

**REAL ESTATE REGULATORY AUTHORITY,  
HIMACHAL PRADESH**

**In the matter of:-**

Sh. Ravi Kant S/o Shri Kewal Ram and Smt Ranjana Sharma  
W/o Sh Ravi Kant both R/o 81/1A, Trikant Niwas, Lower  
Cemetery, Sanjauli, Shimla- H.P.  
.....Complainant

Versus

- 1) Rajdeep & Co. Infrastructure Pvt Ltd, SCO -12,1<sup>ST</sup> Floor,  
Hollywood Plaza, VIP Road, Zirakpur -Punjab
- 2) Sh Rajdeep Sharma s/o ShSansar Chand Tehsil Rohru  
Distt Shimla  
.....Non-Complainant/ Respondents

**Complaint no. RERA/HP SHCTA/04180002**

**Present: - Shri Ravi Kant, Complainant along with Advocate  
Sh Sameer Thakur through Webex**

**Shri Rishi Kaushal Advocate for Respondents**

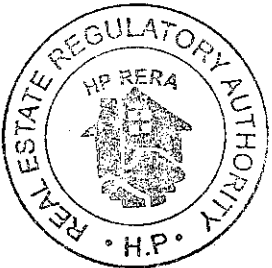
**Shri Mayank Manta, Assistant District Attorney for  
State of Himachal Pradesh/ RERA Himachal  
Pradesh.**

**Date of Hearing (Through WebEx): -19.11. 2020**

**Date of pronouncement of Order: -  
17.12.2020**

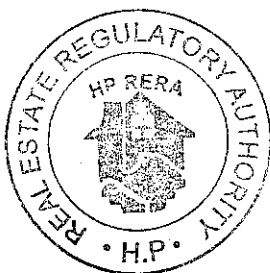
**ORDER**

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



## **BRIEF FACTS OF THE CASE**

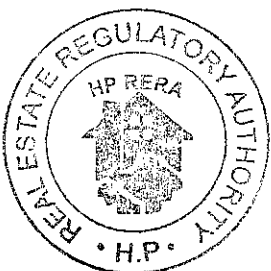
1. The present matter refers to a Complaint filed under the provisions of the Real Estate (Regulation and Development) Act, 2016(herein after referred to as the Act)against M/s Rajdeep and Co. Infrastructure Pvt. Ltd., which are having a ongoing project named Claridges Residency located at Upmohal, Keleston, Tehsil and Distt 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.
2. The parties to the complaint have filed their written submissions/ replies/ rejoinder before this Authority after issuance of notice for hearing along with additional documents which have been taken on record for proper adjudication of the present Complaint.



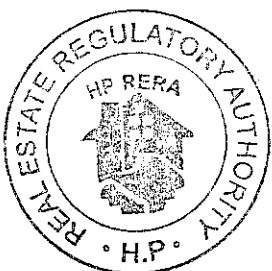
3. The Authority has gone through the documents and pleadings of the complainant and Respondent. The following facts have emerged in the case:-

a. That the complainants Shri Ravi Kant and Smt Ranjana Sharma had filed an online Complaint dated 23rd June, 2020 before this Authority in 'Form-M' bearing complaint no. RERA/HP SHCTA/04180002 of the HP Real Estate (Regulation & Development) Rules, 2017. As per the complaint it has been alleged that the respondent promoter, Rajdeep & Co. Infrastructure Pvt Ltd has cheated by playing fraud on them. The complainant(s) have further alleged that the respondent promoter, in breach of the conditions of the sale deed, executed for the sale of the said flat, has not honored the conditions of the sale deed and also duped them of large amount of money fraudulently, by making false promises to provide additional services and facilities, in addition to the commitments made in the sale deed.

b. That the complainant(s) entered into an agreement dated 27.10.2014, with the respondent promoter to purchase a flat bearing number 201, on the second

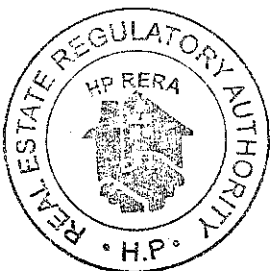


floor in Tower "A" at "Claridges Residency", a residential housing project being developed by the respondent promoter, coming up at Upper Bhararai, Shimla. The agreement to sell, showing the total sale consideration of the said flat to be Rs.41,00,000 , entered upon between both the contending parties, mentioned clearly that the first party/ seller i.e. Rajdeep & Co. Infrastructure Pvt Ltd was owner in possession of land comprised in khata Khatauni No. 151/186,Khasra No. 5, measuring 1416.80 Sqm situated at Upmohal Keleston, Tehsil Shimla(U), Distt Shimla, Himachal Pradesh and the seller had constructed a four storeyed building on the said land and the map of the said building has been approved from concerned authority, page no. 05-07 of Annexure R-1 of the reply to the amended complaint. That the sale deed of the flat, in accordance with the terms of conditions of the agreement to sell, dated 27.10.2014, was to be executed on or before 15.05.2016 and the same was executed for semi finished flat on 19.5.2016.The sale deed, in pursuance to the agreement to sell, showing the



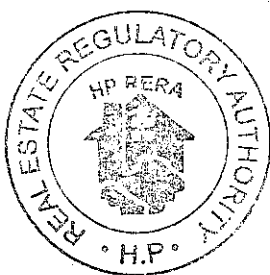
consideration price of Rs. 36, 00,000 was executed between Sh Rajdeep S/o Sh Sansar Chand R/o village Jakhar. Tehsil Rohru, Distt Shimla-HP, as first party and the complainant(s) as second party, for flat no. 201 on 2nd floor in a four storied building in Tower "A" at "Claridges Residency", upper Bhararai Shimla, annexed as 'Annexure 1 colly' at page no 9 of the amended complaint which was paged and indexed as required. The detail of the total consideration price of Rs. 36, 00,000as paid by the complainants to the respondent is mentioned in the executed sale deed. It was also clearly mentioned in the sale deed that the map of the said building has been approved from MC Shimla vide order no 35(AP) dated 6.2.2003. The copy of the approved map, for a four storied building, in the name of Smt Jaswant Kour , on khasra number 5/5 at Bhararai is annexed at page no. 34 of the complaint.

- c. That the complainants, pursuant to the execution of sale deed dated 19.5.2016, became absolute owners of the flat and the possession of the same, free from all encumbrances, was handed over by



the respondent promoter to the complainants vide possession letter dated 24.5.2016 annexed at page no 31 of the complaint. The possession letter clearly mentioned about receiving a post dated cheque bearing number 000016 issued for date 15<sup>th</sup> August 2016 amounting to Rs. 2,42,420 against the outstanding charges, annexed at page no 31 of the complaint.

- d. The complainants further alleged that at the time of entering into agreement to sell as well as in accordance with the terms of the sale deed, the respondent promoter was to provide NOC for the installation of domestic water and electricity connections. The complaints have also alleged that that the respondent promoter, in addition, was also required to provide space for installing 1000 liters personal and independent water tank along with free access to said space and also specified parking space.
- e. That all the facilities were to be provided for a sale consideration of Rs. 36,00,000, which was fully paid by the complainant to the respondent promoter. The complainants have reiterated that



the possession of the flat was given to them as the entire consideration amount of the flat was paid by them and have annexed the copy of the executed sale deed and the copy of the possession letter as was given by the respondent promoter.

- f. That the complainants have further alleged that, during intervening period between agreements to sell on 27.10.2014 to the date of the execution of sale deed on 19.05.2016, the respondent promoter assured to provide additional services for which additional amount was demanded and was paid by the complainant.
- g. That the promoter claimed that his company would provide club with bar and restaurant and all indoor games and recreational facilities. The flat owners were offered life time membership on onetime payment of Rs. 1, 75,000, which was paid vide receipt no. 1059 dated 13.05.2016 annexed at page no 29 of the complaint.
- h. That the promoter asked the complainants to make payment of service tax to the tune of Rs. 2, 25,000 which was paid by him vide receipt no 1047 dated 17.12.2015 annexed at page no 25 of the complaint.



The complainant also paid an amount of Rs. 1,00,000 vide receipt no 1050 dated 14.01.2016, annexed at page 26, to use a fully equipped modern gymnasium within the project. The complainants alleged that they also paid an amount of Rs. 1,00,000 vide receipt no 1101 dated 20.01.2016 annexed at page 27, towards the power back up along with laundry, dry cleaning and ironing etc as onetime payment. All these facilities were to be provided within six months of the completion of the project or to say within six months from the date of handing over of the possession and execution of the sale deed. The complainants further alleged that the respondent promoter demanded an amount of Rs. 2,42,000 towards refundable security which was to be refunded on completion of one year from the date of execution of sale deed and the same was paid vide cheque no 000016 dated 15.08.2016.

