

REAL ESTATE REGULATORY AUTHORITY

HIMACHAL PRADESH

IN THE MATTERS OF:-

1. Amit Mittal, resident of E-325, Greater Kailash 1, New Delhi 110048.
2. Mrs. Satvinder Mann, resident of E-325, Greater Kailash 1, New Delhi 110048.

.....Complainants

Versus

1. Bemloi Development & Infrastructure Co. Pvt. Ltd. through its Director/Authorized Representative Sh. Kanwar Deep Singh Sekhon, S/O Sh. Baljeet Singh Sekhon, resident of, Old Beer Khana, Samtara Colony, Kanlog, Shimla, Himachal Pradesh Pin- 171001.
2. DLF Home Developers Ltd. through its Director(s) /Authorized Officer/ manager, SCO 188-189, Sector- 8-C, Madhya Marg, Chandigarh (UT) 160009

.....Respondents

COMPLAINTNO.HPRERA/OFL/2021-51

Present: Sh. Suresh Kumar Madhania Advocate for the complainants
Sh. Gautam Sood, Advocate for the respondent no. 1 & 2

Final date of hearing (through WebEx): 19.07.2022

Date of pronouncement of orders: 20.08.2022

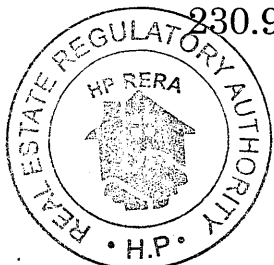


Order

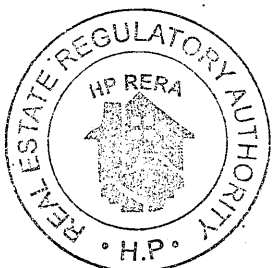
Coram:- Chairperson and both Members

Facts of the case:

1. That the complainants are husband and wife and have filed the present complaint against the respondents. It was pleaded in the complaint that in the year 2009-2010 they were interested to purchase a property/flat/villa in Shimla, Himachal Pradesh and came to know about the development of a residential complex Samtara Pvt. Estate, Shimla which was alleged to be jointly developed and constructed by respondent(s) No. 1 & 2. It was pleaded that on being inquired, the representatives of the respondents/promoters had disclosed that the respondents are constructing the project 'Samtara Pvt. Estate' residential complex at Shimla for which respondent no.1 had obtained permission under section 118 of the HP Tenancy and Land Reforms Act, 1972, and the building plan of the said complex has been sanctioned by the Municipal Corporation Shimla. It was further pleaded that the respondents represented that after the execution of agreement for sale the possession of the Villa will be handed over within 24 months. It was further pleaded that the said project is registered with this Authority having registration No. RERAHP11190066. It was further pleaded that the complainant after going through the contents of standard form application provided by the respondents on 27.08.2010 at New Delhi applied for Villa No. 1, Villa Type-B, having super area 251.258 sq. mts. (approx.) 2705 sq. ft. (approx.) having exclusive right to use common area measuring 230.907 sq. mts.(approx.) for a total consideration of Rs.2,56,18,014/-.

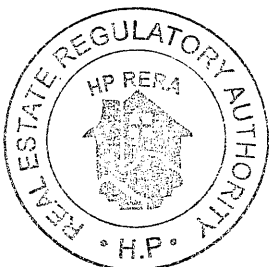


It was further pleaded that the complainants had opted for downpayment plan whereby they had to pay 95 % of the sale consideration as and when demanded by the respondents prior to handing over of possession of the booked Villa. It was further pleaded that at the time of booking of the said Villa the complainants along with application enclosed a Cheque No. 126353 amounting to Rs.25,00,000/- as booking amount drawn in favour of Bemloi Development and Infrastructure Co. Pvt. Ltd (Respondent no. 1). It was further pleaded that the complainants paid Rs.2,48,48,324/- which was approximately 95% of the total sale consideration for Villa No.1 which payments were acknowledged by the respondents by issuing receipts which are annexed with the present complaint and these receipts clearly show that the project Samtara is a joint venture of both the respondents. It was further pleaded that after paying 95% of the total sale consideration, the complainants asked the respondents to execute agreement for sale qua the booked Villa so that complainants could go through its terms and conditions. It was further pleaded that as per the booking application the respondents had agreed to handover the possession of the Villa within 24 months from the date of execution of agreement for sale. It was further pleaded that respondents did not pay any heed to the said requests of the complainants and did not execute the agreement for sale till August, 2011. It was further pleaded that on repeated requests the respondent No.1 after the lapse of 10 months on 22.08.2011 executed agreement for sale at Shimla. It was further pleaded that the respondents received 95% of the sale consideration without executing the agreement

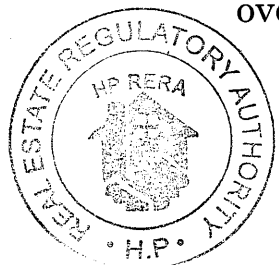


for sale intentionally and the execution of agreement was delayed for about 10 months.

2. It was further pleaded that after going through the contents of agreement for sale the complainants were surprised and astonished to know that the said agreement was containing several unfair, arbitrary and onesided clauses protecting only the interest of the respondents to which complainant objected. It was further pleaded that the respondents did not respond towards the requests of the complainants and explained that the agreement was a standard form contract and the complainants do not need to worry about the contents of the same. It was further pleaded that the complainants were never willing to accept the said onesided unfair and arbitrary terms of the agreement for sale, but as the complainants had paid 95% of the payment 10 months prior to the execution of the said agreement, were left with no other option then to sign and execute the said agreement. It was further pleaded that as per clause 11 of the agreement for sale, the respondents had agreed to deliver the possession of the Villa within 24 months i.e. by 22.08.2013. It was further pleaded that thereafter, the respondents on 26.06.2012 through e-mail communication made to complainant No.2 informed that the construction of project "Samtara" is in progress. It was further pleaded that the complainants were quite hopeful that by the end of year 2013 they will be able to shift to Shimla and will be able to settle down there with entire family. It was further pleaded that after June, 2012, the respondents did not make any communication regarding the development of construction of Villa and till 22/08/2013 failed to complete the construction of the project.

