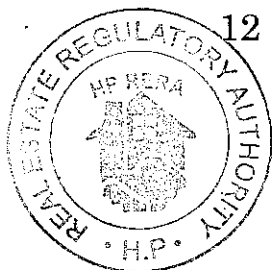
upto 16.10.2028 and therefore it was pleaded that respondent has much time left for completion of the project. The payment of Rs 17,45,580/- made by complainant towards part payment of total consideration of the plot has been admitted by respondent in its reply. With these pleadings it was submitted that the complaint filed by complainant may kindly be dismissed.

4. Rejoinder –

In rejoinder the pleadings made in the complaint were reiterated and re-affirmed. It was further pleaded that reply filed by the respondent is based on conjectures, surmises and suppositions. It was further pleaded that the respondents have failed to bring on record any documentary proof to substantiate that the development of colony in Dharampur will take time and as per the field report the construction work is still in progress and roadwork will be completed in the month of November, 2022 approximately. There is no basis on which the respondent have pleaded so in their reply and it is merely a vague statement. It was further pleaded that in case of delay in delivery of project the complainant is entitled to interest for delayed possession. It was further pleaded that the Hon'ble Supreme Court has settled that a buyer cannot be asked to wait endlessly and indefinitely for the possession of his house. It was further pleaded that it was respondent's duty to execute an agreement for sale and mention the date of delivery of possession in the agreement and failure to do so is against the provisions of RERA Act,



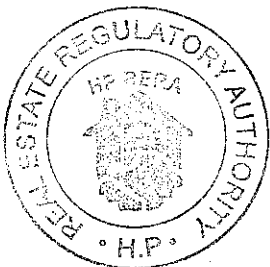
2016. It was further pleaded that the landmark judgments of the Hon'ble Supreme Court in the Jayantilal Investments Vs. Madhuvihar Cooperative Housing Society Limited case held that whatever has been mentioned in the brochure has to be complied with. It was further pleaded that as per brochure various amenities were promised therein. It was further pleaded that the flat buyers are entitled to compensation for delayed handing over of possession and for the failure of the developer to fulfill its promises with regard to amenities. The complainant relied on the judgment in Pradeep Narula v/s Granite Gate Properties - Consumer Complaint No. 315 of 2014 whereby the Commission held that the builder was under a contractual obligation to complete the construction and hand over possession within the agreed time failing which they were liable to pay compensation for delayed possession as per agreement for sale. Similarly the complainant also relied on Jitendra Balani v. Unitech Consumer Case No. 510 of 2015 Dated 8th February 2016 wherein also similar orders were passed. Further it was pleaded that that real estate builders cannot take recourse to the "Force Majeure" provisions for delay in delivering projects and that homebuyers cannot be made to wait indefinitely for possession of their units. Last Para of the reply is wrong and denied in toto being incorrect and not acceptable and reliable. However, the prayer clause of the complaint is reaffirmed as true and correct. It was further pleaded that as per Section 12 of the RERD Act, 2016 if any person is affected by incorrect



and false statement contained in the notice, advertisement, prospectus and intends to withdraw from the project, he shall be returned his entire investment along with interest at such rate as may be prescribed. With these pleadings it was prayed that the prayer in terms of complaint may kindly be allowed.

5. Arguments by complainant-

It was argued on behalf of the complainant that the plot was to be delivered within three years but the respondent has failed to do so. The total cost of plot was around 46 Lakhs out of which roughly about Rs17 lakhs have been paid by the complainant. It was further argued that the extension granted to the project in question will not affect the individual rights of the parties. It was further argued that the development works have not even started on the site of the project in question. It was further argued that out of total 80 flats only 52 flats have been sold. Further it was argued that the respondent is not depositing money received from allottees in any dedicated account in view of the mandate of the RERD Act, 2016. It was further argued that as per the reply the respondent has itself admitted that the development works have not even started therefore there is no scope of completion of the project in time. The internal and external developments are still incomplete and there is no likelihood for the project to be completed in near future.

