

**REAL ESTATE REGULATORY AUTHORITY
HIMACHAL PRADESH**

Complaint no. HPRERA2022004/C

IN THE MATTER OF:-

Satish Chandra Saxena son of Sh. Prakash Chandra Saxena, resident of E-84, 2nd Floor, G.K.-1, Greater Kailash, South Delhi, Delhi-110048

.....Complainant

Versus

M/s Rajdeep & Company Infrastructure Private Limited, Office at SCO12, First Floor, Hollywood Plaza, VIP Road, Zirakpur, Punjab 140603 through its Director

.....Respondent

Present:- Sh. Vishal Mohan, Ld. Counsel along with Sh. Satish Chandra Saxena complainant through WebEx

Sh. Rishi Kaushal, Ld. Counsel for the respondent promoter, Rajdeep and Co. Infrastructure Pvt. Ltd.

Final date of hearing:-02.03.2024

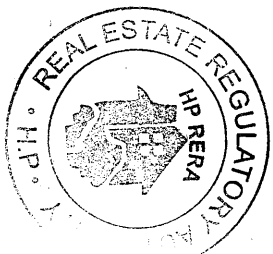
Date of pronouncement of order:-10.04.2024

Order

Coram: - Chairperson and Member

Facts of the Case

- 1 The facts giving rise to the present petition are that the complainant had agreed to purchase a property comprised of a residential Unit No.-302, 3rd Floor, 3-BHK Duplex in Tower-B, in Kasauli Paraiso, Tehsil Kasauli, District Solan, H.P., from M/s Rajdeep and Company Infrastructure Pvt. Ltd, being the developer of the project. Vide Agreement for sale dated 11-12-2019, the complainant had agreed to purchase a residential unit from the respondent for a total sale consideration of Rs. 1,10,00,000 /- (Rupees one crore and ten lakhs only) and a sum



of Rs. 84, 76, 672 /- had been paid at the time of signing of the aforesaid agreement. The due date of possession as per the aforesaid agreement for sale was by 30th April, 2020. As the national lockdown due to the outbreak of Covid-19 pandemic was imposed, the timeline was extended for a period of six months. Though the said period has also expired since long, the property has not been handed over to the applicant for the reason best known to him. The project was not complete in February-March 2021 when the family of the complainant visited the spot. With these pleadings it was prayed in the relief clause that the promoter may be directed to complete the work and hand over the possession of the property agreed to vide agreement for sale within a time-bound manner.

2 Reply:-

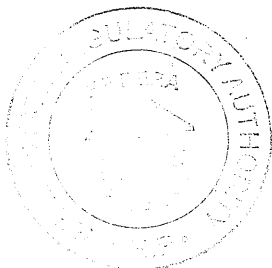
In reply it was averred that the delay has been caused due to circumstances beyond the control of the promoter such as COVID-19. Keeping in view the Central Government advisories a force majeure period of six months from 25th March, 2020 to 24th September, 2020 was granted by the Himachal Pradesh RERA. The delay as alleged by the complainant is neither wilful nor intentional but due to the force majeure circumstances as mentioned above.

3. Rejoinder-

That a sum of Rs.23,71,672/- remains to be paid to the respondent. It is pertinent to mention that the complainant wants to make good the said payment also subject to the completion of the flat as agreed.

4. Settlement agreement-

As per the agreement for sale dated 11.12.2019 the aforesaid property was to be handed over to the complainant latest by 30th April, 2020. After adding grace period of six months due to

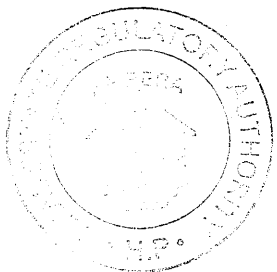


Covid-19 the promoter was required to hand over the property upto 31.10.2020.

