

**REAL ESTATE REGULATORY AUTHORITY,  
HIMACHAL PRADESH**

**In the matter of :-**

**Sh. Paras Verma and Anita Verma**

**Complainant(s)**

**Versus**

**1. Rajdeep and Co. Infrastructure Pvt. Ltd.**

**2. Sh. Rajdeep Sharma s/o Sh Sansar Chand Tehsil**

**Rohru Distt Shimla**

**Respondents**

**Complainant No. RERA HPSHCTA 05180003**

**Present:-**

**Sh. Sameer Thakur, Advocate along with Sh. Paras Verma Complainant through WebEx**

**Sh. Rishi Kaushal Advocate for the respondents**

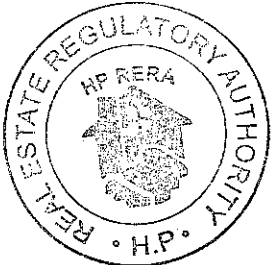
**Sh. Mayank Manta, Assistant Distt. Attorney for State of Pradesh/ RERA, Himachal.**

**Date of Hearing (through WebEx: 19.11.2020**

**Date of Pronouncement of Order : 17.12.2020**

**CORAM :- Chairperson and both members RERA**

1. The present matter refers to a complaint, filed by Shri Paras Verma, under the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) against M/s Rajdeep and Co.



Infrastructure Pvt. Ltd., which are having a ongoing project named Claridge's Residency located at Up Muhal, Kaleston, Teshil, Shimla, Himachal Pradesh and also against Sh. Rajdeep Sharma. The Authority also made a site inspection on 17<sup>th</sup> February, 2020, as there were many complainants against the Project. Further, a site inspection was also carried out by the Town Country Planner of the Authority, on 15.9.2020. The final arguments in the present complaint were heard on 19<sup>th</sup> November, 2020. The main facts of the case are as follows:-

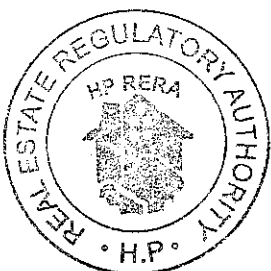
**Facts mentioned in the Complaint --**

2. Sh. Paras Verma the present complainant and his mother had agreed to purchase flat no-401, Tower-A, measuring 1920 Sq. ft. in the Claridges Residency. The sale deed between the parties was executed on 1<sup>st</sup> May, 2017, in the office of Sub- Registrar, Shimla, for a sale consideration of Rs. 80,00,000/-.
3. The complainant has further submitted that he took the possession of the incomplete flat in May 2017. That time he was given temporary electricity and water



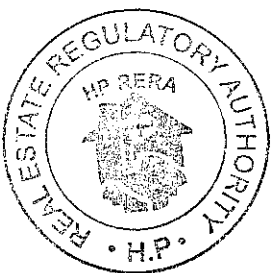
connections and he was assured that NOC for the permanent domestic water and electricity connections will be given soon and the mutation in his favour will also be entered very soon. He gave a post dated cheque for Rs, 4 lakh to the respondent, subject to the condition that all work in the flat will be completed, NOC for mutation will be given, space for water and electricity will be allotted and car parking will also be allocated to him. However, these facilities have not given by the respondent, till date.

4. In July,2017, one employee of Sh. Rajdeep Sharma threatened the complainant of stopping water and electricity, if he didn't pay Rs. 4 lakh and other dues. However, the complainant stopped the payment, as the additional facilities were not provided to him. In the meantime, his electricity and water connections were cut off. Then, he tried to contact Mr. Rajdeep Sharma(respondent) but he kept on increasing his demand to pay the additional money without providing any facilities, which were promised to him. On 10<sup>th</sup> February, 2020 he also filed a complaint before the SP,



Shimla, for cheating, fraud and extortion. He has also pointed out that the respondent was running a Hotel business by name HNH Holiday as Home Stay in the same building. He has made the following prayers in his detailed complaint :-

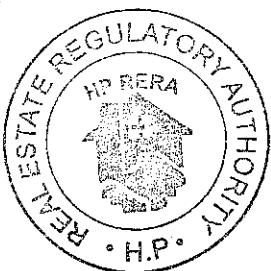
- i) Issue Directions to Shimla Police Department to also add me as complainant in FIR NO. 0007/20 P.S Shimla, Sadar under section 420 IPC added to the FIR made against Mr. Rajdeep Sharma.
- ii) Direct Mr. Rajdeep Sharma to provide me No Objection Certificate so I can get the mutation done in my favour.
- iii) Direct Mr. Rajdeep Sharma to provide space for my Water tank and Electricity Meter and till such time provide me with water and electricity via sub meters as was done in the beginning.
- iv) Direct Municipal Corporation to give me water and electricity connections in my name as have been given to some other flat owners in my Tower.
- v) Direct Mr. Rajdeep Sharma to complete all the pending work in my flat as per the list made out by his own site supervisor.



- vi) Direct Mr. Rajdeep Sharma to provide me a car parking as he has charged me Rs. 1.00,000/- for this parking.
- vii) Direct Mr. Anil Chaudhary to stop threatening me and my family by way of letters and phone calls because I have filed my complaint with HP-RERA.
- viii) Direct Mr. Rajdeep Sharma to pay a sum of Rs.29,80,000/- (interest @ 12% per annum, for 3 years) as compensation, for taking Rs. 88,70,900/- from me and not providing me a livable place, for 3 years and damages, for the harassment, faced by me and my family at his hands.
- ix) Direct Mr. Rajdeep Sharma to stop running illegal Hotel Business from a residential colony.
- x) Pass any order as my Lordship deems fit.'

**Reply by the Respondents:-**

5. The respondent in his reply has taken the preliminary objections that this complaint is frivolous, keeping in view the decision given by the Punjab RERA in Bikramjit Singh and others v/s Mr. HP Singh and others. He has further pointed out that, the home buyers are duty bound to make all the payment and interest. On merit,



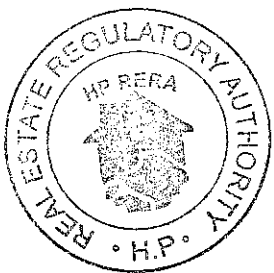
he contended that the complainant has not paid the balance payment, therefore, he is not entitled to get any relief in the present complaint.

**Application for the interim relief:**

6. The complainant also filed an additional application for carrying out mutation and restoration of water and electricity connection on 3<sup>rd</sup> September, 2020. The Authority had directed the Town and Country Planner to visit the site on 15<sup>th</sup> September, 2020, about the issue of mutation and restoration of water and electricity connection. The report of the Town and Country Planner is placed in the file.