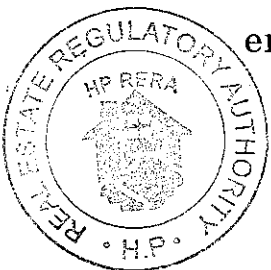


6. Arguments by respondent-

It was argued on behalf of respondent that plot no. 4 has been allotted to Dr. Savita Goyal on 27th February, 2019. as per brochure tentative date of completion is three years but it was argued that it was only a tentative date and was not a final date. It was further argued that guidelines issued by Government of India dated 30th May, 2020 which was an advisory qua extension of the registration of projects due to force majeure condition vide which six months extension was granted to the project in question due to spread of Covid 19 pandemic. It was argued that the registration of the project was extended by total of about one year due to Covid 19 pandemic and because of this reason the work of the project was not completed. It was further argued that as per Section 19 of the RERD Act, 2016 none of the conditions of agreement were violated and therefore the complainant cannot be granted refund. It was further argued that if one year extension granted by Government of India is taken into consideration then the due date of delivery of plot would come next year i.e. in the year 2023 and therefore it was argued that the complaint is premature and is thus liable to be dismissed.

7. CONCLUSION/ 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 there are three issues that require the consideration and adjudication, namely:-

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

8. A. Jurisdiction of the Authority.

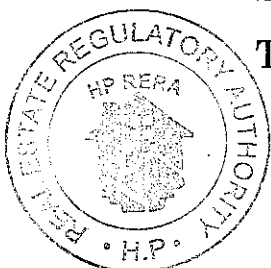
Section 31 of the Act prescribes that any aggrieved person can file a Complaint before the Authority or the Adjudicating Officer as the case may be for any violation of the provisions of the Act *ibid*. Thus, this Section provides that a separate Complaint be lodged with the Authority and the Adjudicating Officer, "as the case may be." Accordingly Rule 23 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 also provides the procedure of filing Complaint with the Authority and prescribes 'Form M' for filing a Complaint. In this case, the Complainant has filed the Complaint in 'Form-M.'

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

"to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the Rules and regulations made there under".

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

The promoter shall—



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

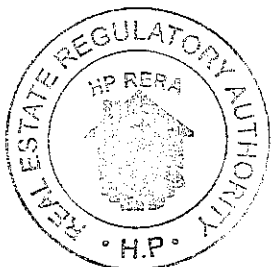
Section 19 (4) of the Act provides as under:

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

Further Section 38 (1) of the Act says

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

Thus Section 34(f) of the Act empowers the Authority to ensure compliance of the obligations cast upon the promoters

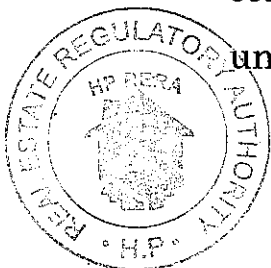


and Section 11(4) (a) (Supra) cast obligation on the promoter to implement “agreement for sale”. Further, Section 37 of the Act empowers the Authority to issue directions in discharge of its functions provided under the Act. The Authority also has power to impose penalties under Section 59 to 63 for 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.’

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

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

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

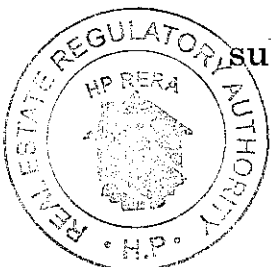


11. **B. Whether the Complainant is entitled to get the refund of the money along with interest or not?**

After going through the record of the case as well hearing the arguments advanced by both the parties the Authority is of the considered view that the complainant had booked a Plot no. 4 measuring 240 Sq. mts. in partially Self Financing Scheme in Housing Colony at Dharampur (Solan) with the respondent promoter. As per the allotment letter issued by respondent the possession of the plot was to be handed over within three years from the allotment of the plot i.e. 27.02.2019.