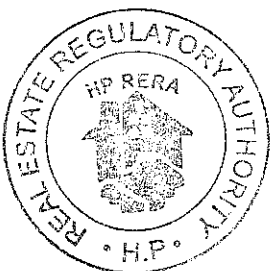
- i. That after the registration of the sale deed and taking of the possession of the flat by the complainants, they were stunned to see that there was no domestic electricity and water meter. The respondent throughout was using electricity and





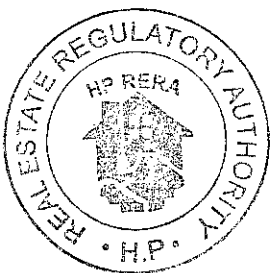
water from the commercial connections that he has obtained for carrying out the construction activity at site. The complainants alleged that they were always made to understand and believe by the respondent that the building is a sanctioned building and only for this reason they invested such a huge amount in buying the said flat.

- j. That the complainants asked to be provided the NOC for the installation of domestic electrical and water connection in the flat but the respondent again demanded an amount of Rs. 2, 00,000 from the complainants for providing the said requisite NOC .The complainants alleged that they were blackmailed and forced to pay this amount of Rs. 2, 00,000 as demanded by the promoter and paid the said amount without free consent and extorted by the promoter by putting pressure. The complainants stated that they had no other choice but to succumb to the pressure and blackmail of the promoter and had to pay the amount of Rs. 2,00,000 which was transferred in the account of Rajdeep and Company in Yes Bank vide reference no. N106180520669791 on 16.4.2018 by way of a



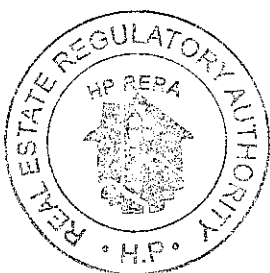
NEFT transaction and the receipt of the same was acknowledged by the promoter vide receipt no 1149 dated 25.06.2018 annexed at page no 32 of the complaint. The respondent, even after extorting this huge amount did not provide the requisite NOC, which he was duty bound to provide as per clause no 12 of the executed sale deed.

- k. That the complainants approached municipal corporation Shimla authorities, to make enquiries about as to why the requisite NOC is not being issued by them. The complainants alleged that they were in for a rude shock to know that the building was constructed in violation of the norms and the NOC cannot be issued till the completion plan is approved as conveyed by MC Shimla vide their letter no.MCS/AP/6418/8/16-7311 dated 12.12.2016 annexed at page no 12 of the complaint.
- l. That the original building map/ proposal drawing was approved in the name of some other person, Smt Jaswant Kour, as per copy of drawing enclosed at page no 31 of the complaint, according to which the building was proposed to be a four storied structure with one dwelling unit/ flat on each floor



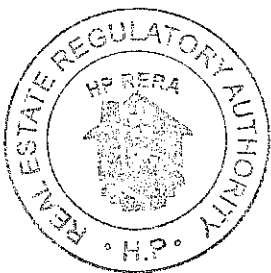
but the promoter has constructed two flats on each floor in contravention to the sanctioned plan. The complainants have further alleged that the respondent promoter has been running a home stay service from the said premises and the complainants too wanted to run 'bread and breakfast service' from their premises but could not do so because there was no independent electrical connection in the absence of NOC. The complainants have alleged that the respondent promoter coerced them lease their flat to him failing which he threatened to disconnect the electrical and water supply to their flat

- m. The complainants have alleged that, as was agreed upon vide clause 12 of the executed sale deed that the respondent will provide a space for installation of a water tank of capacity 1000 liters with right to use approach for checking, maintenance and replacement of the water tank from time to time, but the same was never provided. The requisite NOC and the space for water tanks, as agreed upon vide clause 12 of the sale deed, have not been provided till date and when requested to do the



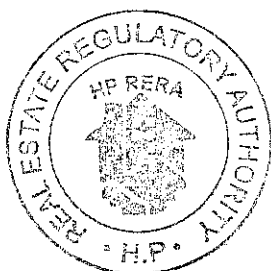
needful pertaining to these issues, the complainants alleged that they were threatened by the respondent. The respondent has also demanded maintenance charges @ Rs. 2500 per month and threatened to disconnect electricity and water supply to the flat, if not paid. The complainant further alleged that the respondent has been supplying electricity and water from the commercial connections that he has obtained for carrying out the construction, and forcing them to pay for using these services at exorbitant rates, whereas they have purchased residential flat and are supposed to be provided electrical and water supply at domestic rates.

- n. That the respondent, after having extorted a total amount of Rs. 10,42,000 over and above the settled and final sale consideration of Rs. 36,00,000, towards various services and facilities including for NOC which was to be provided by him free of cost as per the sale deed condition, are nonexistent at site. The complainants, despite of paying such huge amounts for buying this flat and for nonexistent services, are forced to pay per month



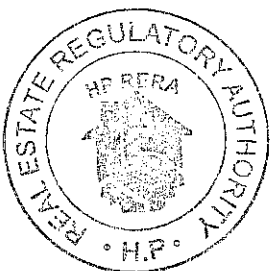
monthly charges against their free will and consent and thus feel cheated by the respondent.

- o. The complainants further stated that, after the Govt allowed the installation of commercial electrical and water connection without any NOC from any authority, having no other option, applied for and got independent commercial electrical and commercial water connection for their flat.
- p. The complainant was charged for electricity and water at exorbitant commercial rates.
- q. That the complainants have sought specific relief from this Authority
  - i. that they be provided NOC by the respondent for installing domestic electrical and water connections, in accordance with the terms of sale deed and they be reimbursed the tariff difference between the commercial and domestic charges of electrical and water services, by the respondent till the time the NOC for the domestic connection of both the services, is provided by him as there is huge difference between the tariff of



commercial and domestic connection of both the services

- ii. That the respondent should provide space for the installation of independent water tank of capacity 1000 ltrs with independent approach without any hindrance from any one for proper care, maintenance and replacement of the tank, if need arises, within the vicinity of the building, named as Block 'A' and not in any other block like B,C or D as an attempt was made in past by the promoter to provide space in block D. The space should be such that when tank is placed at a suitable height, the supply of the water to the flat from the tank should be by way of gravity flow. The approval of completion plan is held up for the reason that the respondent has opened the closed basement and the complainants have prayed that the MC Shimla authorities be directed to initiate suitable action in this regard
- iii. That the respondent is forcing the complainants to pay the maintenance charges despite there being no agreement for the same and he be

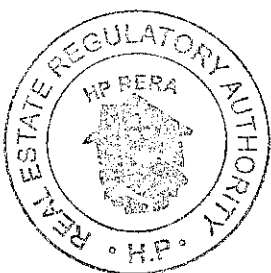


refrained from charging the same which is undue and unjust.

- iv. That the promoter be directed to refund the additional payment of Rs. 10, 42,000 collected from the complainants under different pretexts of providing services and facilities that have not been provided at all. The amount spent on the installation of water tank and water supply lines amounting to Rs. 56,500 be also returned.
- v. That the complainants be provided specific parking space to park one light motor vehicle, LMV, as agreed upon as per clause 13 of the sale deed, in the parking floor of the block 'A' where the promoter has established his office in an unauthorized manner.
- vi. That the completion plan of the building/ flat be got approved by the respondent.

**Reply by the Respondent:**

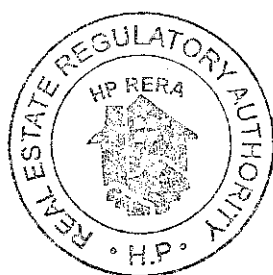
4. The replying respondent , in his reply has submitted that the complainant has not approached this Authority with clean hands and has concealed material facts which is necessary to adjudicate the



complaint and has got registered a frivolous FIR against the answering respondent. The respondent has submitted that the issue is minor in nature and attempts were made to resolve it amicably but the complainants acted mischievously and did not settle the issue.

5. The respondent submitted that the issuance of NOC is done by the authorities and this fact is known to the complainants but still they are making it an issue before this authority and as such they have no cause of action to file this complaint. The applicant has also got his independent electrical connection leaving behind no issue at all.
6. The replying counsel has cited the complaint case adjudicated by Real Estate Regulatory Authority Punjab, titled

*'Bikaramjit Singh and others (complainants) versus M/s HP Singh and others , in which it has been clearly laid down three conditions that must be fulfilled for such complaints to be considered by it, firstly the alleged violations though commencing before the enforcement of RERA Act, must be continuing till date; secondly , the alleged violations must also constitute a contravention of the RERA Act, and the rules and regulations made there under; and thirdly, the issue should not have been decided or be pending in any forum/ court before approaching this authority'*



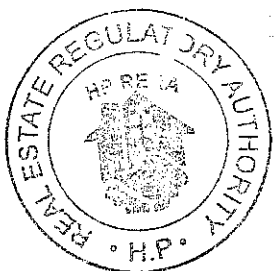


In the present case, the complainant has raised their similar issues before the Hon'able High Court of Himachal Pradesh at Shimla and the same is pending adjudication and the complainant has failed to raise the alleged violations against the respondent that constitute a violation of RERA Act and the rules and regulations made there under.