5. During the course of proceedings before this Authority both the parties entered into a mutual settlement and signed settlement agreement on 15.10.2022. As per terms and conditions of the settlement agreement, the relevant portion of which is being reproduced herein below and following action(s) were required to be taken by both the parties :-

- “(i) The first party i.e. promoter has agreed to pay Rs. 10,00,000/- as full and final settlement amount to the second party i.e. complainant.*
- (ii) Both the parties have agreed that the construction linked payment to be paid by the second party to the first party is approximately Rs. 22 lakhs subject to additions/ deduction, if any in rates on final measurements, to be made at the time of final delivery of the apartment in question.*
- (iii) That the second party has agreed to pay Rs. 12 lakhs (i.e. 22 lakhs (balance amount to be paid) minus Rs. 10 lakhs) amount settled to be paid to the second party on or before 1st November, 2022 for which account details shall be supplied by the first party to the second party.*
- (iv) That the first party has agreed to handover the legal and valid possession of the apartment in question complete in all respects in accordance with agreement for sale on or before 1st April, 2023 failing which the first party has agreed to further pay delayed possession charges of Rs.60,000/- per month till the possession in accordance with law and agreement for sale is delivered.”*

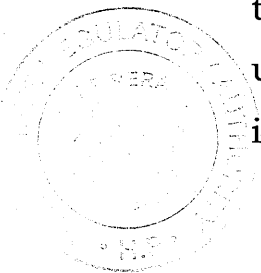
6. As per settlement agreement, the interest for delayed possession from 31.10.2020 to 31.03.2023 was mutually agreed by the parties to be Rs 10,00,000/- to be paid by the promoter to the allottee. The promoter undertook by way of the settlement agreement to deliver the possession by 1st April, 2023. However since a sum of Rs. 22 Lakhs was due to be paid towards sale consideration by the allottee to the builder, the aforesaid amount



was set off from the balance sale consideration. Therefore the balance amount to be paid by the allottee was Rs 12,00,000/-. Further by the settlement agreement if the flat is not delivered by 1st April, 2023 then it was mutually agreed that the promoter shall be further held liable to pay a sum of Rs 60,000/-per month as delayed possession charges. However, in terms of above the promoter did not hand over the possession upto July, 2023 and paid delayed possession charges to the complainant @ 60,000/- per month. The possession was ultimately offered by the promoter on 1.08.2023 vide letter dated 29.7.2023. As the promoter offered possession of the unit in question this Authority vide its order dated 05.08.2023 discontinued the delayed possession charges w.e.f. 1.8.2023 keeping in view that the substantial work in the flat was completed as the video of the completion of work of the flat was shared by the promoter with the Authority and the complainant.

7. Miscellaneous application by the complainant-

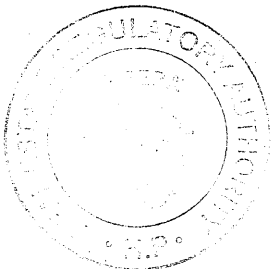
The complainant has filed an MA No. 48A-B/2023 vide which he has placed on record the current status of development of the project as a whole. It was stated that vide earlier orders and indulgence of this Authority the work in respect of construction of residential unit purchased by the complainant has been undertaken by the respondent /opposite party. The project was to have Sewerage Treatment Plant, and was to be a gated colony having 24x7 CCTV surveillance. The path / approach road leading to the property is in a pathetic condition, it is all along unlighted, having 11 blind turns and so it is very risky to reach the said property. The quality of the construction is not up to the mark as the POP is peeling off and the furniture installed is not worthy of user as is evident from the photographs. No elevator has been installed so far. It was pleaded that access is a fundamental



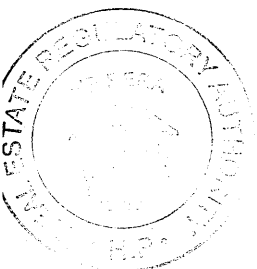
necessity for the complainant and his wife both of whom are senior citizens and the latter suffers from a limited mobility. The comparison of the apartment with the brochure would go to reveal that there is a lot of difference in respect of the same. No STP has been installed so far which is essential for living in the said apartment and making it worthy of user. Connection in respect of water supply has still not been obtained. The Electricity Transformer which was to be installed at the site by the Builder has not been installed so far. With these averments it was prayed that appropriate directions may kindly be issued in the said matter for its completion. It was further requested that an independent agency / body / individual may be assigned to assess the condition of completion, so that the complainant is not deprived of his right to live with dignity in the apartment, for which he has spent his life savings.