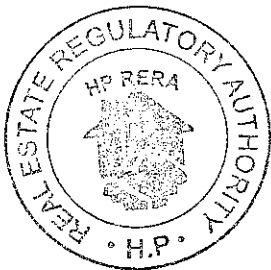
**Written submissions on behalf of the Complainant:-**

7. The complainant has filed detailed written submissions on 10.9.2020. In the written submissions the complainant has forcefully pleaded that respondent has been harassing the complainant, by not providing the basic essential amenities like water and electricity. Because of stopping of these essential facilities, the flat is not habitable. The respondent has breached clause-3, of Sale deed by not attesting the mutation. He has also



broken clause-12 of the sale deed by failing to provide NOC from the competent Authority for installation of domestic water and electricity connections. The respondent has also not provided parking space as specified in clause-13 of the sale deed. The demand of extra charges of Rs. 4.52 lakh is beyond the terms of the sale deed. He has paid full amount of Rs. 80,00,000 at the time of execution of the sale deed. The value of the flat as per evaluation carried out by the respondent himself through Aakriti Associate was Rs. 79,12,800/- which include electrical as well as furnishing charges. Thus, there is no justification for asking the additional amount of Rs. 4.52 lakh in the garb of parking charges, internal development charges, fire fighting charges etc.

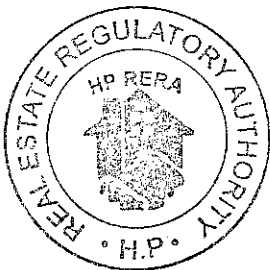
8. The complainant has further pointed out that the flat owned by him is without electricity and water facility making it inhabitable. Because of this situation, he had no option but to rent a premise in Shimla and paying regular rent. He has also taken loan from the bank for this flat and paying regular interest.



9. He has also pointed out that NOC for the building in question has been rejected by MC Shimla vide letter dated 12.12.2016, because the respondent has failed to submit the completion plan of the building, in accordance with the sanctioned plan. The respondent is bound by clause-12 of the sale deed to provide NOC and requisite water and electricity connections, which he has failed to do and constitute contravention of section-11 and 17 of the Act.

**Written submission and Synopsis on behalf of respondents:-**

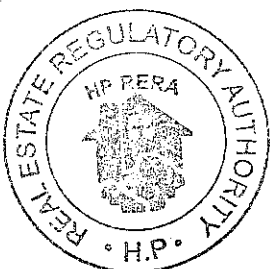
10. The respondent in his written submission has pointed out that the complaint has not been filed as per the prescribed Form-M and permission to amend the complaint was allowed against the principles of natural justice. He pointed out that the amendments of pleading should not been allowed. Secondly, he has stressed that in the present case the Real Estate (Regulation and Development) Act 2016 is not applicable, as the size of plot is only 273.60 sq. mts. which is less than 500 sq. mts. and number of units as per plan approved are less





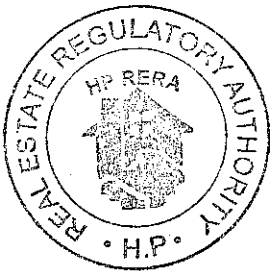
than eight constructed by Sh. Rajdeep Sharma. Thirdly, has pointed out that complainant is seeking mutation and compensation and the powers to adjudicate these lies with the Adjudicating Officer, under section-71 of the Act and not with the Authority. He also pointed out there is a violation of section-19 of the Act by the complainant, by not making the payment as per agreement. He has also added that the complainant has concealed material facts, which are necessary to adjudicate this complaint. To support his case he has cited the following rulings: -

- a. Modi Spinning & Weaving Mills Co....vs Ladha Ram & Co. On 23 September 1976.
- b. Meghmala & Ors. Versus G. Narasimha Reddy & Ors. in Civil Appeal Nos. 6656-6657 of 2010 decided on 16.08.2010.
- c. Union of India and others vs Cipla Ltd and others Civil Appeal No. 329 of 2005, decided on 21.10.2016
- d. DCM Shriram Industries Ltd. Vs HB Stockholdings Ltd. And Ors. on 28 April 2014 CO. A (SB)7/2014 & CA No.275/2014.

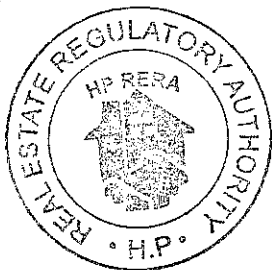


**Arguments advanced: -**

11. The Verbal arguments through Webex, in this case were heard on 19<sup>th</sup> November, 2020, in addition to the written submissions submitted by both parties. Sh. Sameer Thakur. Ld. Counsel for the complainant submitted that he bought a flat in Block-A from the respondent and sale deed was executed on 1<sup>st</sup> May, 2017. The mutation in this has not been affected till date, despite making the full payment at the time of sale deed. He drew the attention of the Authority towards clause-3 of the sale deed, where the seller had agreed to undertake mutation. On the contrary, respondent wrote a letter Ann. R-II, dated 8.2.2018, to the Tehsildar (U) Shimla stopping the mutation. He argued that the respondent has no right to stop the mutation. If there was a dispute, there were other remedies for the recovery of the same. He further argued that as per clause-12 of the sale deed, seller was to provide installation of water and electricity connections in the name of purchaser, and the seller was also liable to provide space for installation of water tank of the

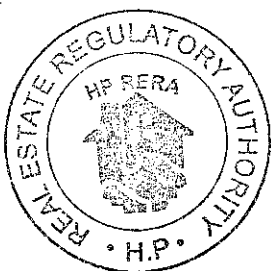


capacity of 1000 Ltrs. However, the respondent has failed do the same. He also drew the attention of the Authority towards the letter of MC Shimla dated 26<sup>th</sup> August, 2020 (Ann. A-6) where in, the Architect Planner of MC Shimla has intimated to Sh. Ravi Kant (another complainant) that *'the completion plan of the Claridges Residency Block-A has not been approved and hence, NOC for domestic connection cannot be considered'*. He also emphasized that the site inspection of the Town Country Planner of this Authority has clearly brought out that the respondent has intentionally not got the mutation done and the electricity and water connections have not been provided. It is an obligation on the respondents to provide these facilities as per the Real Estate (Regulation and Development) Act 2016. He also pointed out that in case of few other flats, water connections have been released by the MC, at the commercial rates, as the respondent has failed to get the completion of the building approved. He also pointed out that the respondent is asking Rs. 35000/- as annual maintenance charges, without providing any



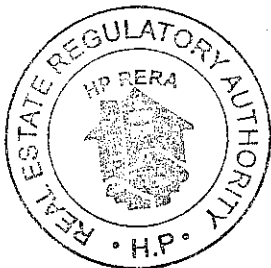
services and thus, extorting money from the complainant and well as from the other allottees. He also argued that the respondent was duty bound to provide space to park one vehicle as per clause-13 of the Sale deed, but the parking space has been covered unauthorizedly by the respondent and there is no parking space available in the building.