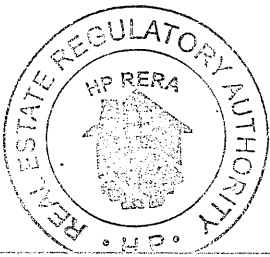


3. It was further pleaded that due to the illness of father of the complainant No.1, the complainants remained engaged in getting medical treatment of his father but were hopeful that in one or two months they shall be offered possession of Villa by the respondents, but it was pleaded that all the hopes were shattered when the respondents vide e-mail communication dated 27.03.2015 informed that the construction work was still not complete and is going on. It was further pleaded that the complainants since 2016 kept on making numerous telephonic communications in addition to the e-mail communications with the representative of the respondents regarding the handing over of possession of Villa but the respondents never gave any satisfactory reply to the complainants and kept on making false promises and assurances quahanding over of the possession and also gave false information that the construction work was going on in full swing and the complainants will very soon receive a letter of tentative date of delivery of possession of the Villa. It was further pleaded that thereafter, the complainants in the month of September, 2019 received a letter from the respondents wherein they had informed that respondents have received a certificate of completion from Municipal Corporation, Shimla on 30th of August 2019. It was further pleaded that in the month of March, 2020 the respondents through letter dated 07.03.2020 again informed the complainants that respondents have received the completion certificate from the department of Town and Country Planning, Himachal Pradesh vide letter No. 9765 -67 dated 3rd of February 2020, but it was pleaded that there was no mention of actual date of handing over of possession to the complainants in the aforesaid communication.

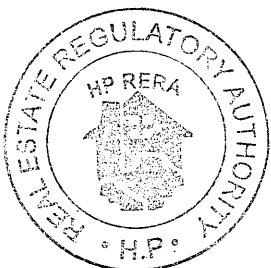


It was further pleaded that respondents did not hand over the possession to the complainants and the complainant No.1 again through E-mail dated 08th April, 2021 requested the respondents to handover the possession otherwise complainants will be constrained to approach the relevant legal authorities for redressal of their grievance pertaining to the non-delivery of the Villa. It was further pleaded that the respondents failed to revert back to the said e-mail communication and till date have not handed over the possession of the above mentioned property to the complainants for which they are legally entitled.

4. It was further pleaded that feeling cheated, harassed and dissatisfied by the services of respondents, the complainants filed a Consumer Complaint having CC/2/2021 titled as "Sh. Amit Mittal. &Anr Vs. Bemloi Development & Infrastructure Co. Pvt. Ltd. &Anr" before the Hon'ble State Consumer Disputes Redressal Commission at Shimla, H.P. for seeking relief against the deficiency in services and unfair trade practises exercised by the respondents against the complainants. It was further pleaded that during the pendency of above mentioned Consumer Complaint the complainants came to know that the respondent No.1 had applied for issuance of Occupation Certificate against 17 No(s) of Villas of the project. It was further pleaded that as per letter dated 17.07.2020 issued by the Director TCP, H.P the complainants were surprised to know that the respondents have obtained the Occupation Certificates for 17 No's of Villas and were offering them possession in few days and have also issued FSA to some of the Villa Buyers and on the other hand have not applied for the Occupation Certificate against Villa No.1 of the complainants. It was



further pleaded that the A.P. MC Shimla vide letter No. MCS/AP/742/2/19-4106-4108 dated 30/08/2019 had already accorded sanction/ completion to the entire residential project consisting of Block No.1 to 15. Therefore, it was pleaded that the non-obtaining of Occupation Certificate for Villa No.1 is in itself discriminatory act towards the complainants. Thereafter the said consumer complaint was withdrawn. It was further pleaded that respondents were also served with legal notice to which they did not reply. It was further pleaded that the failure of the respondent to hand over the possession of the Villa within agreed period of time i.e. 24 months from the date of execution of agreement for sale dated 22.08.2011 amounts to contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 (here in after referred to as the RERA Act, 2016) and it was pleaded that the respondents have also failed miserably in fulfilling all the obligations as stipulated under Section 11 read with Section 14 of the Act ibid. It was further pleaded that even after the lapse of more than 10 years from the date of execution of agreement for sale and receipt of 95% of the sale consideration prior to the execution of agreement for sale, the respondents have caused gross delay in completing the construction and further intentionally discriminated the complainants by not obtaining the Occupation Certificate which the respondents were duty bound to provide as per the provision of Section 4-(E) of the Act ibid. With these averments it was pleaded that the possession along with execution of sale deed of the Villa No.1 (Type -B) be ordered in favour of respondent. Further it was prayed that respondent be directed to pay delayed possession

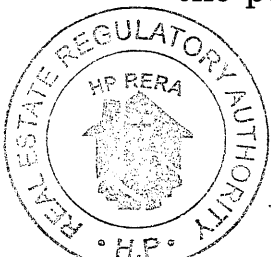


interest @ 18% upon Rs. 2,48,48,324/- received till handing over of the possession of Villa.

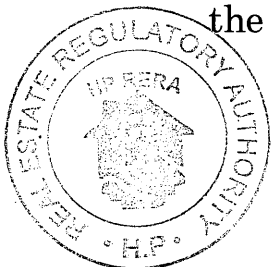
5. Reply-

The respondent filed reply and took the objections of maintainability, abuse of process of law, no enforceable cause of action, locus standi, estoppel, limitation, misjoinder and non-joinder of parties, vague pleadings and forum hunting. It was pleaded in the reply that the rights of both the parties stems from the agreement for sale and no party is permitted to alter the same. It was pleaded that the complainants had earlier also filed a similar complaint before the State Consumer Commissioner as complaint no. 2 of 2021 titled as Sh. Amit Mittal & others vs. Bemloi Development & Infrastructure Co. Furthermore, it was pleaded that the complainants in their complaint have not disclosed that under what provision of the Act, they are seeking what nature of relief. It was further pleaded that as per section 71 of the Real Estate (Regulation and Development) Act, 2016, the complaint is to be transferred to the adjudicating officer for holding a detailed enquiry. It was then pleaded that the adjudicating officer has been duly notified by the State Government as the principal court of original civil jurisdiction i.e. the District Judge, Shimla. It was further pleaded that the present complaint cannot be adjudicated by this Authority since it involves intricate questions of law and facts. It was further pleaded that the respondent has not violated any of the provisions of the RERD Act, 2016 concerned.