8. Reply to the application

According to the response by the respondent the community's gated entry is available and the individual plot or block's sewage system is operational. The consolidated sewerage treatment plant on the other hand the infrastructure is ready, the machine or plant has already been ordered, and temporary CCTVS are already in place. Permanent CCTVS will be installed following the conclusion of construction activities in the surrounding areas. The path/approach road to the project is a Government road and the same is outside the domain of the respondent, however twice the road got carpeted on the request of the respondent to the officials. But every year due to rains the same gets damaged. It is only on the instance of the complainant the furniture and furnishing was completed 6 months back during the ongoing construction activity in some parts of the campus rather the answering respondent requested to get flat furnished only when



the complainant intended to take possession. It was submitted that the flat was got ready as per the instructions of the complainant and twice the respondent got it painted and cleaned on weekly basis spending huge sum from his own pocket to maintain the flat. It was further stated that last year unprecedented rain took place which has caused damage to the property. For the third time the flat has been got repainted and cleaned. The respondent by way of this application would request the complainant to take possession and maintain the same himself or in the alternative the pay maintenance charges to the respondent. The elevator was delivered at the site on 23.12.2023 and is pending installation. Since then the lift site is in possession of lift company and the same is likely to be installed within 45 days as per the information provided by the company. However the flat of the complainant is on 1st floor from the parking which is just 10/12 stairs from the parking and is ready to use. The flat in brochure is a sample flat of 2BHK single floor for illustration purpose, however the flat of the complainant is 3BHK duplex and in terms of furnishing and finishing is even better than the sample flat and the only difference between the two is that the sample flat is cleaned on day to day basis. It was further stated that the water is available in the flat all the time and there is ample provision of water storage on site. Further the individual connections can be allocated only to the prospective buyers/owners by the concerned department after registration of sale deed. It was further stated that the facility of temporary electricity connection is available in the project and individual connections can be allocated only to the prospective buyers/ owners by the concerned department after registration of sale deed. It was further stated that the answering respondent's team is chasing



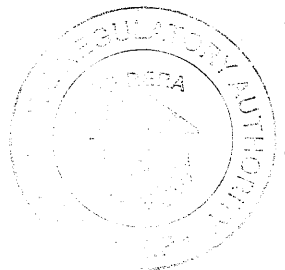
and requesting the complainant for executing new agreement for sale. It is prayed that the complainant may be directed to complete the documentation, formalities and make the balance payment and take the possession of unit/ flat in question so that the answering respondent can be absolved from his responsibility.

8. Arguments by the complainant-

The facts of the application were reiterated on behalf of the complainant during the course of arguments. It was further argued that the property is not complete in all respects. The old people like the complainant and his wife cannot access the property through the stairs because of their medical conditions. It was submitted that new property which is to be sold should be of standard material. It was further submitted that transformer is an essential ingredient of a gated and planned project. The maintenance of internal roads is the responsibility of the promoter. Further it was submitted that STP is a sine quo non for the project. The only endeavour of the complainant is that he should get the facilities as assured by the respondent in the agreement for sale.

9. Arguments by the respondent-

The respondent reiterated the contents of the reply filed by the respondent. It was further submitted that the photographs of the road appended by the complainant are of external road which is not in the domain of the respondent. It was further argued that quality of construction is of good standard. It was further submitted that lift will be installed in next 45 days. It was submitted that Flat allotted to the complainant is even better than the sample flat shown initially to the complainant. It was also submitted that the respondent has been requesting the complainant to complete the documentation under Section 118



of the HP Tenancy and Land Reforms Act, 1972 and submit to the concerned competent authority for availing the aforesaid permission.