12. He also argued that the additional money of Rs. 4.52 lakh demanded by the respondent is totally unjustified and without any basis, as he has made full and final payment at the time of the sale deed. The extra charges asked are illegal, keeping in view the valuation report of the flat prepared on the behest of Sh Rajdeep Sharma. Further, as per section-2(zb), of the Act, all the internal works were to be provided by the respondent. He also stressed that the possession given to him is defective, as the flat is not habitable. Therefore, he should be refunded the rent being paid by him and interest being paid to the bank. He drew the attention towards the rent being paid by him at Shimla and the details of the payment being made to the bank. He, therefore, pleaded



that there is nothing due from his side and respondent be asked to provide him all the facilities and be penalized for the extortion.

13. The Ld. Counsel for the respondents Sh. Rishi Kaushal argued that the complainant has not paid the money due to him. He had given a post dated cheque of Rs. 4 lakh, however, the same was withdrawn. Thus, he is not entitled for the facilities, till he pays the amount due along with interest as per section-19 of the Act. He also reiterated the points raised in his written submissions. He pointed out that the additional complaint/documents submitted by complainant are against the principles of natural justice. The Act is not applicable in the present case as the land area is less than 500 sq. mts. Further, the Authority does not have power to adjudicate this case, and only the Adjudicating Officer can adjudicate this case under section-71 of the Act. He also pointed out mutation and other facilities can be provided once the respondent pays his dues. Regarding the revised plan, he intimated

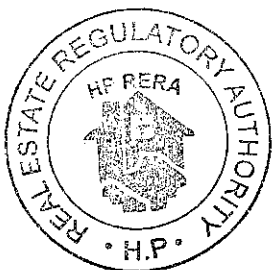


that the case of this project is pending under the Retention Policy.

**Conclusions:-**

14. We have perused the record pertaining to the case as well as the site inspection reports. We have also duly considered the submissions made before us in the form of complaint, reply and rejoinders as well as written submissions, by the parties. In our view, the following issues require consideration and adjudication in the present case: -

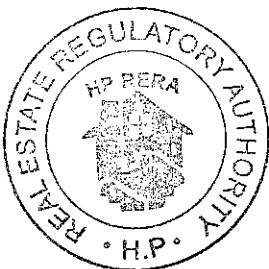
- i) Whether the Real Estate (Regulation and Development) Act, 2016 is applicable in this case?
- ii) Whether there is a violation of principles of natural justice and settled procedure?
- iii) Whether the Authority has jurisdiction to decide this case?
- iv) Issue of attestation of mutation.
- v) Whether any payment is due from the complainants?
- vi) Issue of providing basic services like electricity and water.
- vii) Payment of rent etc. by complainant due to non availability of water and electricity supply.
- viii) Issue of Maintenance charges.



ix) Other issues and directions.

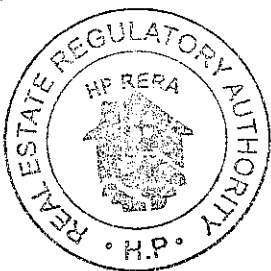
**i) Whether the Real Estate (Regulation and Development) Act 2016 is applicable in this case?**

15. The Ld. Counsel for the respondent in his written submissions and while making arguments, have stressed that in the present case the plot size is 273.60 Mts. which is less than 500 sq. mts, therefore, the Real Estate (Regulation Development ) Act 2016 is not applicable in this case. He based his arguments, in view of the provisions of section-3 of the Act. Section-3 of the Act states, that no registration of a Real Estate project will be required where the area of land proposed to be developed does not exceed 500 sq. mts. In the present case, Mr. Rajdeep Sharma, one of the promoter owned 1416 sq. mts. of land in up Muhal Kallestan ,as per revenue record of 2013-14. However, later on, in the family settlement he has transferred a part of this land to his wife, his mother etc. This is clear from the copy of agreement dated 11<sup>th</sup> August, 2016, supplied by the respondent with his written submissions. At page 2 of the agreement, it is mentioned that -



“And whereas the first party was the owner of land comprised in Khata Khatoni No 151/186, Khasra No-5, measuring 1416.80 Sq. Mts situated at Up Muhal Kalleston, Tehsil Shimla(U), District Shimla Himachal Pradesh and at the time of ownership the first party has executed Joint Development agreement with M/S RAJDEEP AND COMPANY INFRASTRUCTURE PRIVATE LIMITED (PAN No. KAAF67444Q) a Private Limited Company having its registered office at 2694, Sector-23 Chandigarh”.

16. Thus, in the present case, it is very clear that Rajdeep being owner of 1416 sq. mts. of land at up Muhal Kellastan had executed a Joint Development Agreement with Rajdeep & Company. The joint development agreement dated 16<sup>th</sup> June, 2014 was registered in the office of Sub Registrar, Solan and copy is placed as Ann-R-A with the written submissions, filed by the respondent. The Rajdeep & Company has developed Block A,B,C and D of this project. The only change that has taken place later on, is that Sh. Rajdeep Sharma has transferred ownership of some part of land to his mother and wife.

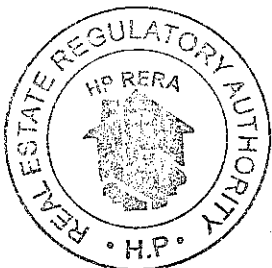




The proviso to Section 3 (2) (a) the Act reads as follows:

“Where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases”.

17. Thus, any project which has an area more than 500 sq. mts. , of all phases is to be registered under RERA. It does not matter whether the ownership of land of the project, belongs to one person or more than one person. In the present case, the total area of full project being developed by Rajdeep and Company Infrastructure Ltd is 1416 sq. mts. Therefore, the project is fully covered under the provisions of the Act. This is also clear from the fact that Mr. Rajdeep Sharma has applied for the registration of the project with the Authority on 10<sup>th</sup> February 2020. Thus, it is held that the Act is applicable on the present project and complainant is fully authorized to file the present complaint. The Rajdeep and Co. Infrastructure Ltd, Sh. Rajdeep Sharma as well as the all other owners of the land are jointly promoters



in the present case, as they are bound by the joint development agreement and are covered as promoters under section 2 ( zk) of the Act.