7. The replying counsel has relied on section 31 of the Act, the relevant of which is reproduced as under;

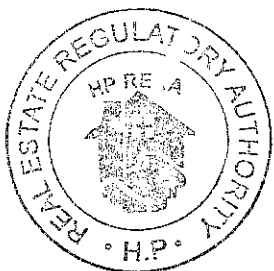
*'any aggrieved person can file a Complaint before the Authority or the Adjudicating Officer as the case may be for any violation of the provisions of the Act' or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be'*

arguing that the present complaint fails to point out any of the violations or contravention of the provisions of this Act or the rules. The counsel further emphasised that the present complaint is false, frivolous, vexatious and abuse of the process of this Hon'able Authority and the complainants have also concealed that the similar case is pending before the Hon'able Distt Consumer Redressal Forum at Shimla and hence this complaint is liable to be dismissed on this ground also.



8. The replying respondent, in his amended reply, submitted on 25.10.2020, has submitted that the complainant has mentioned about the agreement to sell dated 27.10.2014 but mischievously did not annexe the same with his complaint. He further submitted that as per the agreement to sell dated the consideration price of the flat was Rs. 41, 00,000 and the complainant was charged accordingly for the flat and furnishings taken together whereas the complainant has annexed only the copy of the sale deed of the flat which shows the price of the flat but not of the furnishings. The said agreement to sell has been annexed as Annexure R-1

9. The replying respondent has also submitted, in his reply dated 25.10.2020, to the amended complaint, , that as far as space for the water tank is concerned, the same has been provided and parking space is also there. He has also clarified that the possession letter, attached at page 31 of the complaint, without any annexure number, mentions only about the sale price and not about the facilities as claimed by the complainants. The replying respondent has drawn attention to the clause 1 of the sale deed, which says

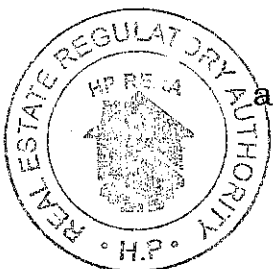


that the vacant possession of the flat has been handed over to the complainants, according to existing map duly signed by both the parties thus leaving no room for the complainants to wake up after 4 years.

10. The replying respondent, while replying to the synopsis of the complaint has again reiterated that the contents of the said synopsis are vehemently wrong and denied, further adding that the receipts issued are towards consideration amount and taxes, further emphasising that the contents of the agreements to sell dated 27.10.2014, Annexure R-1, are crystal clear.
11. The replying respondent has denied all the averments made by the complainants in their complaint and sought the complaint to be dismissed.

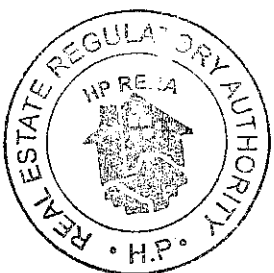
**Rejoinder and written submissions on behalf of the complainant:**

12. The counsel of the complainant filed a detailed rejoinder refuting the reply of the respondent counsel and has categorically made the following submissions
  - a. That the complainants have raised several issues with regards to the breach of the terms and conditions of the



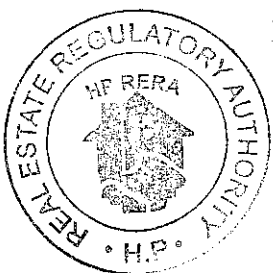
sale deed, namely breach of clause 12 pertaining to the provision of the NOC for domestic electrical and water connection along with provision of space for the installation of a water tank of capacity 1000 litres with right to approach for care and maintenance. The breach of clause 13 with reference to the provision of a car park space. The counsel for the responded has further drawn the attention towards the demand of Rs. 35000 for yearly maintenance charges without any basis as nothing pertaining to the same has been agreed upon between the parties at the time of sale deed. The counsel further raised the issue of demand for additional payments for various facilities, amounting to Rs. 10, 42,000 which are beyond the terms of the sale deed and no facility against the amount charged has been provided till date. The amount paid for different services has been provided again in the synopsis of the complaint.

- b. That the responding counsel has not refuted any lapses and charges of the breach of the terms and conditions of the sale deed. The counsel has also submitted that the complainants are being forced to pay the exorbitant charges towards the electricity charges on commercial



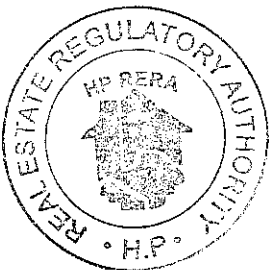
rates to the respondent and have annexed the copies of the bills for the year 2019 along with payments as annexure A-1 colly, annexed at pages 7-11 of the rejoinder to the reply to the amended complaint. The application seeking NOC from MC Shimla has been rejected twice, on 12.12.2016 and on 26.08.2020 due to the reason that the completion plan of the building was not approved as the building has been constructed in violation of the sanctioned plans and thus a clear cut violation of section 14(1) of the RERA Act, the rejection letters annexed as Annexure A-2 colly, annexed at pages 12-15 of the rejoinder to the reply to the amended complaint. The non provision of the NOC and other issues raised in the complaint are a violation of section 11(4) b, 11(4) d, 17(2) read with section 2(n) (v) and 19(5) of the RERA Act. The complainants counsel has also stated that the complainants deserve compensation from the respondent for paying such exorbitant rates of electricity and water charges under section 14(3), 18(3) read with section 71 of the RERA Act.

- c. That the complainant obtained permission for a commercial water connection in 2016 and pursuant to



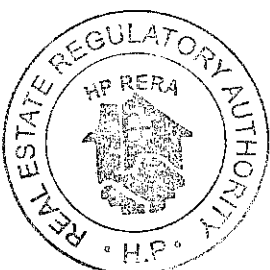
the spot inspection by the Authority on 17.02.2020 and verbal directions of the Authority and with the express consent of the respondent, carried out the work of laying pipe line and installation of the water tank for the individual commercial water connection, in block 'A' where the flat of the respondent is situated and spent an amount of Rs. 56,500 towards the same, the copies of the invoices annexed as Annexure A-3 colly annexed at pages 16-19 of the rejoinder to the reply to the amended complaint. However the respondent, in June 2020, uprooted the pipelines and water tank and shifted the same to block 'D' without the permission of the complainant and as a result of the same, the complainant filed a police complaint on 20.06.2020. A copy of GD entry dated 20.06.2020 is annexed as Annexure A-4 annexed at page 20 of the rejoinder to the reply to the amended complaint

- d. That the respondent cannot demand a onetime parking fee over and above the sale deed consideration amount of Rs. 36, 00,000 that included the price of the car parking space, which is a violation of section 17(2) read with section 2(n)iii of the RERA Act.



e. That the additional payments amounting to Rs. 8, 42,000 were extorted by the respondent in an unjust manner for providing services and facilities which were never provided till date and the action of the respondent is in violation of the provisions of the RERA Act. The respondent, even after having received Rs. 2,25,000 towards payment of service tax, has been demanding more amount towards the same, the demand letters of the same have been annexed as Annexure A-6 colly, annexed at pages 25-28 of the rejoinder to the reply to the amended complaint . That the complainant also spent an amount of Rs. 56,500 towards the cost of the installation of the water tank and water supply lines, as annexed as Annexure A-3 colly.

f. That the respondent has been charging exorbitant maintenance charges @ Rs 30,000 p.a. for the year 2017-18 to the year 2018-19 and thereafter @Rs. 35,400/-p.a. with GST for the year 2019-20 & 2020-21 from the complainants without providing any facility. The charging of GST is illegal for the monthly maintenance payment below Rs. 7500 .The complainants were forced to make these payments and

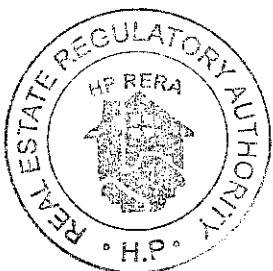


the receipts of the same are annexed as Annexure A-7, colly annexed at pages 29-37 of the rejoinder to the reply to the amended complaint. The only service that is being provided in the name of maintenance is provision of water, which is again a violation of section 11(4) (d) of the RERA Act. The respondent has, on one hand, not allowed the complainants to install their water tank and pipe line for the individual water connection, and on the other hand, has been forcefully charging the exorbitant charges towards the same in the name of maintenance.