9. Findings of the Authority.

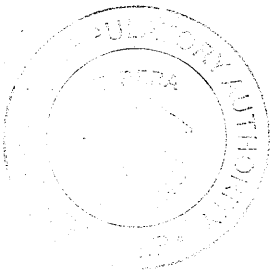
We have heard the arguments advanced by both the Ld. Counsels and also perused the record pertaining to the case. We have duly considered the entire submissions and contentions submitted before us during the course of arguments. This Authority is of the view that the point of determination that requires the consideration and adjudication, namely:-

Whether the common areas, basic facilities and development works as pointed out by the complainant in MA no. 48A-B/2023 have been completed or not?

10. Findings of the Authority-

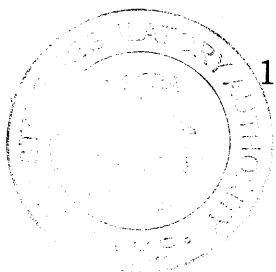
Whether the common areas, basic facilities and development works as pointed out by the complainant in MA no. 48A-B/2023 have been completed or not?

On the issue of quality of construction there is nothing in the agreement for sale dated 11th December, 2019. Although there is another agreement for sale dated 15th April, 2021 appended by the complainant with his complaint and it has been alleged that the respondent wanted the complainant to sign the said agreement. This agreement has not been signed by either of the parties but the respondent has admitted its drafting and contents. Further as per clause 16 of the agreement for sale dated 11th December, 2019 executed between the parties the promoter undertook that he shall be responsible for doing internal developments within the complex which includes (i) laying of roads (ii) laying of water lines (iii) laying of sewerage lines (iv) laying of electrical lines etc. Further as per clause 21 of



the agreement for sale the buyer shall be entitled to use and enjoy the common areas and facilities within the complex along with all the occupants/ owners.

11. Since the agreement for sale dated 11th December, 2019 is signed but the subsequent agreement for sale dated 15th April, 2021 is not signed therefore we cannot not look into the contents of the latter. The relevant agreement for sale is of date 11th December, 2019 and by way of the same the respondent undertook to deliver the flat along with ready and complete common areas with all specifications, amenities and facilities of the project.
12. In terms of the above, the promoter did not hand over the possession upto July, 2023 and paid delayed possession charges to the complainant @ 60,000/- per month. The possession was ultimately offered by the promoter on 1.08.2023 vide letter dated 29.7.2023. As the promoter offered possession of the Unit in question this Authority vide its order dated 05.08.2023 stopped the delayed possession charges w.e.f. 1.8.2023 keeping in view that the substantial work in the flat was completed as the video of the completion of work of the Flat was shared by the promoter with the Authority and the complainant.
13. However the complainant has pointed out certain shortcomings in the common areas, basic facilities and development works as discussed herein below.
14. Firstly, so far as the **approach road** is concerned the photos appended on record reveal that the road which the complainant is alleging to be in poor condition is external road and is not in the domain of the respondent as it belongs to the local or municipal authority exercising powers in this behalf.
15. Secondly qua the **quality of construction** no expert evidence has been led on behalf of the complainant to address



his contention that the quality of construction is not as agreed by the parties. Further this contention is otherwise beyond the scope of the reliefs claimed in the original complaint. Relevant Sections of the Indian Evidence Act, 1872 .

Section 101 -Burden of proof.

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 102 On whom burden of proof lies.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

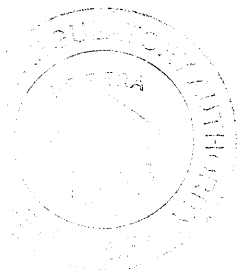
Section 103 Burden of proof as to particular fact.

The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Section 106 Burden of proving fact especially within knowledge.