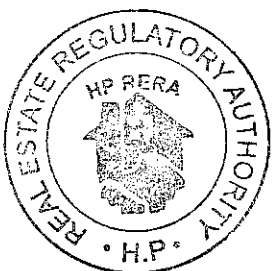
18. Further, The respondent in para-5 of his reply has stated as follows :

*“ That present case is squarely covered by the findings of this present Authority in the Bikramjit and ors. (complainants) vs M/s H.P. Singh and ors. in which it has clearly laid down three conditions that must be fulfilled for such complaints to be considered by it”.*

We have gone through the above cited order, which has been enclosed with the reply. Firstly, the order is not of Himachal RERA , but of the RERA Punjab. Secondly, the facts of that case are very different then of the present case. In that case, the allegation was about the violation of provisions of Punjab Apartment and Property (Regulation ACT) 1996. Thus, that case is not relevant while, adjudicating the present case.

(ii ) **Whether there is a violation of principles of natural justice and settled procedure ?**

19. The Ld. Counsel for respondent in his written submissions has emphasized that the complaint has not

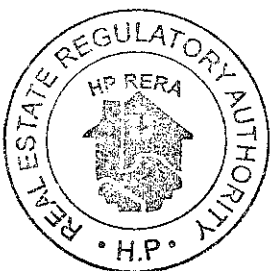


been filed in the prescribed form and the complainant in the guise of the permission ,completely changed the complaint in violation of the rules of the amendment and in violation of principles of natural justice. He has also quoted SC of India in, Modi Spinning and Weaving Mills Co. vs. Ladha Ram & and Co. Dated 23<sup>rd</sup> September, 1996.

Thus, the Ld. Counsel has argued that the Complainant should not have been allowed to amend his complaint ,as it is not as per the settled procedure.

We have gone through the provisions of the Act. Section-31 of the Act authorizes any aggrieved person to file a complaint before the Authority. Section-35 of the Act, empowers the Authority to call for any information or conduct investigations and for that purpose the Authority may ask any promoter or allottee to furnish any information.

In the present case the complainant had filed his complaint in Form-M. The Authority had asked the complainant to file detailed information and documents pertaining to the complaint, to properly adjudicate the

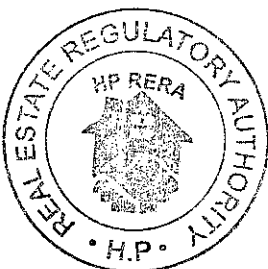


complaint. The rule-23 (f) of the Himachal Pradesh Real Estate (Regulation Development) Rules, 2017 also provide that the Authority can ask a complainant for production of documents or other evidence. Thus, in the present case in the interest of justice ,the Authority had asked detailed complaint, supported with documents from the complainant. The respondent was given full opportunity to rebut these pleadings, in his reply and written submissions. The respondent has done the same in the present case. Therefore, the Authority has adhered to the principles of natural justice, by giving full opportunity to both the parties, to plead their case.

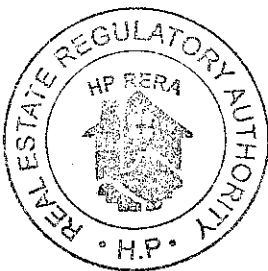
(iii) **Whether the Authority has jurisdiction to decide this case?**

20. The respondent in his written submission has argued that the claim of the complainant is under section-18 of the Act, hence the Authority does not have jurisdiction in the case. The case is to be decide by the Adjudicating Officer. He has also quoted the following judgments of Hon. SC in para 3 of his submissions-

“The latest judgments further supporting the said provisions of the law and law laid down by the Hon’ble



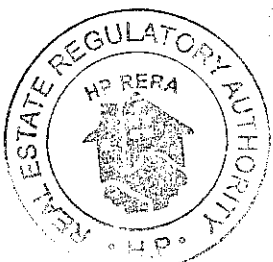
Apex court, where the Hon'ble Apex court clearly held that 4 Parallel Proceedings before the two forums cannot taken as held. The relevant parts of the Judgement passed by Hon'ble court is as follow:- In case of Meghmala & Ors. Versus G. Narasimha Reddy & Ors, in Civil Appeal Nos. 6656-6657 of 2010 decided on 16.08.2010 Para 9:- "that the self-same relief two parallel proceedings before the two forums cannot be taken". In another case of Union Of India and other vs Cipla Ltd and other Civil Appeal No. 329 of 2005 decided on 21.10.2016 Para 150 held that "A classic example of forum shopping is when a litigant approaches one Court for relief but does not get the desired relief and then approaches another Court for the same relief". The Hon'ble Delhi High Court in DCM Shriram Industries Ltd. vs HB Stockholdings Ltd. And Ors on 28 April, 2014, CO.A (SB) 7/2014 & CA No. 275/2014 held that "The expression "Parallel Proceedings" has not been defined. However, the expression has been used in a sense to describe a set of proceedings that a litigant is proscribed to pursue simultaneously. Such set of proceedings either includes proceedings that are identical in effect or a set of proceedings that are inherently inconsistent so as a pursuit of one, negates the other. In the former case, the proceedings must be similar at least in three respects: 1) the parties, 2) the issues involved and 3) the relief claimed. In cases where proceedings are



similar in these material aspects, it is obvious that the result of one would render the others meaningless. In such circumstances permitting parallel proceedings would amount to permitting meaningless litigation. The expression "Parallel proceedings" must mean a set of proceedings which are pursued for identical reliefs, are based on the same cause of action and the subject matter of the disputes is similar". In the present matter the issue regarding not to grant mutation is before the competent Revenue Authority in which due to the nonpayment of the consideration amount, the mutation of the property in question has put on hold vide annexure R-2 on record"

21. We have gone through the above case Laws in detail. the first case law is of Supreme Court of India in Meghmala & ors. vs. G. Narasimha Reddy & ors. In that case, litigant had completed several rounds before the high Court. Therefore, the review petition was not considered maintainable. In the present case there are no such circumstances.

22. The second case quoted is of Union of India vs Cipla Ltd. The respondent has referred to para- 150 of Forum Shopping, where Solicitor General had brought to the notice

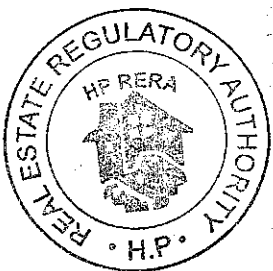


of SC, that Cipla had filed petition in the Bombay High Court, The Karnataka High Court and also an affidavit in the Delhi High Court.

23. In the present case, no such instance have been quoted by the respondents that the complainant has filed , any other petition in other court. The reference to issue, regarding grant of mutation before the competent revenue Authority is a separate proceeding and in no way could be considered as parallel proceedings.

24. The respondent has also quoted Delhi HC in DCM Shriram Industries Ltd. Vs HB Stockholdings Ltd. &n ors.

In that case, it was contended by the Appellant that respondent no-1 was barred from perusing the petition before the Company Law Board as, some proceedings were going on before the SEBI. The court concluded that proceedings with SEBI will not prevent respondent to peruse his petitions before the Company Law Board. Thus, the facts of the case quoted by Ld. Respondent are different from the present case. Further, section-88 of the Act makes, it very clear that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other Law for



the time being in force. In the light of above discussions, the argument of the Ld. counsel for the respondent about the parallel proceeding in the case, does not hold ground.