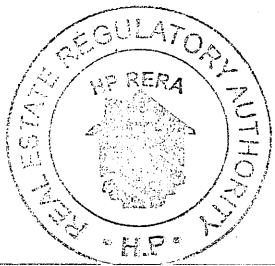
6. It was further pleaded in the reply that the complaint is liable to be stayed under Section 10 of the Civil Procedure Code, 1908 in view of the pendency of the Civil Writ Petition No. 4325/2020 titled as Bemloi



Development & Infrastructure Pvt Ltd vs. State of H.P. and Civil Writ Petition No. 8594/2011 titled as Sh. Tikender Singh Panwar vs. State of H.P, both of which are pending adjudication before the Hon'ble High Court of H.P. with regard to same subject matter of the property. It was further pleaded that the present complaint would lead to multiplicity of litigations and conflicting orders. It was further pleaded that the present complaint is hopelessly time barred and beyond the prescribed period of limitation. It was further pleaded that the present complaint has been filed in the month of October 2021 and the reliefs sought are such that the alleged cause of action in relation thereto arose more than two years prior to the filing of the complaint as such it was pleaded that the complaint is barred by time. It was also pleaded that the complaint is bad for mis-joinder and non-joinder of parties as respondent No.2 DLF Home Developers Ltd is altogether a separate and independent entity and has got nothing to do with the present project in the any manner whatsoever. It was further pleaded that the complaint discloses no enforceable cause of action against the respondents, therefore the complaint is liable to be dismissed with exemplary costs. It was further pleaded that the complainants were duly informed about the schedule of possession as per Clause 11(a) the agreement for sale. It was further pleaded that as per the aforesaid clause 11(a), the respondentsendeavoured to offer possession of the said Villa within 24 months unless there is delay due to a force majeure circumstances. It was further pleaded that there were certain circumstances beyond the control of the respondents wherein respondent No.1 could not handover thepossession of the villa as per the terms and conditions of the agreement. It was further pleaded that



respondent No.1 cannot be made liable for the delay or failure due to force majeure conditions and circumstances. It was further pleaded that respondent no.1 has already completed construction of the entire villas/complexes and is ready to handover the possession to the customers including that of the complainant. It was further pleaded that the respondent No.1 has duly informed the complainants about the status of construction of its villas from time to time. It was further pleaded that a Civil Writ Petition bearing no. 8945 of 2011 titled as "*Tikender Singh Panwar & Anr. v State of H.P. & Ors*", was filed before the Hon'ble High Court of Himachal Pradesh alleging violation in obtaining approvals and sought inquiry by an independent agency. It was further pleaded that the Hon'ble High Court of Himachal Pradesh vide its orders dated 17.10.2011 had directed the Municipal Corporation, Shimla not to issue completion certificate/further permission to occupy the constructed houses. It was further pleaded that due to aforesaid order passed by the Hon'ble High Court, the respondent no. 1 has not been able to obtain the occupation certificate qua the villas including that of the Complainants. It was further pleaded that the said stay order is still continuing and the project completion got delayed due to the reasons mentioned above. It was further pleaded that as per clause 40 of the agreement for sale dated 22.08.2011, the respondents shall not be liable or responsible for not performing any of its obligations or undertaking as provided in the agreement if such performance is prevented or delayed due to force majeure conditions. It was further pleaded that the respondents were well in course of completing all development activities at site way back in the year 2014 itself and completed the entire project in the year

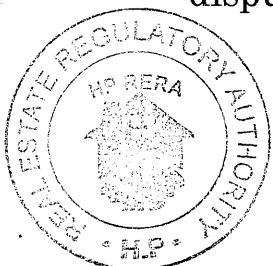


2016. It was further pleaded that the delay cannot be attributed to respondents as it has occurred due to reasons beyond the control of the respondents. It was further pleaded that on 27.12.2016, the respondent No.1 submitted revised building plans along with other documents with respect to the villas with the Town & Country Planning Department, Himachal Pradesh and it was pleaded that the said department on 30.01.2017 forwarded the revised building plans to the Municipal Corporation, Shimla for their approval. Thereafter, a reminder letter was also issued to the Municipal Corporation, Shimla on 30.03.2017 as the project was getting delayed. It was further pleaded that Municipal Corporation, Shimla after a delay of 31 months, approved the revised building plans as submitted by respondent no:1 vide orders dated 30.08.2019. It was further pleaded that the delay in granting approval by the competent authorities cannot be attributed to the respondent and the respondent had completed its project in a time bound manner. It was further pleaded that upon grant of approval by Municipal Corporation Shimla, the Town & Country Planning Department, Himachal Pradesh renewed the license of the respondents on 01.10.2019 and accordingly issued completion certificate with respect to the project vide letter dated 03.02.2020. It was further pleaded that the Town & Country Planning Department, Himachal Pradesh vide letter dated 17.07.2020 issued Occupation Certificate in respect of 17 out of 24 villas and later issued a corrigendum on 25.07.2020. It was further pleaded that thereafter the Municipal Corporation Shimla vide orders dated 26.08.2020 in an illegal,unlawful and unilateral manner withdrew the Completion Certificate and sanction granted in favour of the



respondents. Thereafter based on the orders passed by the Municipal Corporation, Shimla dated 26.08.2020, Town and Country Planning Department Himachal Pradesh on 10.09.2020 unilaterally and without granting any opportunity to the respondents ordered the withdrawal of renewal of license dated 01.10.2019, completion certificate dated 03.02.2020 and occupation certificate dated 17.07.2020. It was further pleaded that for these reasons which are beyond the control and dominion of the respondents and as per the terms and conditions of the agreement for sale fall under Force Majeure circumstances, the respondents were unable to handover the possession of the villas to the complainants. It was further pleaded that against the unilateral and illegal acts of the Municipal Corporation Shimla and Town & Country planning Department, Himachal Pradesh in revoking the sanction, approval, completion and occupation certificates of the respondents with respect to the project in question, the respondents have filed and preferred a Civil Writ Petition bearing No.4325/2020, which is pending adjudication before the Hon'ble High Court of Himachal Pradesh. Therefore, it was pleaded that in order to avoid multiplicity of litigation and also to avoid conflicting orders in contravention to the orders and directions passed by the Hon'ble High Court of H.P. in the aforesaid two Writ Petitions, it was prayed that the present matter is liable to be stayed under Section 10 of the Civil Procedure Code, 1908.