The complainants have time and again brought all these issues to the notice of the respondent but there was no response from the respondent. The copies of communications have been annexed as Annexure A-8 colly, annexed at pages 38-47 of the rejoinder to the reply to the amended complaint

**13. Site Inspection Reports:-**

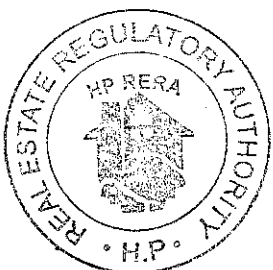
The first site was carried out by the Authority on 17.02.2020 along with officers of the Town and country planning Deptt. as well as officers of Architect Planning branch of MC Shimla, the complainant, Sh Ravi kant



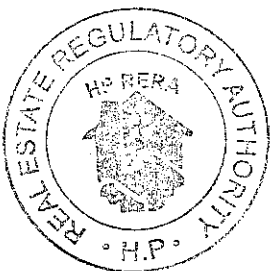


was present in person and a representative of the respondent was also present at site. The officers of MC Shimla informed that as per record available and as existing at site, there are four blocks in the complex, namely A,B,C and D, the 'A' block being the lowest block, constructed just above the Lakkar Bazar-Poabo road and other 3 blocks have been constructed above block A, with block 'D' abutting the upper road. It was informed by MC Shimla that 'A' block is an approved four storeyed block for which approval was given in the name of one Smt Jaswant Kaur vide order no 35(AP) dated 06.02.2003 however an open basement was also existing at site as the lowest storey of block 'A'. The other contents of the site report pertaining to upper blocks, as received from MC Shimla, not being mentioned here are as not being relevant to this case.

During the site visit, the issue of installation of the commercial water connection for the flat of Sh Ravi kant, the permission for which was obtained by him from MC Shimla, was discussed and it was agreed upon by the representative of the respondent, on the verbal instructions of the Authority, that the complainant can lay the pipelines and install the water tank for his tank.



Another site visit by the town planner of this Authority, in compliance of the orders of the Authority, was carried out on 15.09.2020, the report of which is on the case file. The site visit was carried out in presence of the complainant along with other residents of block 'A', 'B', 'C', 'D', who also happen to be the complainants in their respective cases before this Authority, representative of the respondent, officers of Shimla Jal Prabandhan Nigam ltd, Architect Planner MC Shimla, Junior Engineer AP Branch, MC Shimla and the junior Engineer RERA HP Shimla. The issue of the water connections was discussed with all present at site and mentioned at serial no 2 in the report. It was mentioned by the representative of the respondent that they have been fetching water by water tankers and supplying to all residents of all the blocks under habitation. The officers of Shimla Jal Prabandhan Nigam ltd informed that no water connection has been released for block 'A' .The residents of block 'A' namely Ms Nisha, Ms Aditi Rao and Ravi kant (complainant) informed that the respondent was charging Rs. 18000 per year for maintenance which was increased to Rs. 24000 and then further increased to Rs. 35000 per year and in case there is any protest or



delay in payment, their water supply is stopped. They all demanded that the respondent should give space for the installation of individual water tanks as he is not permitting them to use the roof for the same. The complainant, Sh Ravi Kant, also informed that he has not been getting any water for his flat since August 2019. The representative of the respondent had no satisfactory answer when confronted by the Town Planner.

The residents complained about being charged @ Rs. 8 per unit for the electricity which was exorbitant and was supplied from meters installed in block 'B'. The complainant, SH Ravi Kant, informed that he has got his own commercial electrical meter.

Written submission and Synopsis on behalf of respondents:-

1. 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 be allowed. Secondly, he has stressed that in the present case the Real Estate Regulation and Development Act 2016 is

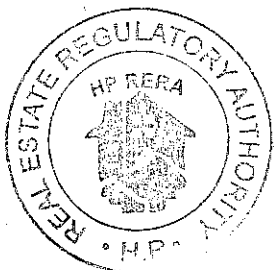


not applicable, as the size of plot is only 273.60 sq. mts. which is less than 500 sq. mts. and number of units as per plan approved are less than eight owned by Sh. Rajdeep Sharma. He has also added that the complainant has concealed material facts, which are necessary to adjudicate this complaint. To support his case he has cited the following rulings:-

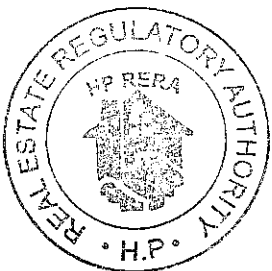
1. Modi Spinning & Weaving Mills Co....vs Ladha Ram &Co.  
On 23 September 1976.
2. Meghmala &Ors. Versus G. Narasimha Reddy &Ors. in  
Civil Appeal Nos. 6656-6657 of 2010 decided on  
16.08.22010.
3. Union of India and others vs Cipla Ltd and others Civil  
Appeal No. 329 of 2005, decided on 21.10.2016
4. 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:**

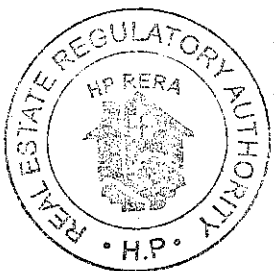
14. The final arguments through Webex, in this case were heard on 19.11.2020. In addition to the written submissions submitted by both parties. Sh. Sameer Thakur, the Ld. Counsel for the complainants reiterated the points made by him in his complaint and supporting



documents supplied by him. He submitted that the complainant bought a flat in block-A from the respondent and sale deed was executed on 19th May, 2016 and had paid full and final consideration price of the flat amounting to Rs. 36, 00,000 and the mutation of the flat was also entered in his name. However, despite repeated requests he was not provided the NOC for the installation of domestic water connections for the electricity and water connection which was supposed to be provided by the respondent in accordance with the terms and conditions of the sale deed, specifically clause no 12 of the sale deed. In the absence of the same, the flat was not habitable and the possession of the flat was meaningless since it could not be used for the purpose it was bought for. He further submitted that the space for the installation of an individual water tank with independent approach for care and maintenance and replacement of the same, was not provided as was agreed upon in the sale deed . The Ld. Counsel argued that the complainant has also not been provided a car park space for one car as was to be provided to him by the respondent in accordance with the condition no 13 of the sale deed. The Ld. Counsel



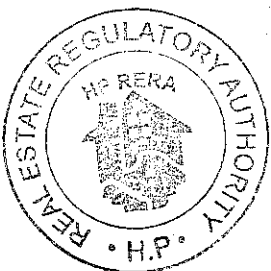
drew the attention of the Authority to the synopsis of the complaint filed by him, annexed at page 16 of the original complaint giving details of the additional payments along with receipt numbers and dates of the payment. The total amount, as per the synopsis of the complaint is Rs. 10, 42,000 in addition to the total sale consideration of the flat amounting to Rs. 36, 00,000. The Ld. Counsel while arguing the case, laid emphasis on the rejoinder/ written submissions filed by him, on 5.11.2020, to the reply filed by the respondent promoter in response to the amended complaint, annexed at page no.1 to 47, detailing about the breach of the clauses of the sale deed , additional payments extorted by the respondent promoter without providing services and facilities against which these payments were collected thus violating various provisions of the RERA Act. The Ld. Counsel drew attention of this authority the annexures attached with rejoinder dated 5.11.2020, towards un due and unjust demand of pending electrical bills raised by the promoters, annexed at page no 7 to 11, payments paid towards the same at page no. 12, rejection of the NOC by MC Shimla dated 12.12.2016 and 26.8.2020 at page no 12



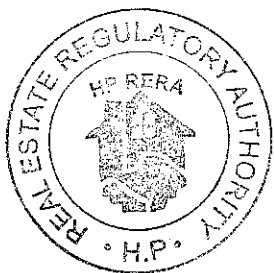
and 13 ,approval of commercial water connection by MC Shimla along with fee deposit receipt along with invoices of the material purchased for the installation of the tank , pipes and other fittings at page 15 to 19, GD entry dated 20.6.2020 at page 20, various demand letters raised regularly by the respondent promoter from page 25 to 32, payments made by the complaint to the respondent and communication between both the contending parties from page no. 33 to 44 and photographs of the installed water tank and later uprooted/ removed water tank that was placed in block 'D' after uprooting, from page 45 to 47, on which an amount of Rs. 56500 was spent.

The Ld. Counsel pleaded before this authority to provide all the reliefs sought by the complainants and further pleaded that the erring promoter be suitably penalized for harassing the complainant and for all the violations of the RERA Act.