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

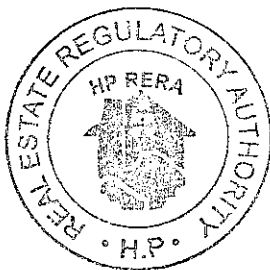
“Section 31 of the Act prescribes that any aggrieved person can file a complaint before the Authority or the adjudicating Officers as the case may be for any violation of the provisions of the Act. Further, Rule 23 of the Himachal Pradesh Real Estate (Regulation and Development) Rules 2017 provides the 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—





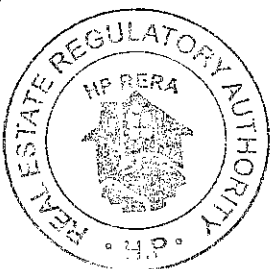
(a) "be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made there under or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, 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 17 of the Act *ibid* provides as under,

(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent Authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent Authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent Authority, as the case may be, under this Section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-Section (1), it shall be the responsibility of the promoter to



*handover the necessary documents and plans, including common areas, to the association of the allottees or the competent Authority, as the case may be, as per the local laws:*

*Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent Authority, as the case may be, within thirty days after obtaining the occupancy certificate.”*

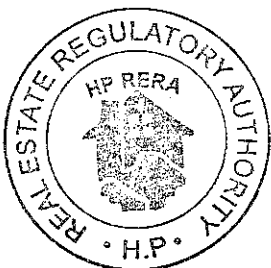
Section 19 (4) of the act provides as under:

*(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

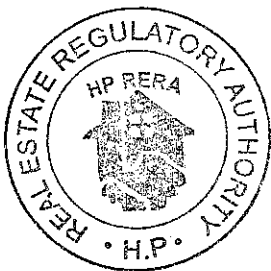
*(1) “The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made there under.”*

26. 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.'

27. In the present case the complainant has asked various reliefs which pertains to the obligations cast upon the promoters. Under section-11 (4) (b) the promoter is responsible to obtain the completion certificate. Under section- 11 (4) (f ) he is responsible for providing and maintaining the essential services. Under section-14 promotor is obligated to develop the project in accordance with the sanctioned plans. Section-34 clause- (f) provides that the Authority is to ensure compliance of the obligations cast upon the promoter. For this purpose, the Authority has powers to conduct investigations under section 35 and power to issue directions under section 37. Further, the Authority has power to impose penalty or interest under section 38 of the Act, in regard to any

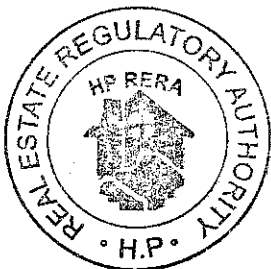


contravention of obligations cast upon the promoter. The various penalties which can be imposed by the Authority are mentioned from Section-59 to section -69 of the Act. Thus, the Authority has clear jurisdiction to decide about imposing penalty and interest in regards to any contravention of obligations cast upon the promoters. As far as the compensation is concerned, the same is to be adjudicated by the Adjudicating officer under section 71 of the Act.

**iv) Issue of attestation of mutation**

28. In the present case, the sale deed was executed between the parties on 1<sup>st</sup> May, 2017. However, the respondent on 8<sup>th</sup> Feb, 2018 wrote a letter (Ann-R-II) to the Tehsildar Shimla(U) that he has sold a flat to Anita Verma and Paras Verma, but the complainants have not paid Rs. 4.80 Lakhs, therefore, please do not proceed with the mutation.

From the perusal of the sale deed, it is clear that parties had agreed to sale and purchase the flat number 401 for a total consideration of Rs. 80 lakhs. In the last para at page-3 of the sale deed, it is written:

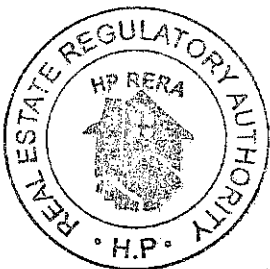


**“And the seller has received said total sale consideration from the purchaser and the seller hereby acknowledges the receipt of the full and final payment”.**

Thus, from the above para of the sale deed it is clear that both the parties acknowledged full and final payment. Moreover, clause-3, at page 5 of the sale deed reads as follows:-

“that the seller hereby undertakes and agrees to get the mutation entered in all relevant revenue records and the seller has no objection in case the mutation of the sold property be attested in favour of the purchaser in absence of these sellers”.

29. From the above clause of the sale deed, it is very clear that the mutation was to be entered based on the sale deed in the absence of the seller. Thus, the complainants once have sale deed in their favour, have right to get the mutation entered in their favour, in the revenue records. The respondent had no right to write a letter, stopping the mutation based on some alleged non payment. In view of the above facts, the Authority directs the Tehsildar(U) Shimla to enter and attest mutation in favour of the complainant based on the registered sale deed between the parties,



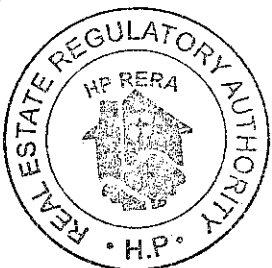
without taking into consideration the letter written by the respondent.

**v) Whether any payment is due from the complainant.**

30. In the present case the respondent has pointed out that the complainant has not made the payment due from him. There are various correspondences supplied by both the parties regarding the additional payment. There is a letter dated 1<sup>st</sup> Oct, 2019 (at P-4) of the file, where the respondent has mentioned that Rs. 4 lakh principal and Rs.2.32 lakh of interest is due from the complainant. It is also evident from the record that a post dated cheque of Rs. 4 lakh dated 25.6.2018 was given by the complainant to the respondent, but the same was withdrawn for want of various facilities and completion of various works.