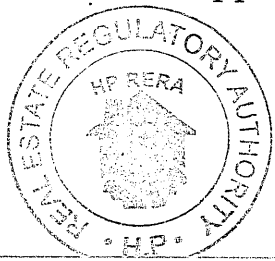
7. It was further pleaded that as per Clause 52 of the agreement for sale, it was mutually agreed between the parties that all disputes arising out of the agreement shall be settled amicably, failing which, they shall be referred to Arbitration and therefore it was prayed that present dispute if any be referred for arbitration. It was further pleaded that



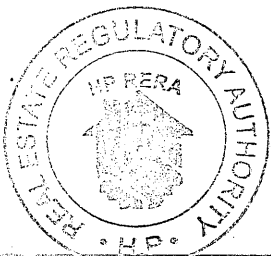
respondent No.1 is solely carrying on the construction and management of the project and respondent No.2 has no concern whatsoever with the project. It was further pleaded that time and again draft agreement for sale with respect to the Villa was being mailed to the complainants for execution at the end, however it was alleged that the complainants time and again showed their apprehension and reluctance to execute the agreement for sale and therefore it was pleaded that there is no delay in execution of agreement for sale on the part of respondents. The terms of the agreement for sale containing several unfair, arbitrary and one-sided clauses was denied by the respondent. It was further pleaded that the contents of agreement for sale were read over and explained to the complainants. It was further pleaded that nongrant of Completion Certificate by the competent and requisite authorities, which is a condition precedent for handing over the possession to the buyers, and consequent delay in handing over the possession, cannot be termed as any contravention or violation under the RERD Act, 2016 on the part of the respondents. With these pleadings in the reply it was prayed that the complaint be dismissed. Along with this reply an application under Section 10 of the Code of Civil Procedure 1908 was filed praying for stay of the present complaint in view of the pendency of Civil Writ Petition No. 8594/2011 and Civil Writ Petition No. 4325/2020 which was ordered to be decided with the main case.

8. Rejoinder-

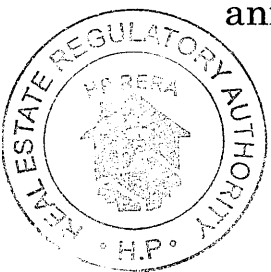
The complainants in the rejoinder have primarily reiterated the pleadings made by them in the complaint and also filed reply to the application under Section 10 CPC. It was further pleaded in the



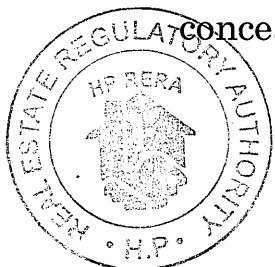
rejoinder that the complainants have approached the Hon'ble Authority to get their grievance redressed as per the provisions of the RERD Act, 2016 whereas, the fact of filing of consumer complaint before the State Commission having Complaint No.CC/2/2021 is admitted and the said complaint has also been filed for seeking possession of the Villa from the respondents. It was further pleaded that non delivery of possession even after the lapse of eleven years has given cause of action to the complainants to file the complaint against the respondents. It was pleaded that the CWP No.8594/2011 titled as Sh. Tikender Singh Kanwar Versus State of H.P was filed on 14.11.2010 and was registered on 01.01.2011. It was further pleaded that the agreement for sale and the request letter to execute the same was sent to the complainants on 25.07.2011 (Annexure C-13) which was more than 6 months after the above-mentioned Writ Petition was filed and registered. It was further pleaded that the respondents with ulterior motive did not disclose about the filing of said writ petition against them and by concealing the said material fact from the complainant, have caused grave injustice to the complainants. It was further pleaded that the complainants having faith and under bonafide belief without any knowledge about the Civil Writ Petition filed against the respondents and its consequences, adhered to the requests of the respondents and signed the agreement for sale. It was further pleaded that the Writ petition filed before the signing of the agreement for sale can be categorized as a harmful condition or a defect which vitiates the entire contract between the parties to the present lis. Hence it was pleaded that failure to disclose material facts effecting the development of Villa are relevant and amounts to unfair



trade practice for which the respondents are liable to be penalized. It was further pleaded that the complainants were not party to the Civil Writ Petition No.4325/2020 titled as Bemloe Development and Infrastructure Pvt. Ltd. versus State of H.P. and civil writ petition No.8594/2011 titled as Tikender Singh Kanwar Versus State of H.P. which are pending adjudication before the Hon'ble High Court of H.P. It was further pleaded that the respondents obtained the Completion Certificate against the entire project and selectively obtained the Occupation Certificate for 17 numbers of Villas except that of complainants Villa No.1. Therefore, it was pleaded that the respondents prayer for staying the present ongoing proceedings before this Ld. Authority is totally untenable as it is an abuse of process of law and is a delaying tactics adopted by the respondents to frustrate the agreement for sale dated 22.08.2011. It was further pleaded that the present complaint is within the period of limitation as the relief sought by the complainants for seeking possession of booked Villa is still awaited as respondents have failed to handover the possession of Villa No.1 for last more than 11 years which they have agreed to handover within twentyfour months from the day of execution of agreement for sale and cause of action is still continuing. It was further pleaded that the respondents have also communicated the process of issuing of respective final statement of accounts to the complainants vide letter dated 23.10.2020 for handing over of possession which they have in fact miserably failed to do so. It was further pleaded that the respondents cannot be allowed to blow hot and cold in the same breath as the payment receipts which are annexed as C-2 with the complaint bears the stamp and logo of DLF



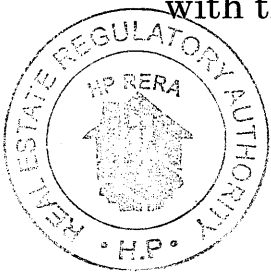
Homes and therefore the complaint against respondent no. 2 is certainly maintainable. It was further pleaded that agreement for sale clearly specifies the DLF as Development and Marketing Partner of respondent No.1. It was further pleaded that the complainant has appended various documents which go to show that respondent no. 2 is also a promoter in the present case. It was further pleaded that the complainants have recently sought information under R.T.I. Act from the P.1.0. cum- Town & Country Planner, T&CP Department Shimla who has disclosed that the respondent had never applied for the Occupation Certificate against Villa No.1 and nor have reapplied for the same till date. It was further pleaded that the ongoing litigation as narrated by the respondents is neither connected to the cause of action of the complainants nor has the Hon'ble High Court of HP issued any stay order against the complainants or against the stay of present complaint pending before the Learned Authority. It was further pleaded that at point No.9 contained in page No.10 of agreement for sale it has been explained that the issuance of occupation certificate shall be the conclusive evidence that the construction of the said complex and the said Villa is fully completed in accordance with the plans and specifications. Therefore, it was pleaded that the respondents have selectively completed the construction of 17 numbers of Villas and accordingly obtained the occupation certificates against the same and by doing discrimination with the complainants even after receipt of 95% of sale consideration way back in 2010 have failed to construct the Villa and handover the possession to the complainants. It was further pleaded that the respondents are concealing the material fact/ information pertaining to order dated