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him

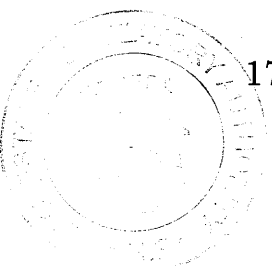
Under the Real Estate (Regulation and Development) Act (RERA), the onus to prove defects in construction lies on the buyer. In case titled as **Anil Rishi VS Gurbaksh Singh 2005 5 SCC 558; 2006 11 JT 521** it was held by the Hon'ble Supreme Court that the burden of proof rests on the party who asserts the affirmative of an issue, not the party who denies it. In the case titled as **K. C. Ninan VS Kerala State Electricity Board 2023 9 SCR 637; 2023 0 Supreme(SC) 555** the Hon'ble supreme court held that the onus to prove defects in construction lies on the buyer, not the seller, under the doctrine of caveat emptor. It was further held by the Union Territory Consumer Disputes Redressal Commission, Chandigarh in case titled as **Vinod Kumar Anand**



Vs Harbhajan Singh 2006 1 CLT 390 ; 2006 1 CPJ 1 that the buyer cannot simply allege defects without providing cogent and independent evidence to substantiate the claims. The court cannot collect evidence for any party in a case as held by the Hon'ble high Court of HP in **Ved Parkash VS Mool Raj Padha 2016 5 ILR(HP) 493 ; 2016 0 Supreme(HP) 1607 , Liaquat Ali VS Amir Mohammad 2016 0 LatestHLJ 831 ; 2016 0 Supreme(HP) 2711**. The power of appointment of an expert cannot be exercised by the court to assist a party in collecting evidence, as the party should be able to get the evidence itself as held by the Hon'ble high Court of HP in **Mast Ram VS Nand Lal 2015 6 ILR(HP) 660 ; 2015 0 Supreme(HP) 1437**. It is settled law that the court cannot be used as a tool by the parties to collect evidence in their favour. The parties must take responsibility for gathering and presenting their own evidence. Therefore the burden of proving the defects is on the buyer. Even otherwise the averments made qua this aspect are vague and generalised in as much as the detailed particulars of the nature of quality of construction are missing. The peeling of POP cannot reflect on the quality of construction unless some sound evidence is brought on record by the complainant so as to enable the Authority to take a clear view.

16. Thirdly so far as the **installation of elevator** is concerned the word elevator and lift are synonymous. In terms of the reply filed by the respondent the elevator was delivered on 23.12.2023 and since then the lift site is in the possession of the lift company and he undertakes that the same shall be fully operational within 45 days. The respondent is obligated to provide functional elevator in the project to the respondent

17. Fourthly so far as **disparity between the apartment in the brochure in comparison with the Flat offered** is



concerned. Section 12 of the RERD Act, 2016 talks about obligations of promoter regarding veracity of the advertisement or prospectus.

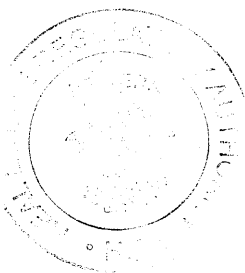
*Section 12 - Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, **he shall be compensated** by the promoter in the manner as provided under this Act:*

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

Therefore for veracity of advertisement and prospectus the relief of compensation has been provided under section 12, which is subject matter of compensation under Section 71 and 72 of the RERD act, 2016 and is the domain of the Adjudicating Officer and this Authority has no jurisdiction to decide the issue.

18. Fifthly, on the issue of **non installation of STP** the respondent has admitted in the reply that the STP has not been operationalized. Therefore the respondent is held liable for non installation of the same as this facility being an essential part of the common facilities is incomplete.