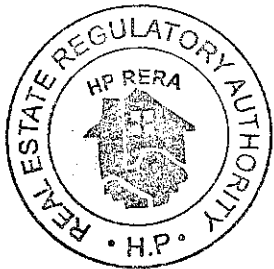
At page -47 of the file, the following extra charges have been shown payable, which has been signed by both the parties-

<b>S.No.</b>		<b>Amount in Rupees</b>
1.	Car parking	1,00,000
2.	Internal Development charges @ Rs. 50000	57,250



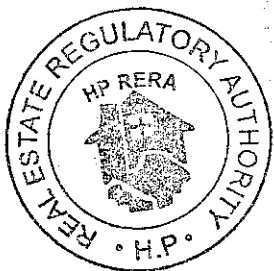
3.	External Electrification Charges @50 per sqft.	1,09,920
4.	Fire Fighting charges @ Rs. 20 sqft.	43,968
5.	Club Membership @ 50000	57,250
6.	Sinking Fund @ 10 per sqft.	21,984
7.	Interest free Maintenance security @ Rs. 20 per sqft.	43,968
8.	One year Advance Maintenance @ Rs. 1500 per month	18,000
9.	Interest	0
	Total	4,52,340

31. The complainant in his complaint as well as in his rejoinder has narrated that these extra charges were payable only on providing these extra facilities. In para-13 of his rejoinder, he has submitted that one parking space was to be provided as per the sale deed and additional parking was to be provided for Rs. 1 lakh. However, no designated space for parking has been provided by the respondent. The internal development and firefighting facilities are to be provided as per section-2 (zb) of the RERA Act. Thus, these additional charges are not tenable. Further, no external charges are leviable, as the same are already included in the valuation of the flat. Thus, he argued that the extra amount asked by the respondents are not payable and disconnecting



of electricity and water connections, is nothing but extortion of money. He handed over the cheque of Rs. 4 Lakh, subject to the condition that, he will get NOC for mutation in revenue record, water supply and electricity, allocated car parking space and completion of all works. The respondent on the other hand has argued that the complainant is duty bound to pay amount due as well as interest as per section-19 of the Act.

32. From the perusal of record of this case, it is clear that the complainant had made the full payment of Rs. 80 lakh, as sale consideration to purchase the flat, which is evident from the content of the sale deed dated 1<sup>st</sup> May, 2017. However, it is also evident that the complainant had provided a post dated cheque of Rs. 4 lakh to the respondent. The complainant has made it clear that this money was for the extra facilities. From the facts of the case, it is apparent that the complainant was required to pay Rs. 4 lakhs, subject to providing various extra facilities. In addition to this, the respondent was duty bound to provide NOC for providing water and electricity connections at domestic rates. From the

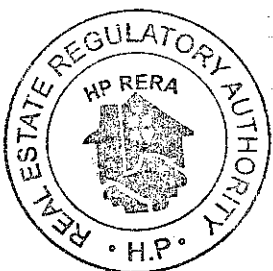




spot inspection reports and also from the pleadings of the parties, it is evident that these extra facilities have not been provided till date. Thus, it is held that the complainants are not required to pay this extra money, as these extra facilities have not been provided. In future, if respondent provides these extra facilities, only then he can raise the bill to the complainant for any extra payment, and not otherwise.

33. The respondent has also asked for interest on his dues. The rate of interest charged by him is exorbitant @ 24%. Whereas, as per clause-7, section-19 of the Act, prescribes that the allottee shall be liable to pay interest as, prescribed for delay in payment. The prescribed rate of interest is SBI highest marginal cost of lending rate + 2% as per Rule-15 of HP RERA Rules 2017. The allottee is to pay the interest only when the extra works are completed. In the present case, the extra works have not been done therefore, the issue of levying of interest does not arise.

Further, The complainant has paid the service tax to the respondents, but it is not known, whether the respondents have paid that tax to the government or not?

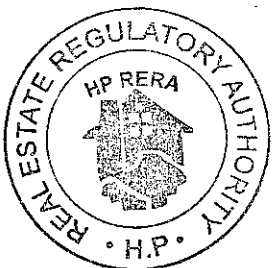


The respondents must provide the tax deposit receipts to the complainants

**vi) Issue of providing basic services like electricity and water:**

34. The Hon'ble Apex Court in the matter of **Chameli Singh and others vs. State of U.P. and another** 1996) 2 SCC 549, has held that, "*Right to live and specifically observed that right to life includes the right to live with human dignity and further observed that right to live guaranteed in any civilized society implies the right to shelter and while discussing the right to shelter, includes electricity which is undisputedly, an essential service to the shelter for a human being.*

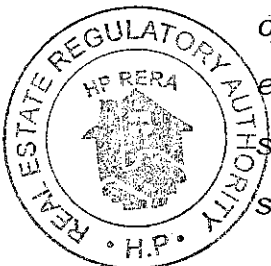
**In State of Karnataka vs. Narasimhamurthy (AIR 1996 SC 90) SCC p. 526, para 7: JT at p. 378, para 7)**, the Hon'ble Apex Court held that, "*Right to shelter is a fundamental right under Article 19(1) of the Constitution. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, **pure air and water, electricity**, sanitation and other civil amenities like roads etc. so as to have easy access to his daily avocation ..."*



The Madras High Court in the matter of **T.M. Prakash and others vs. The District Collector, Tiruvannamalai District, Tiruvannamalai and another 2013 SCC OnLine Mad 3001** has held that access to Electricity supply should also be considered as a right to life, in terms of Article 21 of the Constitution of India and observed as under:

*“66. Lack of Electricity supply is one of the determinative factors, affecting education, health, cause for economic disparity and consequently, inequality in the society, leading to poverty. Electricity supply is an aid to get information and knowledge. Children without Electricity supply cannot even imagine competing with others, who have the supply. Women have to struggle with firewood, kerosene, in the midst of smoke. Air pollution causes lung diseases and respiratory problems. Electricity supply to the poor supports education and if it is coupled with suitable employment, disparity is reduced to certain extent. Lack of education and poverty result in child labour.*

*68. The Respondent ought to have visualised the difficulties of the women, children and aged persons, living in the huts for several years, without Electricity. Electricity supply is an essential and important factor for achieving socioeconomic rights, to achieve the constitutional goals with sustainable development and reduction of poverty, which encompasses lower standards of living, affects education, health, sanitation and many aspects of life. Food, shelter and clothing alone may be sufficient to have a living. But it should be a meaningful purpose. Lack of Electricity denies a*

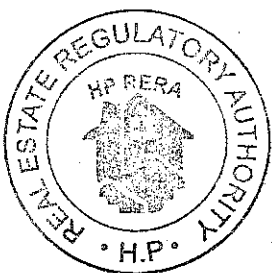


*person to have equal opportunities in the matter of education and consequently, suitable employment, health, sanitation and other socioeconomic rights. Without providing the same, the constitutional goals, like Justice, Liberty, Equality and Fraternity cannot be achieved.”*

35. For a residential flat to be livable, the provisions of electricity and water supply is minimum essential services. In the present case, clause-12 of the sale deed provides as follows:

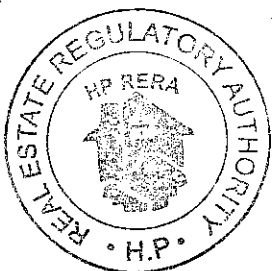
*“That the SELLER will be liable to provide No Objection Certificate/affidavit for the installation of water & electricity connections in the names of PURCHASERS & the PURCHASERS have right to use un interrupted the water & electricity from the existing meters and the sellers will also liable to provide the space for installation of water tank capacity of 1000 Ltrs. and the Purchasers have right to use approach for checking, maintenance and replacement of the water tank from time to time. The other occupants/owners of the building will not make any hindrance/obstruction for the use of approach for the checking/maintenance and replacement of the water tank.”*

36. Thus, the respondent promoters were duty bound to install water and electricity connections, in the flat sold to the complainant.