03.11.2020 (Annexure C-18) passed in CMP No.10432/2020 in CWP No.4325/2020 along with CWP No.8945/2011 whereby the Hon'ble High Court has stayed the order dated 26.08.2020 (Annexure R 10) and 10.09.2020 (Annexure R 11) passed by the Municipal Corporation Shimla and Town and Country Planning respectively whereby Municipal Corporation Shimla had revoked the sanction and approval given to the respondents and TCP had revoked the renewal of license, completion certificate and occupation certificate in favour of respondent No.1. It was further pleaded that at present as per the information based upon the orders dated 03.11.2020, the respondents are free to handover the possession to Villa Buyers. Therefore it was pleaded that the Annexures 10 & 11 are stayed by order dated 03.11.2020 and by not disclosing the same to this Authority the respondents are deliberating trying mislead this Authority. It was further pleaded by the complainant that the provisions of section 10 of Civil Procedure Code are applicable to the suit only and not applicable to the complaint filed under the Real Estate (Regulation and Development) Act, 2016. It was further pleaded that CWP No.8594 of 2011 and CWP No.4325/2020 which are pending before the Hon'ble High Court of Himachal Pradesh do not directly and substantially pertain to the subject matter of dispute in the present complaint.

9. Arguments by Complainant-

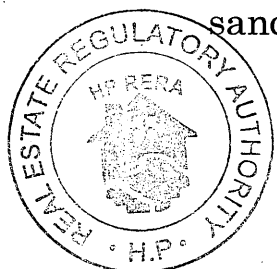
It was argued on behalf of the complainant that the present complaint has been filed for Villa no. 1 in the project in question. This villa was booked on 27th August, 2010 and the application from is annexure C-1 with the complaint. Thereafter it was argued that complainants paid a



total consideration Rs. 2,48,48,324/-prior to execution of agreement for sale. It was further argued that the possession of the villa was to be handed over within 24 months of the execution of agreement for sale. It was further argued that this agreement for sale was executed on 22nd August, 2011 and the agreement is annexed as annexure C-3. It was further argued that the respondent failed to hand over possession within the agreed time. It was further argued that on 24th February, 2015 the respondent has issued a communication stating therein that tile work in the villa is pending and soon the possession of the same will be delivered to the complainant. It was further argued that Annexure C-6 is the completion certificate qua the entire project which the respondent obtained on 30th August, 2019. Thereafter, it was further argued that the complainants were hopeful that despite a huge delay now they will get the possession of the Villa as per the agreement. It was further argued that as per the complainant there are 24 villas in the project and the completion certificate was issued against the entire project. It was further argued that on 3rd February, 2020 the respondent issued a letter C-17 wherein it was informed that the possession would be delivered to the complainant. Thereafter it was further argued that the complainant on failure of the respondent to deliver possession filed a consumer complaint before the State Consumer Commission. Thereafter it was further argued that respondent joined the litigation and took a specific objection that the State Consumer Commission doesnot have the jurisdiction and it is the Authority constituted under RERD Act, 2016 that has jurisdiction to adjudicate the matter. Thereafter it was further argued that the complaint before the State



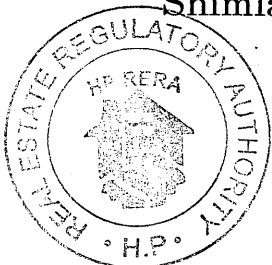
Commission was withdrawn and this complaint was filed. It was further argued that a document has been submitted by the complainant that they have been deliberately denied possession whereas one similarly situated person named as Adit Gupta has been handed over the possession of villa no. 14. It was further argued that there has been a delay of more than seven years in delivering possession from the date of execution of agreement and till date there is no hope of possession of the villa so purchased by the complainant. It was further argued that all the receipts of money that have been issued by the respondents qua the money that has been paid to the respondents are having logo of DLF and therefore it is wrong on the part of respondents to say that DLF is not a necessary party in the litigation. It was further argued that the respondent has been taking the plea that there has been an order of the Hon'ble High Court in a Writ Petition that has prevented the respondents from delivering the possession of the villa to the complainants which is annexed as R-3. It was further argued that the complainants during the process had applied for an RTI to which it was replied that the respondents have never applied for Occupation Certificate of villa no. 1 along with other villas for whom Occupation Certificate was received. It was further argued that the Occupation Certificate received for 17 number of villas were later on withdrawn by the Town and Country Planning department and Municipal Corporation Shimla. Further it was argued that annexure C-18 is the stay order of Hon'ble High Court which was obtained on 3rd November 2020 whereby the revocation orders qua occupation certificates, completion certificate, renewal of license and sanction were stayed by the Hon'ble High Court. It was further argued



that these orders have not been brought on record by the respondents nor do they say anything qua them in their reply. It was further argued that the respondents have misled and concealed material facts from this Authority in such manner and the complaint in terms of prayer made in the complaint be allowed.

10. Arguments by respondent-

It was argued on behalf of respondents that no possession has been handed over to any of the allottees. It was further argued that as per Section 31 of the RERD Act, 2016 the complaint can only be filed if there is violation of any of the provisions of the RERD Act, 2016. It was further argued that there is no violation of any provisions of the Act as it was argued that delay is due to litigation pending in the Hon'ble High Court of H.P. It was then argued on behalf of respondent that the agreement for sale is between M/s Bemloi Infrastructure Pvt. Ltd. and the complainants and there was no occasion for the complainants to array respondent no. 2 just on the basis that the receipts have been issued by both of respondents jointly. It was further argued that the possession was delayed due to orders passed by the Hon'ble high Court which situation is covered under force majeure clause which is well defined in the agreement for sale executed between the parties. It was further argued that the order of the Hon'ble High Court not to issue any occupation certificates was the reason that the possession and Occupation Certificate was denied to the complainants and such other persons and the project it was argued was complete for intents and purposes. It was further argued that the occupation certificates issued to villas has been withdrawn by the MC Shimla on the ground that stay order on issuance occupation



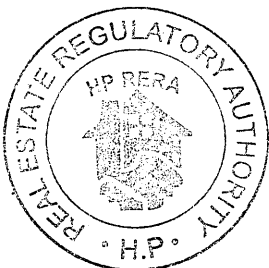
certificates passed by the Hon'ble High Court have not been brought into the knowledge of the functionaries at the time when these Occupation Certificates were issued. It was further argued that there was no deliberate attempt on the part of respondent no. 1 in not delivering the possession of the Villa and further respondent no. 2 has no concern what so ever with the present litigation. It was further argued that the respondent has filed application under Section 10 of the Code of Civil Procedure, 1908 for staying the present proceedings in view of the pendency of litigation before the Hon'ble High Court CWP 4325 of 2020 and CWP 8594 of 2011 where the matter in issue is directly and substantially the same as in the present case. It was further argued that the complaint is premature in nature and no cause of action is available to the complainant to pursue the present complaint.