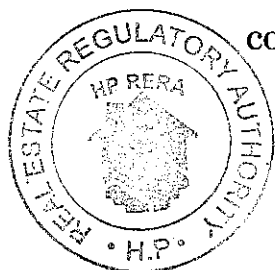
12. It is the case of the complainant that she made several visits to the site of the project and also represented vide letter dated 27.11.2020 & 23.02.2021 to the respondent that there is no development on the site and none of the works as committed by the respondent have been executed. None of the amenities like road, electricity, water and sewerage etc have been developed on the spot. Further shopping complex, community centre, parks, gates etc have also not been constructed and the period of three years is already over. In the absence of completion of basic amenities and facilities, the possession of the plot can not be handed over under any circumstances :

13. Further it was the case of the complainant there is no likelihood of these development works being executed in the near future as well. The respondents in the reply have rather admitted the case of the complainant that there is delay in the completion of development works and the delivery of possession of the plots is likely to take some time. The respondent submitted that construction work is in progress and roadwork



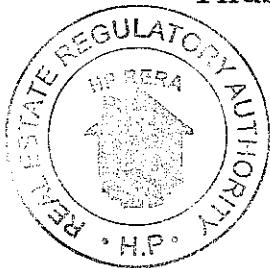
will be completed in the month of November, 2022 tentatively. The respondent submitted that cement and steel have been issued to the contractor but the work on the site has not yet started. The respondent further submitted that estimates of water supply & sewerage stand submitted to competent authority but tenders are yet to be invited. The only reason pleaded by respondent for delay in delivery of possession and for the late completion of development works is the onset of Covid 19 pandemic.

14. Further it was the case of the respondent that the registration of the project is valid upto 16.10.2028 therefore the respondent has much time left for completion of the project and delivery of plot. It was the case of the respondent that three years time for delivery of plot was only tentative and not final. It was further the case of the respondent that guidelines were issued by Government of India dated 30th May, 2020 which was an advisory qua extension of the registration of the projects by six months due to force majeure condition for spread of Covid 19 pandemic which was further extended by six months by the Government of India and therefore the work could not be completed as there is still time left for completion of the work as per the validity period of the project. It was further their case that none of the conditions of the RERA Act, 2016 were violated and the delay has occurred due to force majeure conditions. It was further the case of the respondent that if one year extension granted by Government of India is taken into consideration then the due date of completion of the project will



come next year i.e. 2023 and in view of this the complaint is premature.

15. From the pleadings of the parties, it is clear that the construction work is still not complete as on date of passing of this judgment and there is no likely hood of its being completed in near future. From the record and admission of the respondent most of the development works have not even started therefore there is no scope of completion of the project in time. As per the allotment letter dated 27.02.2019 issued by the respondent in favour of complainant the due date of delivery of possession was three years from the date of allotment i.e. the possession was to be delivered upto 27.02.2022. Therefore, it was the obligation of the promoter to have delivered possession of the plot within the time stipulated. The lockdown due to pandemic began on 25.03.2020 and this Authority granted six months relief to all the projects registered with it, under Force Majeure because of Covid 19 pandemic and therefore the due date of possession of the plot in question got extended by six months i.e. the new deemed due date of possession is 27.08.2022. The validity of date of registration for project as a whole, has nothing to do with delivery of possession to an individual allottee. The individual allottee will be entitled to get possession as per the allotment letter and agreement for sale. In the present case only 52 plots have been sold and remaining are yet to be sold. Thus, every plot holder will be entitled of possession as per

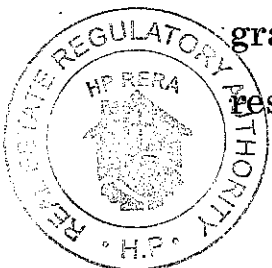


separate allotment letter and agreement of sale issued to him/her.

16. The Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. and another versus Union of India and others 2018(1)RCR(Civil) 298(DB) has laid down as under:-

“Section 4(2)(D)(C) enables the promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(D)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe fresh time line under Section 4(2)(D)(C) he is not absolved of the liability under the agreement for sale.”