15. The Ld. Counsel for the responded, Sh Rishi Kaushal, raised the issue of the maintainability of the complaint and drew the attention towards the facts that parallel proceeding are going on in Hon'able HP high Court and a similar case was disposed off by the consumer



Redressal forum Shimla, citing reason ,dismissed for not attending the same .The The ld counsel refuted the allegations of the contending counsel and drew the attention of the Authority to the agreement to sell dated 27.10.2014, where the consideration amount was mentioned as Rs. 41,00,000. Saying that the additional payments have been taken towards the furnishings whereas the consideration amount of Rs. 36, 00,000 in the sale deed was that of the flat alone. The counsel, on the specific query about the detail of furnishing for which additional amount have been charged, could not give any satisfactory reply. The Ld. Counsel for the respondent promoter could also not reply to the non provision of the requisite NOC as was to be provided by the respondent to the complainant and only insisted that the NOC is to be given by MC Shimla. The Ld. Counsel could not answer about the payments collected towards various services and facilities, which were never provided, as mentioned in the complaint and rejoinder of the complaint. The ld. counsel for the respondent promoter rather blamed the complainant for acting in mischievous manner and accused him of enticing other residents/ allottees of the block 'A' and other blocks to

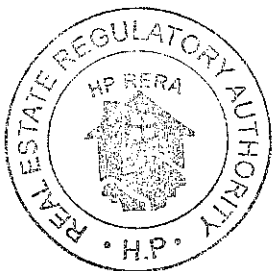




file false complaints against the promoter. The Ld Counsel while arguing the case pointed out that the additional complaint/documents submitted by the complainant are against the principles of natural justice. The Act is not applicable in the present case as the land area is less than 500 sq. mts. Further, the Authority does not have power to adjudicate in this case, and only the Adjudicating Officer can adjudicate this case under section-71 of the Act. Regarding the revised plan, he intimated that the case of this project is pending under the Retention Policy /regularization of buildings as per TCP amendment Act 2016.

Conclusions:-

16. We have heard the arguments advanced by the Ld. Counsel for the complainant & Ld. Counsel for the respondent promoter and perused the record including site inspection reports pertaining to the case. We have duly considered the entire submissions and contentions submitted before us during the course of arguments. This Authority is of the view that the following issues that require the consideration and adjudication, namely:-



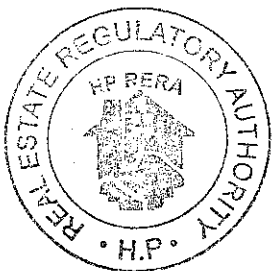
- A. Whether the Real Estate Regulation and Development Act, 2016 is applicable in this case?
- B. Whether there is a violation of principles of natural justice and settled procedure
- C. Whether the Authority has jurisdiction to decide this case?
- D. Findings regarding the building and related issues:-

i) The issue of NOC for permanent individual domestic electricity and water connections in the name of individual flat owners, complainants in this case.

ii) The issue of the installation of the water tank is one of the contentious issues and the complainant has been harassed continuously, on this issue. The Authority, during its site visit, took stock of the situation and explored the possibility of finding solution as per the existing site condition. The Authority suggests that the respondent constructs the steel structure for the installation of the water tanks on the rear left side (towards Bharari / Kamyana side),



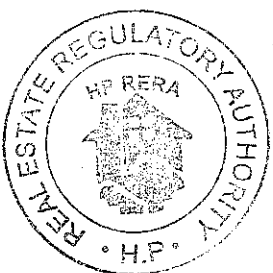
when seen from the open area / setback outside the block 'A' at a suitable height with proper access to each tank for care and maintenance, to get the water supply in the flat(s) by way of gravity flow. The steel structure should be constructed within the plot boundary of the Block 'A' in such a way that the same should not come in front of the existing windows on all four floors. The construction of the same may require relocating /shifting of the existing PVC pipes and GI pipes from the present location, where the steel structure for the tank is to come up. The existing retaining wall on the rear side may also require some realignment and the same should be carried out with utmost care and reconstruction /repair as per professional standards and with good workmanship. Alternatively, the complainant can carry out this work. The total cost of the work with all details of bills should be supplied to the respondent to reimburse the same to the complainant, along with previous



amount of Rs. 56,500 as spent earlier by the complainant, towards the installation of the water tank and water supply line.

- iii) The issue of parking space for one car.
- iv) The issue of exorbitant maintenance charges to the tune of Rs. 35,000 per annum, without any agreement for the same.
- v) The issue of return/reimbursement of excess payment of Rs. 8, 17,000, charged for provision of NOC and nonexistent services and facilities excluding Rs. 2, 25,000 towards service tax.
- vi) The issue of reimbursement of the difference of amount between the domestic and commercial charges of electricity and water supply already paid and will be paid till the time domestic connections are installed
- vii) The issue of approval of the completion plan by MC Shimla

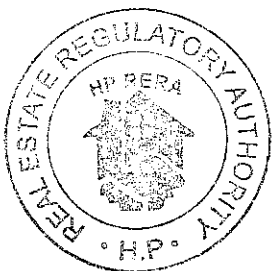
A. Whether the Real Estate Regulation and Development Act, 2016 is applicable in this case?



17. The Ld. Counsel for the respondent made 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 provides that no registration of a Real Estate project will be required where the area of land proposed to be developed does not exceed 500sqmts.

18. In the present case, Mr. Rajdeep Sharma, one of the promoter owned 1416 sq.mts. of land in up Mohal Keleston, Shimla . 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 in case of other complainant in the same project, Sh Paras Verma. At page 2 of the agreement, it is mentioned that

“And whereas the first party was the owner of land comprised in Khata Khatauni No 151/186, Khasra No-5, measuring 1416.80 Sq. Mts situated at Up Mohal

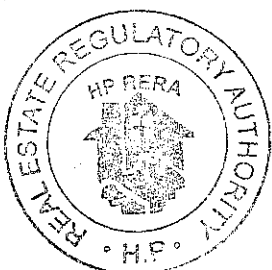


Keleston, Tehsil Shimla (U), District Shimla Himachal Pradesh and at the time of ownership the first party has executed Joint Development agreement with M/S Rajdeep And Company Infrastructure Private Limited (Pan No. KAAF67444Q)a Private Limited Company having its registered office at 2694, Sector-23 Chandigarh”.

19. Thus, in the present case, it is very clear that Rajdeep being owner of 1416 sq. mts. of land at up Mohal Keleston had executed a joint development agreement with Rajdeep and Co. The joint development agreement dated 16<sup>th</sup> June, 2014 is registered in the office of Sub Registrar, Solan and copy is placed as Ann-R-A of the written submissions, filed by the respondent. The Rajdeep & Co has developed Blocks, 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

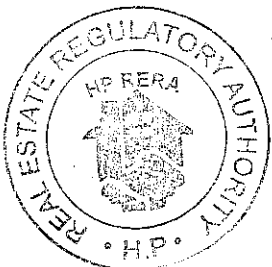


number of apartments proposed to be developed does not exceed eight inclusive of all phases”.

20. Thus, any project which has an area more than 500 sq. mts. including 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 Act. This is also clear out of 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, the Act is applicable on the present project and complainant is fully authorized to file the present complaint. The Rajdeep and Co. Infrastructure Ltd as well as the owners of the land are jointly promoters in the present case.

21. 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 in adjudicating the present case.

B. Whether there is a violation of principles of natural justice and settled procedure

21 The Ld. Counsel 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 Indiain, *Modi Spinning and Weaving Mills Co. vs. Ladha Ram & and Co. Dated 23<sup>rd</sup> September, 1996.*

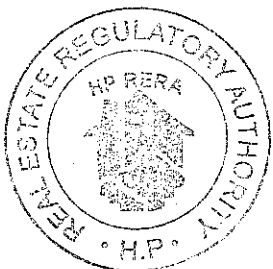




The Ld. Counsel has argued that the Complainant should not have been allowed to amend his complaint, as it is not as per the settled procedure.

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 complaints, supported with documents from the complainant. The respondent was given full opportunity to rebut these pleadings, in his reply and written

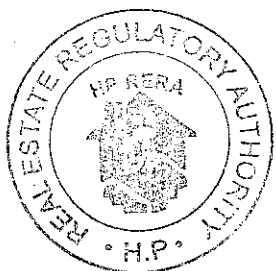


submissions. The respondent has done the same in the present case. Therefore, the Authority has adhered to the principles of natural justice, by giving full opportunity to both the parties to plead their case.

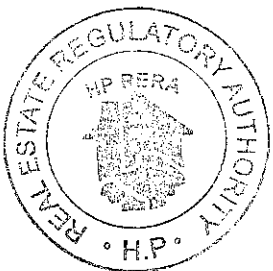
C. Whether the Authority has jurisdiction to decide this case?

22 The respondent in his written submission has argued that the complainant has no cause of action against the answering respondent and the complainant has failed to raise any dispute as provided under the Act and in the absence of the same the present complaint is liable to be dismissed. The complainant has not approached this authority with clean hands and concealed the material facts that the matter in issue is pending adjudication before the Hon'able District Consumer Redressal Forum at Shimla hence this complaint is liable to be dismissed on this ground also.