11. **CONCLUSION/ FINDINGS OF THE AUTHORITY:-**

We have heard the arguments advanced by the Ld. Counsels for the Complainant(s) & Respondent(s) and also perused the record pertaining to the case. We have duly considered the entire submissions and contentions submitted before us during the course of arguments. This Authority is of the view that there are four issues that require the consideration and adjudication, namely:-

A. Jurisdiction of the Authority.

B. Whether the present proceedings are liable to be stayed as prayed for in MA no. 7A of 2022 under Section 10 of the Code of civil procedure, 1908 in view of the pendency of CWP No.4325/2020 along with CWP No.8945/2011?



C. Whether the complainant is entitled to delayed possession charges in terms of proviso to Section 18 (1) of the Act.

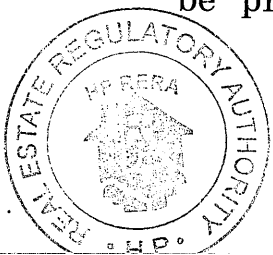
D. Other Issues and directions including imposition of Penalty.

12. **A. Jurisdiction of the Authority.**

Section 31 of the Act prescribes that any aggrieved person can file a complaint before the Authority or the Adjudicating Officer as the case may be for any violation of the provisions of the Act *ibid*. 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 complainants have filed the complaint in 'Form-M.'

13. Section 34(f) of the Act empowers the Authority to ensure compliance of the obligations cast upon the promoters and Section 11(4) (a) (Supra) cast obligations on the promoter to implement "agreement for sale". Further, Section 37 of the Act empowers the Authority to issue directions in discharge of its function provided under the Act. The Authority also has power to impose penalties under Section 59 to 63 for various contraventions of the provisions of the Act. Moreover, Section 38 (1) of the Act in unambiguous terms empowers the Authority to impose 'penalty or interest.'

14. Proviso to Section 18 of the RERD Act, 2016 says that if complainant does not intend to withdraw from the project then, promoter shall pay interest for every month of delay till the handing over of possession of the flat to the complainant at such rate as may be prescribed. So, as per proviso of Section 18, interest is to be

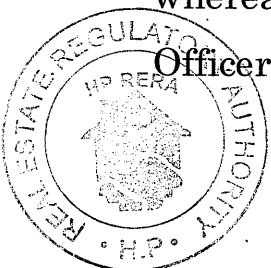


calculated for every month of delay till the possession is handed over to the complainant. Thus, the moment due date for handing over possession is over, the claim of interest for delay of every month is accrued to the complainant as per Section 18 of RERD Act, 2016. Right to claim interest is statutory right once it is accrued it lasts till the possession is handed over. Once delay is caused in handing over possession, it is continuous cause of action to get possession and consequently interest on period of delayed possession.

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

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

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



17. B. Whether the present proceedings are liable to be stayed as prayed for in MA no. 7 A of 2022 under Section 10 of the Code of civil procedure, 1908 in view of the pendency of CWP No.4325/2020 along with CWP No.8945/2011?

And

C. Whether the complainant is entitled to delayed possession charges in terms of proviso to Section 18 (1) of the Act.

Issues no. B, and C are taken up together for the purpose of adjudication and decision as the findings on these issues are interlinked and interconnected and therefore for the sake of brevity and to avoid repetition they are being taken up together.

18. The present project is a RERA registered project. The Authority after going through the record of the case and hearing arguments is of the considered view that the complainants on 27.08.2010 applied for Villa No. 1, Villa Type-B for a total consideration of Rs.2,56,18,014/-. A sum of Rs.2,48,48,324/- which was approximately 95% of the total sale consideration of Villa No.1 was paid by the complainants and the payments were acknowledged by the respondents collectively by issuing receipts which are annexure C-2 appended with the complaint. These payments or its receipt have not been disputed by the respondents. Further perusal of annexure C-2 which are the receipts go to show they were issued jointly by the respondent no. 1 & 2 and bear the stamp and logo of respondent no. 2 DLF Homes as well therefore the complaint against respondent no. 2 is certainly maintainable. Further perusal of agreement for sale shows DLF respondent no. 2 as Development and Marketing Partner of respondent No.1. Section 2 (zk) of the RERA Act, 2016 is as under:



Section 2 (zk) "promoter" means,—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

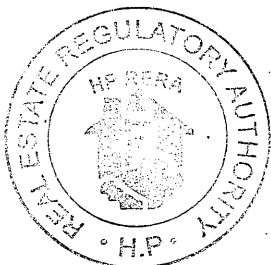
(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or



(vi) *such other person who constructs any building or apartment for sale to the general public.*

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

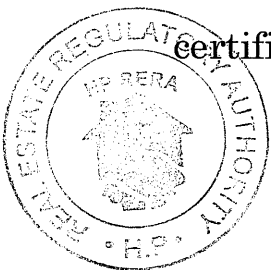
As per Section 2 (zk) any person who acts himself as developer is a promoter for the purpose of the Act and in this manner respondent no. 2 is held to be a promoter along with respondent no. 1.

19. Thereafter, admittedly agreement for sale mentioned as Villa buyer's agreement was executed between the parties on dated 22.08.2011 which is appended with the complaint as annexure C-3. As per clause 11 of the aforesaid agreement for sale, the respondents had agreed to deliver the possession of the Villa within 24 months from the date of execution of this agreement i.e. upto 22.08.2013 which is held to be the due date of possession. According to email dated 26.06.2012 annexure C-4 and e-mail communication dated 27.03.2015 annexure C-5 the construction work of the Villa was still not complete and was in progress. As per clause 13 of the agreement for sale the respondent after obtaining occupation certificate from the competent authority had to offer possession of the said villa to allottee in writing. No such offer of possession has been made even till date.