In the present case, respondent had initially provided water Electricity supply from the common connections to the flat of the complainant at commercial rates, which were also discontinued later. Section- 11(4) (d) of the Act mandates that the promoter shall be responsible for providing and maintaining the essential services on reasonable charges, till the taking over of the maintenance by the association of allottees. But, respondent has miserably failed to fulfil this obligation. Further, he has failed to fulfill his obligations, as per provisions of the sale deed also. The Municipal Corporation, Shimla in its letter dated 26.8.2020 (Ann-A-6) has mentioned that completion plan of the building has not been approved. Till the completion plan is approved, the NOC for domestic connections cannot be considered. Section-11(4) (b) of the Act mandates that the promoters will obtain the completion certificate. In the present case the promoter has not fulfilled his obligation of getting the completion certificate and also providing NOC for these essential services.

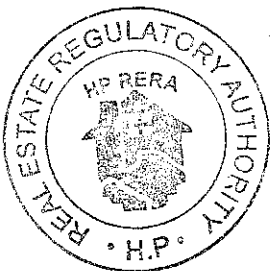
It is pertinent to mention that the approximate cost of this project calculated on the basis of average price of Rs. Forty lakhs for the six flats on the lower three floors of the block 'A' , average price of Rs. 80,00,000 for the two flats on the top floor with attic,



of block A', four flats of block 'C' at an average price of Rs. 68 Lakhs and approx Rs. 32,00,000 for the RCC frame and site development of Block 'D' comes to approx Rs. 7.04 Crores approximately and Authority is empowered to impose penalty upto five percent of the cost of project under section 61. Therefore, he is liable to pay a penalty of Rs. 5 lakh under section-61 of the Act for contraventions of the provisions of this Act.

37. The respondents are further directed to immediately provide water and electricity supply from the common connections and positively within one month of this order. If the same is not done, then they will be liable to pay an additional penalty of Rs. 8 Lakh.

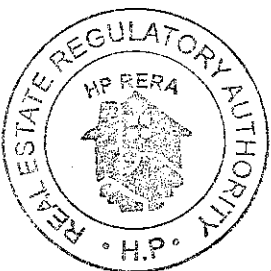
After providing the above temporary connections, the respondent should facilitate and provide location for installation of a water tank for getting a permanent water connection by the Complainants from the Municipal Corporation and also a covered space for getting a permanent electricity connection within next two months. If the above facilities are not provided within two months, then the respondent will be liable for a separate penalty of Rs. 10 lakh.



It is also observed by the Authority that from the common connections, the complainant/allottee is required to pay for the electricity and water supply at commercial rates, which are much higher than the domestic rates. Therefore, the respondent promoters are directed to reimburse the difference of domestic charges vis a vis the commercial rates paid by the complainant in the past and also in future, every month till the respondent promoters provide, No Objection Certificate for getting domestic connections, after receiving the completion certificate.

vii) **Payment of rent etc. by complainants, due to non availability of water and electricity supply:**

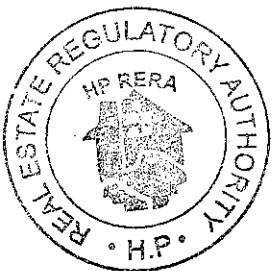
38. The complainant in his rejoinder has stated that as his residential flat is not habitable for want of water supply and electricity, he has taken a flat on rent in Shimla. He has attached the copy of rent agreement at Anx-A-3 and the details of payment of rent at Anx-A-4, which shows that he is regularly paying rent of Rs. 22,500/- per month, for another flat at Shimla, as his own flat is not habitable. Further, he is also paying Rs. 43,392 p.m. to the HDFC bank for the loan taken for purchase of the flat.



39. From the perusal of above facts, it is very clear that the complainants are not able to utilize his own flat ,because the respondent has not provided electricity and water connections from the common connections, which are controlled by the respondent. Neither the respondent has given NOC to complainants, to enable installation of their own electricity and water connections. Thus, the respondent has handed over defective possession of the flat to the complainant ,despite getting full and final payment of the flat as per sale deed dated 1.5.2017. Thus, the possession given to the complainant of the flat is incomplete as the same is not useable. One can understand the mental agony the flat buyer has gone through, due to such rough treatment. It is unfortunate that the respondent promoter has behaved in this manner and has harassed the complainant. The proviso to section-18- ( 1 ) (b) of the Act reads as follows:-

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

40. In the present case the possession given of the flat is of no use, as same cannot be utilized for the want of basic essential

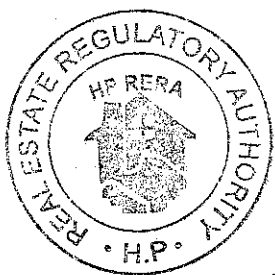




services like electricity and water. Therefore, in the view of Authority, this is a delayed possession of the flat, covered under proviso to section 18 ( 1 ) ( b), till the respondent provide temporary water and electricity supply from the common connections controlled by him or provide NOC for the domestic connections to the complainant. Therefore, the Authority hold that in the present case the respondent will be liable to pay interest at prescribed rate on the sale amount to the complainant, till the electricity and water connections are provided to the complainant.

**viii) Issue of Maintenance charges.**

41. The complainant has pointed out that the respondent is asking for heavy maintenance charges without providing any services and maintenance. It has been argued by the Counsel for the complainant that the respondent was to provide club house facility but the same has not been provided. The same is being used as a Guest house for own use by the respondent. There are no common services being provided by the respondent, despite that he had started charging of maintenance charges of Rs. 1500 per month which has now been increased to Rs. 3,500 per month. If the maintenance charges are not provided, then the

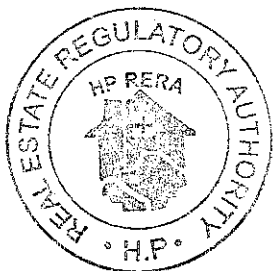


respondent resort to harassment and disconnection of electricity and water supply and this problem is being faced by all the allottees. The respondent Counsel argued that he is providing various common facilities. It has also come to the notice of Authority, during the arguments, that the electricity and water charges at commercial rates are over and above the monthly maintenance charges, being collected by the respondent.