The Hon'ble Bombay High Court by taking note of the provisions of section 4(2)(l)(c) of the Act has categorically laid down that the provisions of the Act will not re-write the clause of completion or handing over of the possession mentioned in the agreement for sale. The aforesaid view in Neelkamal Realtors case was followed by the Haryana Real Estate Appellate Tribunal in the case of Magic Eye Developers Pvt. Ltd. Versus Rajneesh Arora Appeal no. 208 of 2019 decided on 17.12.20219. According to the above, the registration under RERD Act, 2016 does not contemplate rewriting of contract between the allottee and the promoter. The registration granted under the RERD Act, 2016 does not absolve the respondent from his liability to deliver individual plot/flatas per

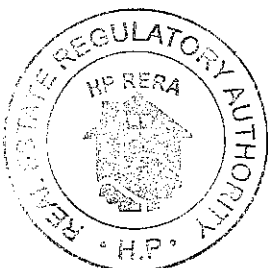


the time stipulated in the agreement. Thus, the respondent was required to offer the possession of the flat to the complainant as per the terms and conditions of the agreement, failing which the complainant will be entitled to claim the remedies as provided under Section 18 of the RERD Act 2016. The due date of possession as per the allotment letter is 27.02.2019 and the time for delivery of possession was within three years i.e. up to 27.02.2022 which time was extended by this Authority by general circular in all the cases by six months. Therefore, the deemed date of possession would be 27.08.2022 but, as per the own version/ admission of the respondent the project development works are nowhere near completion and most of the development works have not even started what to talk of their completion. The delay is writ large and the respondent is rather callous in its approach to complete the project or deliver the possession of the plot.

17. Further the respondent has neither entered into an agreement for sale with the complainant and has received an amount of more than 10 % of the total cost without entering into the agreement for sale.

Section 13 of the RERD Act, 2016, No deposit or advance to be taken by promoter without first entering into agreement for sale.—

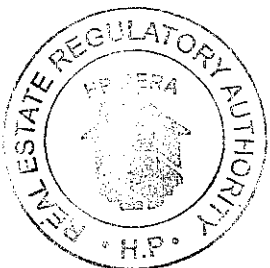
- a. A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the*



said agreement for sale, under any law for the time being in force.

- b. The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."*

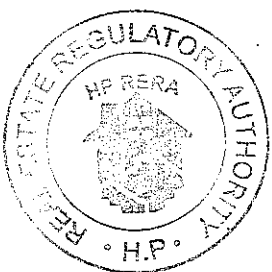
18. Therefore in view of the above, the respondent ought not to have taken advance of more than 10% without first entering into agreement for sale with the complainant and getting the same registered in law in terms of Section 13 of the Act *ibid*. Further the agreement for sale shall be in accordance with the format specified and Form L of the HP Real Estate (Regulation and Development) Rules ,2017 and shall also specify the particulars like date of delivery of possession, specifications of the development works to be done on the plot, apartment or building and the payment plan agreed. The promoter has uploaded the form L at the time of registration of the project with HP, RERA and it is within the knowledge of the promoter that the form L agreement is to be entered into with each individual allottee and the terms of the agreement are binding as per form L. The respondent is in gross violation of the provisions of Section 13 of



the Act *ibid*. Further as per Section 19 (2) the allottee shall be entitled to know the stage wise schedule of the completion of the work but in the present case what emanates from the record is that the respondent never intimated the complainant about the progress of the work rather it was the complainant who kept on visiting the site and writing letters to the respondent intimating them that no work has been executed on the site.