The respondent has cited certain latest judgments supporting the said provisions of the law and law laid down by the Hon'able Apex court, where the Hon'able Apex court clearly held that the Parallel Proceedings before the two forums cannot be held. The relevant parts



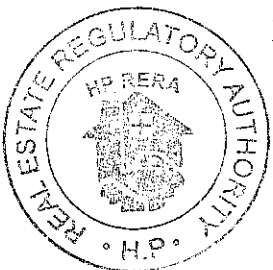
of the Judgment passed by Hon'able court is as follow:-  
In case of *Meghmala & Ors. Versus G. Narasimha Reddy &Ors, in Civil Appeal Nos. 6656-6657 of 2010 decided on 16.08.2010 Para 9:-* "that the self-same relief two parallel proceedings before the two forums cannot be taken". In another case of *Union 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 Stock holdings 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".

23. We have gone through the above case laws in detail. The first case law is Supreme Court *Indiain 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.

24. 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.



25. 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. The issue has been finally settled by the Hon'able supreme court in its order passed in the case of "*imperia structures Ltd vs Anil Patni and others*," whereby it has been held that

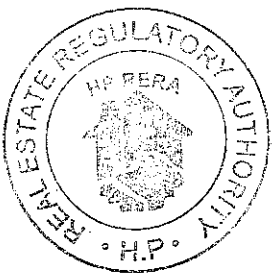
*"On plain reading of Section 79 of the RERA Act, an allottee described in category (B) stated in paragraph 22 hereinabove, would stand barred from invoking the jurisdiction of a Civil Court. However, as regards the allottees who can be called "consumers" within the meaning of the CP Act, two questions would arise; a) whether the bar specified under Section 79 of the RERA Act would apply to proceedings initiated under the*



provisions of the CP Act; and b) whether there is anything inconsistent in the provisions of the CP Act with that of the RERA Act. CIVIL APPEAL NO. 3581-3590 OF 2020 @ CIVIL APPEAL DIARY NO.9796/2019 M/s Imperia Structures Ltd. vs. Anil Patni 39 \*27.

In Malay Kumar Ganguli vs. Dr. Sukumar Mukherjee , it was held by this Court:- "The proceedings before the National Commission are although judicial proceedings, but at the same time it is not a civil court within the meaning of the provisions of the Code of Civil Procedure. It may have all the trappings of the civil court but yet it cannot be called a civil court. \*(See Bharat Bank Ltd. V. Employees and Nahar Industrial Enterprises Ltd. vs. Hong Kong & Shanghai Banking \*Corpn . On the strength of the law so declared, Section 79 of the RERA Act does not in any way bar the Commission or Forum under the provisions of the CP Act to entertain any complaint. 28.

Proviso to Section 71(1) of the RERA Act entitles a complainant who had initiated proceedings under the CP Act before the RERA Act came into force, to withdraw the proceedings under the CP Act with the permission of the Forum or Commission and file an appropriate application before the adjudicating officer under the RERA Act. The proviso thus gives a right or an option to the concerned complainant but does not statutorily force him to withdraw such complaint nor do the provisions of the RERA Act create any mechanism for transfer of such pending proceedings to authorities under the RERA Act. As against that (2009) 9 SCC 221\* AIR 1950 SC 188 : 1950 SCR 459\* (2009) 6 SCC 635\* CIVIL APPEAL NO. 3581-3590 OF 2020 @ CIVIL APPEAL DIARY NO.9796/2019 M/s Imperia Structures Ltd. vs. Anil Patni 40 the mandate in Section 12(4) of the CP Act to the contrary is quite significant. Again, insofar as cases where such proceedings under the CP Act are initiated after the provisions of the RERA Act came into force, there is nothing in the RERA Act which bars such initiation. The absence of bar under Section 79 to the initiation of proceedings before a fora which cannot be called a Civil Court and express



saving under Section 88 of the RERA Act, make the position quite clear. Further, Section 18 itself specifies that the remedy under said Section is “without prejudice to any other remedy available”. Thus, the parliamentary intent is clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the CP Act or file an application under the RERA Act.

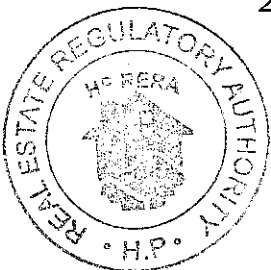
We would also refer to the decision in

***Pioneer Urban Land and Infrastructure Limited and another vs. Union of India and another ,***

*where a bench of three Judges of this Court was called upon to consider the provisions of Insolvency and Bankruptcy (2019) 8 SCC 416\* CIVIL APPEAL NO. 3581-3590 OF 2020 @ CIVIL APPEAL DIARY NO.9796/2019 M/s Imperia Structures Ltd. vs. Anil Patni 42 Code, 2016, RERA Act and other legislations including the provisions of the CP Act. One of the conclusions arrived at by this Court was:- “100. RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.”*

On the perusal of the above cited decisions, the authority is of the view that the argument of the ld counsel for the respondent about the parallel proceeding in the case, does not hold ground.

27. Further regarding jurisdiction, This Authority after careful examination of the statutory provisions of the Real Estate (Regulation & Development) Act, 2016 along



with judicial pronouncements of various Courts including the Hon'able Apex Court, deliberates the matter by explaining various provisions of the Act in this regard.

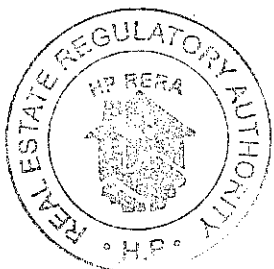
Section 31 of the Act prescribes that any aggrieved person can file a Complaint before the Authority or the Adjudicating Officer as the case may be for any violation of the provisions of the Act. Thus this Section provides that a separate Complaint be lodged with the Authority and the Adjudicating Officer, "as the case may be." Accordingly Rule 23 of the Himachal Pradesh Real Estate (Regulation and Development) Rules 2017 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 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—





*“be responsible for all obligations, responsibilities and functions under the provisions of this Act or the Rules and regulations made there under of 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 11(4) (b) of the Act prescribes as follows:

The promoter shall —

*“be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws for the time being in force and to make it available to the allottees individually or to the associations of allottees, as the case may be*

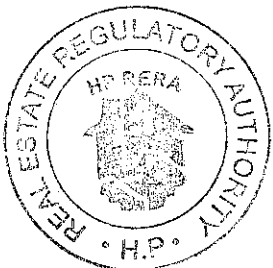
Section 11(4) (d) of the Act prescribes as follows:

The promoter shall —

*“ be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the associations of the allottees”*

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

The promoter shall —



*“enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same , under the laws applicable”*

Section 12 of the Act prescribes as follows:

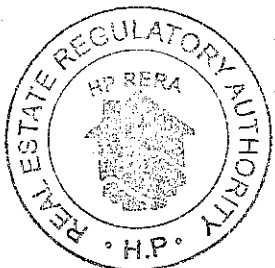
*“where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein,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

Section 14 of the Act prescribes as follows:

- (1) *“the proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.”*

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*



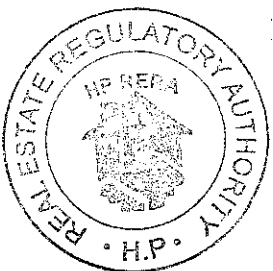
*pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

*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, to the association of the allottees or the competent Authority, as the case may be, within thirty days after obtaining the occupancy certificate.”*

Section 18 of the Act prescribes as follows:



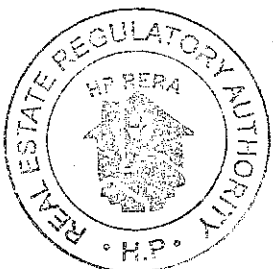
- (1) "if the promoter fails to complete or is unable to give possession of an apartment, plot or building,-
- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) he shall be liable on demand to the allottees, in the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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

- (2) "if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."
- (3) "if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under the Act."