20. The defense of the respondent no. 1 which was also adopted by respondent no. 2 vide zimni order dated 03.03.2022 is that the

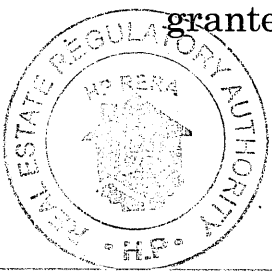


respondents made all efforts to hand over possession within 24 months from the date of execution of agreement for sale as per clause 11(a) but the delivery of possession got delayed due to force majeure circumstances as per clause 40 of the agreement for sale. It was his defence that in Civil Writ Petition bearing no. 8945 of 2011 titled as "*Tikender Singh Panwar &Anr. v State of H.P. &Ors*", the Hon'ble High Court of Himachal Pradesh vide its orders dated 17.10.2011 had directed the Municipal Corporation, Shimla not to issue completion certificate/further permission to occupy the constructed houses and as per the versions of the respondentssaid stay order is still continuing and the project completion got delayed due to the afore mentioned force majeure conditions mentioned above. It was the defence of the respondents that the entire project was completed in the year 2016 and on 27.12.2016, the respondent No.1 submitted revised building plans along with other documents with respect to the villas with the Town & Country Planning Department, Himachal Pradesh and the said department on 30.01.2017 forwarded the revised building plans to the Municipal Corporation, Shimla for their approval and Municipal Corporation, Shimla after a delay of 31 months, approved the revised building plans vide orders dated 30.08.2019 and the delay in granting approval by the competent authorities cannot be attributed to the respondent. It was further his defence that upon grant of approval by Municipal Corporation Shimla, the Town & Country Planning Department, Himachal Pradesh renewed the license of the respondent on 01.10.2019 and accordingly issued completion certificate with respect to the project vide letter dated 03.02.2020. It



was further defence of the respondents that the Town & Country Planning Department, Himachal Pradesh vide letter dated 17.07.2020 issued Occupation Certificate in respect of 17 out of 24 villas. It was further the defence of the respondents that Municipal Corporation Shimla vide orders dated 26.08.2020 in unilateral manner withdrew the Completion Certificate and sanction granted in favour of the respondents and based on the aforesaid orders, Town and Country Planning Department Himachal Pradesh on 10.09.2020 unilaterally and without granting any opportunity to the respondents ordered the withdrawal of renewal of license dated 01.10.2019, completion certificate dated 03.02.2020 and occupation certificate dated 17.07.2020. It was further their defence that against the alleged unilateral and illegal acts of the M.C. Shimla and T.C.P. Department, Himachal Pradesh in revoking the sanction, approval, completion and occupation certificates with respect to the project, the respondent had preferred a Civil Writ Petition bearing No.4325/2020, which is pending adjudication before the Hon'ble High Court of Himachal Pradesh and it was for these reasons that the respondent was unable to handover the possession of the villa to the complainants.

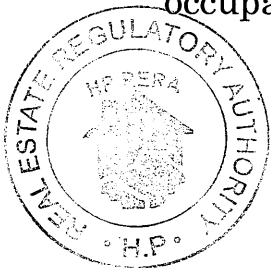
21. The defense of the respondents invoking the force majeure clause is liable to be rejected for the reasons that the respondents for reasons best known to them did not disclose to the complainants about the filing of said writ petition No.8594/2011 titled as Sh. Tikender Singh Kanwar Versus State of H.P against them and by concealing the said material fact from the complainants, that an injunction has been granted against issuing of any completion or occupation certificate till



the road in question at site reaches the last point/ concerned village. The complainants remained under bonafide belief that the possession will be delivered to them as per agreement for sale without having any knowledge about the Civil Writ Petition filed against the respondents. Further, there was no bar or stay from any court or any authority against the respondents from continuing the construction and completion of the same. Despite there being no injunction on construction, the respondents failed to complete the construction work within 24 months i.e. till 22.8.2013 as committed in the agreement for sale. The respondents, as per their own version in the reply, completed the work sometime in the end of 2016 and the revised building plan was filed with MC Shimla only on 27.12.2016 which goes on to prove that there was a delay of almost more than 3 years, only on the account of construction work of the project. Thereafter, the respondents failed to get the completion certificate for another 31 months, a delay on the part of the promoters as per the section 11(4)(b) and this delay cannot be attributed to the allottees in any way. The respondent promoters further applied for the occupancy certificate from Deptt of Town and Country Planning after having received the completion certificate from MC Shimla. The respondent promoter, again for reasons best known to them, applied for occupancy certificate for seventeen villas out of total 24 villas and did not apply for the occupation certificate for villa no 1, which is the subject matter of adjudication in this complaint. Further as per reply to information under R.T.I. Act from the P.1.0. cum Town & Country Planner, T&C.P. Department Shimla which is appended with rejoinder as annexure C-19, it was disclosed that the respondents have never

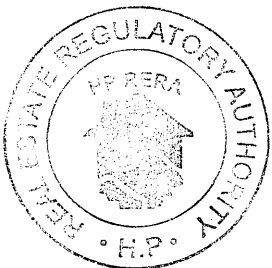


applied for the Occupation Certificate against Villa No.1 which belongs to and is allotted to the complainants and further respondent has never ever re-applied for the same till date. From the perusal of letter dated 17.07.2020 it is clear that respondent No.1 had only applied for issuance of Occupation Certificate against 17 No(s) of Villas of the project which was accorded/sanctioned to them. The respondents could not explain as to when M.C. Shimla vide letter dated 30.08.2019 had already accorded sanction/ completion to the entire residential project consisting of Block No.1 to 15 then why respondents did not apply and obtain Occupation Certificate for Villa No.1 which act in itself is held to be discriminatory. The sanction, license, completion and occupation certificate in favour of respondent No.1. were unilaterally revoked vide order dated 26.08.2020 (Annexure R 10) and 10.09.2020 (Annexure R 11) by Municipal Corporation Shimla and Town and Country Planning Deptt respectively. The respondents moved the Hon'ble HP High court against the revocation and Hon'ble High Court vide order dated 03.11.2020 (Annexure C-18) passed in CMP No.10432/2020 in CWP No.4325/2020 along with CWP No.8945/2011 has stayed the order dated 26.08.2020 (Annexure R 10) and 10.09.2020 (Annexure R 11) passed by the Municipal Corporation Shimla and Town and Country Planning Department, respectively. Meaning thereby that at present as per court order dated 03.11.2020, renewal of license dated 01.10.2019, completion certificate dated 03.02.2020 and occupation certificate dated 17.07.2020 are still in operation and respondents were free to handover possession in terms of agreement for sale to the Villa Buyers of the project. Had the respondents applied for the occupation certificate for villa no 1 along with other villas, the



respondents could have handed over the possession of the said villa to the complainant after the court order staying the impugned orders of MC Shimla and TCP deptt. Further, the complainants have submitted a document dated 29.04.2022 whereby respondents have offered possession in writing to one Mr. Adit Gupta qua Villa no. 14 of the same project for which they had also obtained occupation certificate. The act of respondents of not applying for occupation certificate of Villa no. 1 and thereafter not offering them possession amounts to unfair trade practice and is also discriminatory against the complainants. Therefore, the defense of the respondents that they could not deliver the possession of villa no. 1 to complainants in view of force majeure circumstances is not tenable and deserves to be rejected out rightly for reasons stated above. Therefore, it is held that the present proceedings are not liable to be and cannot be stayed under Section 10 of the Code of Civil Procedure and MA no. 7A of 2022 is dismissed. Further the Hon'ble Supreme Court in the case of **Newtech Promoters and Developers Pvt.Ltd.Vs. State of U.P. and Ors** MANU/SC/1056/2021