19. Further the complainant paid Rs. 17,45,580/- out of the total sale consideration of the plot i.e. Rs 47,04,000/- and the part payment made by the complainant has been admitted by the respondent in his reply. This Authority while adjudicating upon the issue of refund is guided by the judgment of the Hon'ble Apex Court in Civil Appeal nos. 3207-3208 of 2019 titled as "Marvel Omega Builders Pvt. Ltd. versus Shrihari Gokhale and Another." dated 30.07.2019, whereby the Hon'ble Court under para 10 has observed as under,

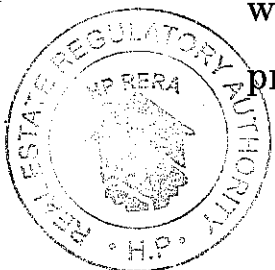
"10. The facts on record clearly indicate that as against the total consideration of Rs.8.31 crores, the Respondents had paid Rs.8.14 crores by November, 2013. Though the Appellants had undertaken to complete the villa by 31.12.2014, they failed to discharge the obligation. As late as on 28.05.2014, the Revised Construction Schedule had shown the date of delivery of possession to be October, 2014. There was, thus, total failure on part of the Appellants and they were deficient in rendering service in terms of the obligations that they had undertaken. Even assuming that the villa is now ready for occupation (as asserted by the Appellants), the delay of almost five years is a crucial factor and the bargain cannot now be imposed upon the Respondents. The Respondents were, therefore,



justified in seeking refund of the amounts that they had deposited with reasonable interest on said deposited amount. The findings rendered by the Commission cannot therefore be said to be incorrect or unreasonable on any count."

The Complainant is therefore entitled to refund of amount in the present case due to delayed delivery of possession.

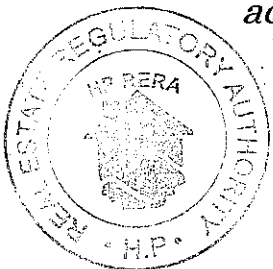
20. In the present case, there exists, clear and valid reasons for holding down that the Complainant is entitled for refund of total payment advanced to the respondent promoter. There has been a breach on the part of the respondent in complying with the contractual obligation to hand over possession of the plot to the complainant upto 27.02.2022 which date was extended by six months by this Authority. But admittedly the project is neither complete nor anywhere near completion rather maximum of the development works have admittedly not yet started. Therefore, realistically there is no likelihood of the project being completed in near future. The failure of the respondent promoter to hand over possession amounts to contravention of the provisions of the Real Estate (Regulation & Development) Act, 2016. The respondent promoter failed in fulfilling all obligations as stipulated in Section 11 read with Section 14 of the Act *ibid*. There has been a delay on the part of the Respondent promoter in completing construction.
21. The Complainant invested her hard earned money in the project. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted. But the submission of the respondent promoter's own issues cannot abrogate and take away the



rights of the Complainant under the Act *ibid*. We do not find any substance in the pleas raised by Ld. Counsel for the respondent thereof. 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."

22. In the present case there is delay in the delivery of the plot and there seem to be no possibility of the completion of work and handing over of possession of the plot in the near future. Therefore, there is no option with the Authority but to order the refund of the amount of Rs. 17,45,580/-.

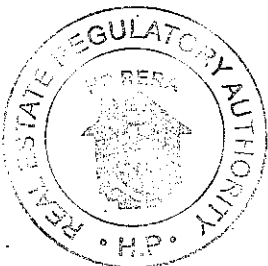
23. The issue is about the interest that the Complainant has sought before this Authority in addition to refund of amount. The Hon'ble Bombay High Court in the landmark judgement of "*Neel Kamal realtors*" in para 261 of judgment has held that "*In my opinion Section 18 is compensatory in nature and not penal. The promoter is in effect constructing the apartments for the allottees. The allottees make payment from time to time. Under the provisions of RERA, 70% amount is to be deposited in a designated bank account which covers the cost of construction and the land cost and has to be utilized only for that purpose. Interest accrued thereon is credited in that account. Under the provisions of RERA, 30% amount paid by*



*the allottees is enjoyed and used by the promoter. It is, therefore, not unreasonable to require the promoter to pay interest to the allottees whose money it is when the project is delayed beyond the contractual agreed period....."*The Hon'ble Supreme Court in "*Pioneer urban land & infrastructure case*" has also held that the flat purchaser is entitled to get refund of the entire amount deposited by him with interest." Thus, the Complainant is entitled to get interest as prescribed as per the Section 18 of the Act read with rule 15 of Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 that clearly states that the rate of interest payable by the promoter to allottee or by the allottee to the promoter, as the case may be, shall be the highest marginal cost of lending rate of SBI, plus two percent.