Section 19 of the Act provides as under:

- (1) "the allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules



*and regulations made there under or the agreement for sale signed with promoter.”*

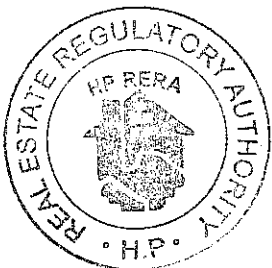
*(2) “the allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation , electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.”*

*(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.”*

*(5)“the allottee shall be entitled to have the be necessary documents and plans, including that of common areas, after handling over the physical possession of the apartment or plot or building as the case may be, by the promoter.”*

Section 2(q) of the Act provides as under:

*“ completion certificate- means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws”*



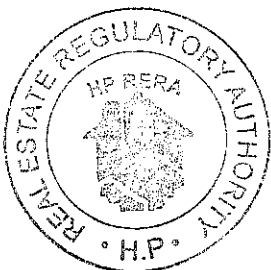
The Section 34 (f) of the Act prescribes that the function of Authority shall include

*“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”.*

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.”*

28. Thus the Section 34(f) of the Act empowers the Authority to ensure compliance of the obligations cast upon the promoters and Section 11(4) (b) (Supra) cast obligation on the promoter to obtain the completion certificate and make it available to the allottees individually, under section 11(4)(d) (supra) cast obligations on the promoter to be responsible for providing and maintaining the essential services on reasonable charges till the taking over of the maintenance of the project by the association of the allottees . The Authority also has power to impose penalties under Section 59 to 69 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.'

Thus from the reading of the above provisions of the Act, it is very clear that the Authority has power to adjudicate various matters under relevant provisions of the Act, including refund and interest under Section 18 of the Act whereas the compensation is to be adjudged by the Adjudicating Officer under Section 71 of the Act *ibid*.

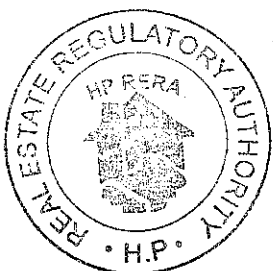
Section 19(4) further empowers the Authority to adjudicate and award refund of amount along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment , flat or building , as the case may be,

C.Findings regarding the building and related issues:-

29.

i) The issue of NOC :-

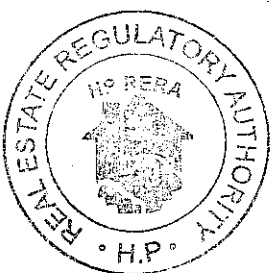
We have seen the record and heard the arguments advanced by both the parties and hold that there is no doubt that the promoter agreed and committed in



no uncertain terms as postulated, at serial no 12, of the executed sale deed, that 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”*

that the promoter will provide the requisite NOC (No Objection Certificate) for the installation of electricity and water connection for residential use .The complainant is entitled to NOC for domestic connection of electricity and water .In the present case, respondent had initially provided water Electricity from the common connections at commercial rates which were also discontinued later. Section- 11(4) (d) mandates that 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

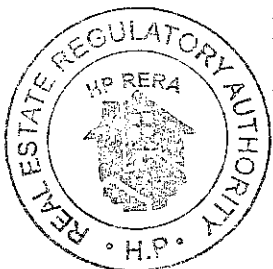




allottees. However, respondent has failed to fulfill this obligation. Further, he has failed to fulfill his obligations as per provisions of the sale deed. The NOC has been rejected twice by MC Shimla, on 12.12.2016 and 26.8.2020, on the grounds that the completion plan has not been approved. The completion plan has not been approved for the reason that, as conveyed by the respondent representatives during site visit of the Authority, that the building drawings were submitted under TCP Amendment 2016 for the regularization of buildings, that has since been quashed. The completion plan, as per routine process, will not be approved by MC Shimla, as the respondent has done violations from the approved plan and opened the basement as additional storey as mentioned in the report of MC Shimla, dated 17.02.2020. The violation from the sanctioned plan constitutes contravention of section 11(4)(b), 11(4)(d) and 17(2) of RERA Act.

ii) The issue of the installation of water tank:-

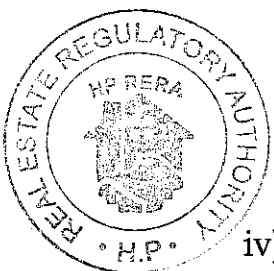
With regards to the installation of individual water tank of capacity 1000 liters with uninterrupted



access for care and maintenance, as agreed upon and committed in the same condition number 12 of the executed sale deed, it is apparently clear that the installation of the tank at suitable location is a requirement to get the water supply in the flat. The same is the unquestionable right of the purchaser and not providing him his due as committed is a breach of the condition of the sale deed and constitutes a violation of section 11(4)(d) and 17(2) of RERA Act.

iii) The issue of car park:-

The promoter (seller) agreed and committed in no uncertain terms as postulated, at serial no 13, of the executed sale deed, that the seller will be liable to provide the space to park one vehicle (LMV) to purchaser. The seller is bound by the condition of the sale deed to provide parking space to the purchaser the price of which is built in the consideration price agreed upon and fully paid. The non provision of parking constitutes a violation of section 17(2) read with 2(n)(iii) of RERA Act.



iv) With regards to the maintenance charges:-

There is no agreement or document substantiating that the purchaser agreed to pay the same. In fact the purchaser is left with no option but to pay the same because he was neither provided the NOC for the electrical connection nor he was allocated any space for the installation of the tank. In the absence of both , he just could not get his independent electrical and water connection, which is a basic requirement for living ,

*as held by the Hon'ble Apex Court in the matter of **Chameli Singh and others v. State of U.P. and another**1996) 2 SCC 549, whereby it has been 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 civilised 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 v. 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*

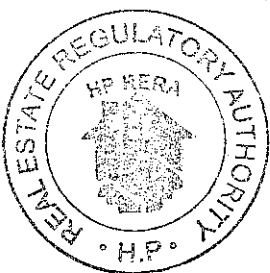


High Court in the matter of **T.M. Prakash and others v. The District Collector, Tiruvannamalai District,**

**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.

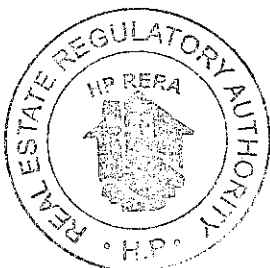
68. The Respondents ought to have visualised the difficulties of the women, children and aged persons, living in the huts for several years, without Electricity. Electricity supply is an essential and important factor for achieving socioeconomic rights, to achieve the constitutional goals with sustainable 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.”*

The seller ensured and created such circumstances, observed by the authority during its site visit on 17.02.2020, and as reflected in the site visit report of the town planner, dated 15.09.2020, that the purchaser was forced to pay whatever was demanded by the seller towards maintenance charges , as in the absence of his individual service connections, there was no other way for them to use their legitimately bought flat but to pay for electricity being supplied at commercial rates and water which were supplied by the seller at exorbitant rates, from his commercial connections under the name of maintenance charges, arbitrarily and unilaterally fixed at a very high rate of Rs. 35000 per annum now, which clearly is a violation of section 11(4)(d) of the RERA Act,

- v. With regards to the issue of refund/ return of additional payment of Rs. 8, 17,000 charged for provision of NOC and nonexistent services and facilities, Rs. 2, 25,000 towards service tax, the promoter extorted these payments on one pretext or the other, fraudulently and with an ulterior motive to

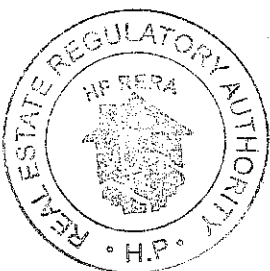


make undue profit. We have no qualms in saying that the RERA act has been enacted primarily for protecting innocent purchasers/ allottees from these kind of promoters who cheat the and blackmail them no end and extract money on one pretext or the other.

When read with section 19(4), that provides:

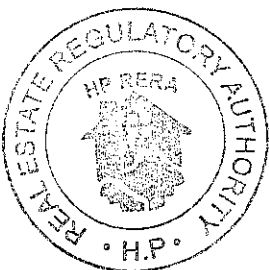
*“The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter **fails to comply** or is unable to give possession of the apartment, plot or building, 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.”*

The authority is of the view that the complainant, in accordance with the prevailing provision of law at that time, pertaining to the payment of service tax, was liable to pay the same. It was the responsibility of the respondent to collect and deposit the same with Commissioner Central Excise and Taxation, Govt of India. The respondent was duty bound to provide the receipt for the service tax deposited by him as collected from the purchaser. The additional payment



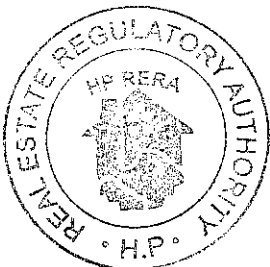
amounting to Rs. 8,17,000/- excluding service tax amount of Rs. 2,25,000, that has been collected fraudulently by the respondent, against different heads , by making false promises to provide various services and facilities like club, gym, power back up, refundable security etc and also by misrepresenting the facts about the provision of the NOC knowing well that the NOC will not be issued by MC Shimla till the time completion or part completion of the building is approved, which clearly is a violation of section 14(3) of the RERA Act and the additional payments are liable to be returned as per section 19(4) of the RERA Act.