19. Sixthly, on the issue of **no permanent connection of water supply** also it has been submitted that there is sufficient water storage available on the site but permanent connections have to be applied by the complainant after execution of sale deed. It is admitted by the respondent that he has not applied for permanent water connection for the project. There is no NOC

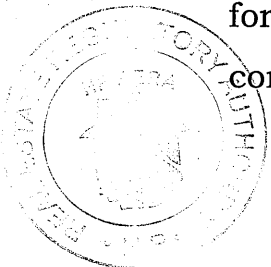


obtained by respondent company from the concerned competent authority. Therefore on this count also the respondent is held liable for dereliction of his duty of not having permanent water connection.

20. Seventhly, on the issue of **non installation of electricity transformer** also it has been admitted that permanent transformer has not been applied and installed. Admittedly single commercial electricity connection is provided. It is the duty of the respondent promoter to get permanent domestic electricity supply in the Project. This obligation has also been re-iterated in Section 11(4)(d) of the RERD Act, 2016. Therefore on this count also the respondent is held liable for dereliction of his duty. The respondent has to apply for permanent electricity connection and thereafter it is also the duty and responsibility of the respondent to facilitate the electricity connection in favour of the complainant by getting the transformer installed in the project through the HPSEBL. Thus to conclude the respondent promoters is duty bound to install permanent water and electricity connections in the project .

21. The respondent is also required to ensure water and electricity supply from the common connections till the permanent connections are obtained and the promoter provides No Objection Certificate for getting domestic connections after receiving the completion certificate.

22. Further on the issue of permission under Section 118 of the HP Tenancy and Land Reforms Act, 1972 the respondent is an agriculturist of Himachal Pradesh. But the complainant is a non -agriculturist in Himachal Pradesh therefore he has to apply for the permission under Section 118 from the concerned competent authority and the promoter respondent shall ensure



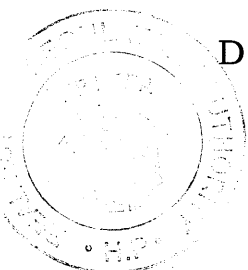
all possible assistance to the complainant along with supply of requisite documents as required in this regard.

23. Section 11(4)(b) of the RERD Act obligates that the Promoter/Developer to obtain a Completion /Occupancy Certificate, or both, of the Apartment/Building from the competent Authority. Further as per section 17 (1) and (2) the respondent was required to get occupancy certificate. Respondent by not getting CC/OC has violated the provisions of Section 11, 14, 17 and 18 of the RERD Act, 2016. Section 34 (f) & (g) of the RERD Act casts a duty on this Authority to ensure that promoter complies with the obligations as mentioned above. It is a fit case to direct the respondent to ensure that the same is obtained in a time bound manner.

24. Relief-

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

- A. The Complaint is partly allowed.
- B. The respondent is directed to ensure that lift/ elevator is installed within a period of two months from this order, failing which the respondent shall be held liable for a penalty of Rs 10,000 per day (after two months) under Section 63 of the RERD Act, 2016 till such default continues.
- C. The respondent is directed to install and operationalize the STP within a period of two months failing which the respondent shall be held liable for a penalty of Rs 5,000 per day (after two months) under Section 63 of the RERD Act, 2016 till such default continues .
- D. The respondent is directed to deposit the money for installation of transformer for the project in question with the



HPSEBL within one month, failing which he shall be liable to pay a penalty of Rs 20,000 per day (after one month) under Section 63 of the RERD Act, 2016 till such default continues .

- E. The respondent is directed to get installed a permanent water connection in the Project within two months of the passing of this order failing which the respondent shall be held liable for penalty of Rs 10,000 per day (after two months) under Section 63 of the RERD Act, 2016 till such default continues .
- F. The respondent is directed to obtain completion/occupation certificate from the concerned competent Authority with the respect to the flat no. 302 Tower B , Third floor in the project within two months from the passing of this order failing which he shall be liable to pay a penalty of Rs Three Lakhs under Section 63 of the RERD Act, 2016.
- G. The complainant is at liberty to approach the adjudicating officer for the claim of compensation under Section 71 and 72 of the RERD Act, 2016


B. C. Badalia
MEMBER


Dr. Shrikant Baldi
CHAIRPERSON