24. In the case of *Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and Ors* MANU/SC/1056/2021 it was held by the Hon'ble Supreme Court in para 25 of the judgment as under:

"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.”

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

The Respondent Promoter has not shown any sincerity in delivering possession of the plot to the complainant in lieu of allotment letter. Rather most of the development works have not been yet started. Further the respondent promoter has accepted more than 10 percent of the amount without entering into agreement for sale with the complainant which is a violation of Section 13 of the Act. The stage wise completion of the project was never intimated to the complainant which is violation of Section 19 of the Act *ibid*. Thus the respondent promoter has violated the obligations cast upon him under section 11 , 12, 13 and 19 of the RERD Act. The violation of Section 13 of accepting more than 10% advance, without first entering into agreement for sale is very glaring.

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

"Para 141. It goes to indicate how at large-scale middle-class home buyers have been defrauded of their hard-



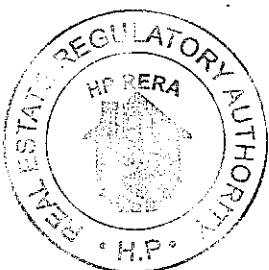
earned money, taken away by the affluents and the officials in connivance with each other. Law has to book all of them. We are hopeful that law will spread its tentacular octave to catch all culprits responsible for such kind of fraud causing deprivation to home buyers. It is shocking and surprising that so many projects have remained incomplete. Several Lakh of home buyers have been cheated. As if there is no machinery of law left to take care of such situation and no fear left with the promoters/builders that such acts are not perceivable in a civilised society. Accountability is must on the part of everybody, every institution and in every activity. We fail to understand the standard of observance of the duties by public authorities has gone so down that such frauds take place openly, blatantly, and whatever legal rights exist only on papers and people can be cheated on such wide scale openly, brazenly and with the knowledge of all concerned. There is duty enjoined under the RERA, there has to be a Central Advisory Council as well as the role of the State Government is not ousted in order to protect against such frauds. We direct the Central Government and the State Government to take appropriate steps on the time-bound basis to do the needful, all other such cases where the projects have remained incomplete and home buyers have been cheated in an aforesaid manner, it should be ensured that they are provided houses. The home buyers cannot be made to suffer when we are governed by law and have protective machinery. Question is of will power to extend the clutches of law to do the needful. We hope and trust that hope and expectation of home buyers are not going to be belied.”



27. 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. 17,45,580/- (Seventeen Lakhs, Forty Five Thousand, Five hundred and eighty rupees) 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%. Hence the rate of interest would be 8% +2 % i.e. 10%. It is clarified that the interest shall be payable from the dates on which different payments were made by the Complainant to the respondent till date the amount and interest thereon is refunded .
- 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.
- iii.* That in view of Section 61 of the Act which prescribes the maximum penalty that could be imposed for the contravention of any other provision of the Act other than Section 3 and 4, as five percent of the total cost of the project. The Authority, considering all facts of the case deems appropriate to impose a penalty of Rs.

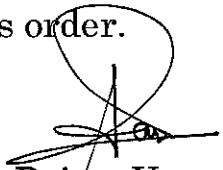


One Lakh for contravention of the provisions of the Act as mentioned in para 25 supra.

- iv. The Complainant shall be at liberty to approach the Adjudicating Officer for compensation under Section 71 of the Act *ibid*.
- v. That the penalty imposed 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 60 days from the passing of this order.


B.C. Badalia
MEMBER


Dr. Shrikant Baldi
CHAIRPERSON


Rajeev Verma
MEMBER