- vi. The complainant is very much within his rights to demand the reimbursement of the difference of charges between the commercial and domestic rates of electricity and water as he is forced to pay for both the services by way of maintenance charges which are exorbitant, without any justification, from the commercial rate connections and neither breakup of the same nor list of services being provided have been disclosed, which clearly is a violation of section 11(d)



read with section 19(4) and the said amount is liable to be reimbursed by the respondents to the complainant

vii. In the present case there is an inordinate delay of 4.5 years in the delivery of the NOC and other services/ facilities. Further, as per the report of MC Shimla, there being an open basement which is one of the reasons for non approval of the completion plan and thus non provision of the NOC. There are no approvals for the construction of gym or club house and space for laundry and ironing and thus these services could not be provided by the respondent. The condition of the provision of NOC is already there in the executed sale deed and thus there is no justification in the excess amount charged again for the same by the promoter. Therefore, there is no option with the Authority but to order the refund of the additional payments amounting to Rupees Eight Lakhs and seventeen thousand paid by the complainant and received by the respondent against these services. The deposit of service tax amounting to Rs.2, 25,000, with the central excise Deptt needs to



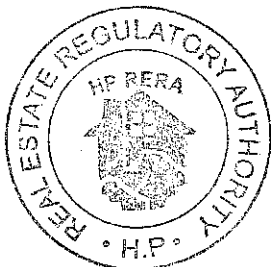


be verified and if not deposited by the respondent, the same will have to be deposited, being due to the Govt.

Thus, the Complainant is entitled to get refund and interest as prescribed as per the Section 19 (4) of the Act

viii. The Authority has taken a serious view of the developments pertaining to the conduct of the respondent because of which the allottee has suffered for no fault of his. He has in fact suffered on more than one ground, by investing his hard earned money and making regular payments on account of maintenance charges , charges on other grounds for facilities and services that were never provided and despite of all this not being able to use the flat for no fault of his, on one count and involving him with a prolonged legal battle on the second count, not to mention about the humiliation that he has faced in requesting the respondent and his staff at site for allowing him to install the water tank and lay the water supply lines and running from pillar to post in MC Shimla , trying to know the factual position of the status of the building and possibility of getting NOC for his flat and making all efforts including taking help from police authorities for the installation of tank and water lines .

The Respondent(s) have not shown any sincerity and



have the audacity to tell that the NOC will be issued by the local authority and all this while were busy protecting their commercial interests to satisfy their greed for more money by enhancing the maintenance charges at their whims and fancies. The Authority is of this firm view that the Respondent Promoters have done an Act of fraud on the complainant and forced him to run from pillar to post to get his legal dues and for the same the Respondent Promoters must be held accountable and penalised under Section 61, 63 and 69 of the Act *ibid* for their failure to fulfil their obligations as promoter as prescribed in Section 11 of the Act *ibid* which should Act as a deterrent for all the Respondent Promoters for repeating such Act with any other allottee/prospective buyer in future in any of their existing or proposed real estate projects in future. In this case, there are glaring violations of Section 11 of the Act *ibid*, committed by the Respondent Promoter that calls for imposition of a penalty under Section 61, 63 and 69.

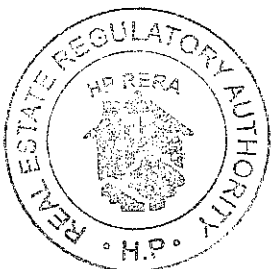
Keeping in view the above mentioned facts, this Authority in exercise of power vested in under various provisions of the



Act and principle of natural justice, issues the following orders/directions:

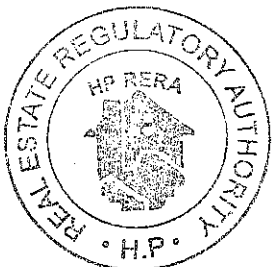
The complaint is allowed and

- i. Section 61 of the Act, prescribes that 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 total estimated cost of the project in this case, when 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 approximately Rs. 7.04 Crores and a penalty at a rate of five percent of the total estimated cost works out to Rs. Thirty five lakhs and twenty thousand. The respondent promoter has miserably failed in providing the NOC for basic services like water and electricity and other common facilities/ services as promised to the allottees. The Authority was dismayed to see that the respondent promoters has collected huge amount but failed to fulfil



the obligations cast upon them by various provisions of the Act. The Authority, considering all facts of the case, deems appropriate to impose a penalty amounting to Rupees Three lakhs (Rs. 3,00,000/-) under Section 61, 69 read with Section 38 of the Real Estate (Regulation & Development) Act, 2016 on the respondent promoter for failing to meet their obligations as prescribed under Section 11 & 14 of the Act *ibid*. 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.

- ii.* The respondents are directed to obtain NOC after obtaining the completion certificate as required under section 11(4) (b), of the building, 'block A', from MC Shimla, as early as possible. The promoter is directed to reimburse the difference of domestic charges and the commercial charges/rates paid by the complainant in the past and in future every month, for supply made/ to be made by the promoter from his commercial connections or individual commercial connection that the

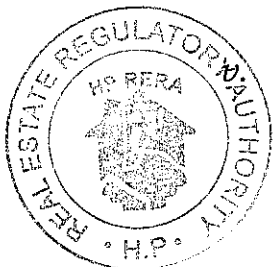


complainant may install till the respondent promoter provides No Objection Certificate for getting domestic rate connections. The bills of which will be raised by the complainant to the promoter on monthly basis and the same shall be honoured within one month of the submission.

*iii.* The respondent is directed to provide space for the installation of the water tank of capacity 1000 litres with proper access to the same from the flat, without any hindrance, for the care, maintenance and replacement of the same within the vicinity of the block 'A', as suggested in para 16(D)(ii), within two months of the passing of this order, failing which a penalty amounting to Rs. 10,00,000 (Rupees ten Lakhs ) shall be imposed under section 61, 69 read with section 38 of the Real Estate (Regulation & Development) Act, 2016 on the respondent promoter, for failing to meet their obligations as prescribed under Section 11 of the Act *ibid*.

*iv.* 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 respondent.

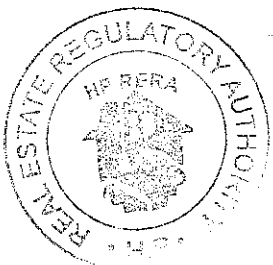
The respondents are directed to enable the formation of Association of Allottees within next two months and hand



over the common areas, in subsequent one month failing which a penalty amounting to Rupees Three Lakhs (Rs. 3,00,000/-) shall be imposed under section 61, 69 read with section 38 of the Real Estate (Regulation & Development) Act, 2016 for failing to meet their obligations as prescribed under Section 11 of the Act *ibid*.

*vi.* The respondents are restrained from charging 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 mutually agreed annual charges.

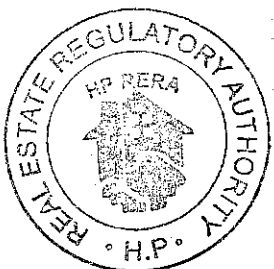
*vii.* The respondent(s) are directed to provide all those services against which the extra charges amounting to Rupees eight Lakhs and seventeen thousand (Rs. 8,17,000/-) have been collected, within a period of three months, failing which the promoter is directed to return/refund the amount along with interest at the SBI highest marginal cost of lending rate plus 2 % as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules 2017. The present highest MCLR of SBI is 7.3 % hence the rate of interest would be 7.3 %+2 % i.e. 9.3%. It is clarified that the



interest shall be payable on completion of the period of three months.

viii. The respondent will provide the receipt of Rs. 2, 25,000 paid as service tax, to the allottee, failing which, a complaint will be made by the allottee to the central excise Deptt, informing them about the amount of service tax paid by her 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 the payment to the tax collecting authority.

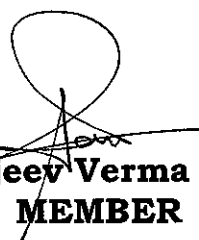
ix. It is further ordered that the respondents are barred from selling/leasing/allotting/booking any remaining flats/land in the present project or any of their projects in Himachal Pradesh, till the compliance of this order. Further, no withdrawals from the bank account of the projects to be made till payments as ordered are made to the complainant 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.



- x. Non-compliance or any delay in compliance of the above directions shall further attract penalty and interest on the ordered amount of refund under Section 63, 69 and Section 38 of the Act *ibid*, apart from any other Action; the Authority may take under Section 40 or other relevant provisions of the Act.
- xi. The above directions of the Authority are to be implemented by the respondent promoters as well as its land owners as promoters of the project jointly and severally.
- xii. The respondent is directed to submit the details of the Bank accounts pertaining to this project within fifteen days.
- xiii. The Complainant(s) 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**

  
**Rajeey Verma**  
**MEMBER**