42. The Authority from its two site inspections has witnessed that that there are very small common areas, like staircases and their lighting etc. in the project and their maintenance will not require this much of monthly charges. Section 11-4(d) of the Act prescribes as follows:- Promoter -

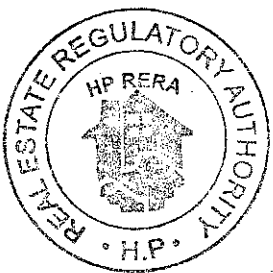
“Be responsible for providing and maintaining the essential services on reasonable charges till the taking over maintenance of the project by the association of the allottees”.

Thus, the respondent was required to provide the essential services on reasonable charges. The Authority feel that the maintenance charges are not commensurate with the services being provided by the respondent promoters. However, the Authority is not going into the reasonableness of the charges at this juncture. Section-11-(4 ) (e) of the Act further provides that

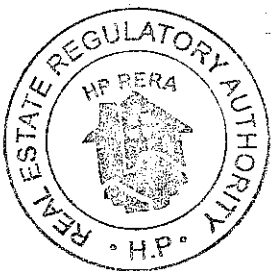


the respondent will enable the formation of association of allottees within a period of three months of the majority of the allottees having booked their flats . Despite booking of majority of flats, the same has not been done in the present case. The Authority directs that the respondent should enable formation of association of allottees (by whatever name called) within next two months. All the common areas should be handed over to the association of allottees, within one month of its formation. After that it is up to the association of allottees to decide whether they themselves want to carry out the maintenance or wants to give the maintenance to some other person. Thus, the respondent promoters are restrained to take any maintenance charges after three months from the issue of this order unless, the association of allottees agree to hand over the maintenance to the respondent promoters. In that case, the charges would be at the rate, as fixed by the association of allottees.

42. Keeping in view the above mentioned facts, this Authority, in exercise of the powers vested to it under various provisions of the Act, issues the follows orders/ directions: -

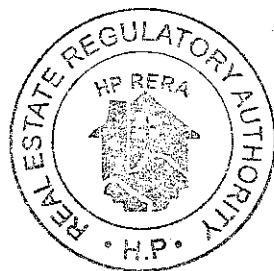


- i) The complaint is allowed. The Tehsildar, Shimla is directed to enter and attest mutation in favour of the complainants based on the registered sale deed dated 1<sup>st</sup> May, 2017.
- ii) The complainants are not liable to pay any extra charges to the respondent promoters, as no extra facilities have been provided.
- iii) The respondent will provide the receipt of the Service Tax (paid by the complainants), deposited in the government account, to the allottee, failing which, a complaint may be made by the allottee to the central excise Department ( Now GST) , informing them about the amount of service tax paid by them to the respondent towards the purchase of flat and with a request to them to recover the same from him, as per procedure along with penalty and interest so that the allottee is not held liable to make payment to the tax collecting authority .
- iv) The respondents are directed to pay a penalty of Rs. Five lakh ( Rs. 5 lakh) under section 61 of the Act, for not fulfilling their obligations under the Act. The penalty imposed shall be deposited in the bank account of this



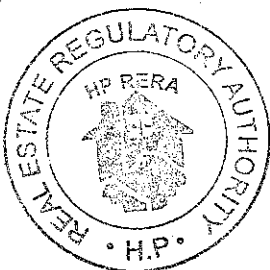
Authority, operative in the name of "Himachal Pradesh Real Estate Regulatory Authority Fund" bearing account no. "39624498226", in State Bank of India, HP Secretariat Branch, Shimla, having IFSC Code SBIN0050204, within a period of two months.

- v) The respondent promoters are directed to provide electricity and water connections to the complainants, from the common connections within one month from the issue of this order. If respondent promoters fail to provide these connections, then they will be liable to pay a penalty of Rs. Eight lakh (8 lakhs) under section-61 of the Act.
- vi) The respondents are directed to facilitate release of permanent water supply with an independent water tank of 1000 litre and electricity connection to the flat of the complainants within two months. If respondents fail to do so, they will be liable to pay a penalty of Rs. Ten lakh (Rs. 10 lakhs) under section 61 the Act.
- vii) The respondents are directed to reimburse the difference of the commercial rate of supplying electricity and water viz-a-viz the domestic rates per month ( and of past months) to the complainants, till the NOC for domestic



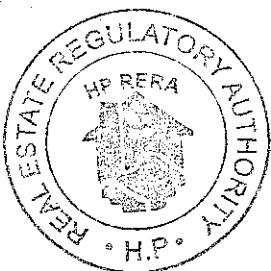
connections are obtained by them, after getting the completion certificate.

- viii) The respondents are directed to pay interest at the rate of highest MCLR of SBI i.e 7.3 % + 2% i.e 9.3% for defective possession i.e equivalent to delayed possession u/s 18 of the Act, to the complainants from the date electricity and water supply were disconnected from their flat, after execution of the sale deed, till the water supply and electricity connections are released/restored from the common connections.
- ix) The complainant is allowed to park one car within the boundary of the block 'A' ( as per sale deed) and needs no permission for the same from the respondents
- x) The respondents are directed to enable the formation of Association of Allottees within next two months and hand over the common areas, in subsequent one month. If the same is not done, then they will be liable to pay a separate penalty of Rs 6 lakh under section 61 of the Act.
- xi) The respondents are restrained from levying any maintenance charges after three months from the issue of



this order, except if, the Association of Allottees agrees to continue the maintenance from them, on a mutually agreed annual charges.

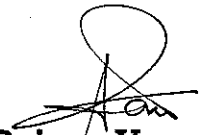
- xii) The above directions of the Authority are to be implemented by the respondent promoters as well as project land owners as promoters of the project, jointly and severally.
- xiii) It is further ordered that the respondents are barred from selling/leasing/allotting/booking any remaining flats/land in the present project or any of their projects in Himachal Pradesh, till the compliance of this order. Further, no withdrawals from the bank account of the projects is to be made till payment as ordered is made to the complainants and penalty is deposited into the account of Authority. Further, there shall not be any alienation of any movable and immovable assets of this project and any other project of the respondents in HP, till compliance of this order.
- xiv) The respondents are directed to submit the details of all their bank accounts within fifteen days.



- xv) Non-compliance or any delay in compliance of the above directions shall further attract penalty and interest on the ordered amount under section-38, 63 and 69 of the Act *ibid*, apart from any other action, the Authority may take under section-40 or to other relevant provisions of the Act.
- xvi) The complainants shall be at liberty to approach the Adjudicating Officer for compensation under Section- 71 of the Act *ibid*

  
**B.C. Badalia**  
Member

  
**Dr. Shrikant Baldi**  
Chairperson

  
**Rajeev Verma**  
Member