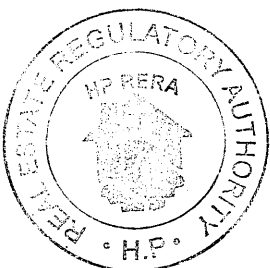
“22. If we take a conjoint reading of Sub-sections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable Under Sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed.



23. Correspondingly, Section 19 of the Act spells out "Rights and duties of allottees". Section 19(3) makes the allottee entitled to claim possession of the apartment, plot or building, as the case may be. Section 19(4) provides that if the promoter fails to comply or being unable to give possession of the apartment, plot or building in terms of the agreement, it makes the allottees entitled to claim the refund of amount paid along with interest and compensation in the manner prescribed under the Act.

24. Section 19(4) is almost a mirror provision to Section 18(1) of the Act. Both these provisions recognize right of an allottee two distinct remedies, viz., refund of the amount together with interest or interest for delayed handing over of possession and compensation.

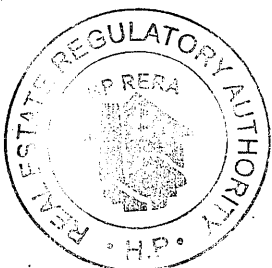
25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."



The ratio of the aforesaid judgment is that conjoint reading of Sub-sections (1), (2) and (3) of Section 18 of the RERD Act, 2016, is that the allottee has the liberty, if he does not intend to withdraw from the project to be paid interest by the promoter for every months' delay in handing over possession as may be prescribed. It was further held that that the right of the allottee to seek interest for delayed possession is unqualified and not dependent on any contingencies or stipulations thereof and is also regardless of unforeseen events or stay orders of the Court/Tribunal, which in either way is/are not attributable to the allottee.

22. Therefore to conclude the respondents have failed to deliver the possession of the Villa no. 1 within the time agreed and stipulated in the agreement for sale and are in default even till today. As the possession has not been delivered even till today therefore there has been gross delay of nine years approximately in delivering the possession to the complainant from the due date of possession dated 22.08.2013 i.e. 24 months from the date of execution of agreement for sale dated 22.08.2011 despite having received 95% of the total sale consideration of the project. Respondents by doing so have violated the provisions of Section 11(4)(a), 14, 17, 18 and 19 of the RERD Act, 2016. The complainant is seeking charges for delayed possession and the proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under:

Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017-



Interest payable by promoter and allottee-

The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent as mentioned under Section 12, 18 and 19 of the Act:

Provided that in case the State Bank of India marginal cost of lending rate is not in use it would be replaced by such benchmark lending rates which the State Bank of India may fix, from time to time for lending to the general public.

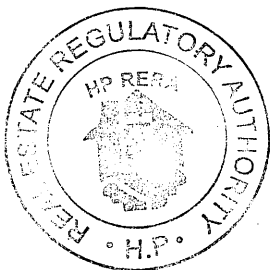
Provided further if the allottee does not intend to withdraw from the project, he shall be paid by the promoter an interest which shall be the State Bank of India highest marginal cost of lending rate

23. The legislature in its wisdom under rule 15 of the rules *ibid*, has determined the prescribed rates of interest. The rate of interest so determined by the legislature, is reasonable and if said rule is followed to award interest, it will ensure uniform practice in all the cases. The definition of term 'interest' as defined under Section 2 (za) of the RERD Act, 2016 provides that rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

Section 2 (za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.—For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*



(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

24. The SBI marginal cost of lending (in short MCLR) as on date of passing of this order is 8 % hence the rate of interest would be 8%+2 % i.e.10% per annum. Therefore, interest on the delayed payment from the complainant shall be charged at 10%.

25. **D.Other Issues and directions including imposition of Penalty.**

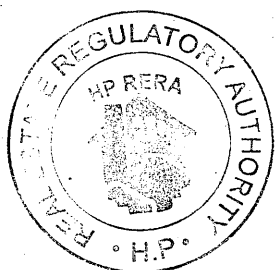
The Respondent Promoter has not shown any sincerity in delivering possession of the Villa no. 1 to the complainants in terms of agreement for sale and has also discriminated against them by officering possession to other allottees of the same project , as discussed in para supra. The Authority is of this firm view that respondents/promoters must be jointly held accountable and penalised under Section 61 of the Act *ibid* for their failure to fulfil the obligations as promoters as prescribed in Section 11, 14 and 17 of the Act *ibid*.

26. **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 hereby allowed.

B. The respondents are jointly directed to pay the interest for delayed possession, at the SBI highest marginal cost of lending



rate plus 2 % as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 to the complainants. The present highest MCLR of SBI is 8 % . Hence the rate of interest would be 8 %+2 % i.e. 10% per annum on the amount paid by the complainant i.e. Rs 2,48,48,324/- for every month of delay from the due date of possession i.e. 22.08.2013 till the date when valid offer of possession is made.

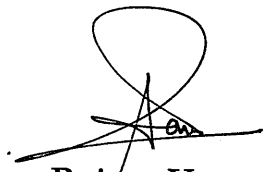
- C. The arrears of interest on delayed possession accrued from 22.08.2013 till the date of passing of this order i.e. 20.08.2022 shall be paid to the complainants by respondents jointly within 60 days from the date of passing of this order and thereafter monthly payments of interest till offer of possession shall be paid before 10th of each subsequent month.
- D. That considering all facts of the case the respondents are held jointly liable under Section 61 & 69 of the Act to a penalty of Rs One Lakh for causing discrimination against the complainant vis a vis other allottees of the same project.
- E. That the penalty imposed shall be deposited in the bank account of this Authority, operative in the name of "Himachal Pradesh Real Estate Regulatory Authority Fund" bearing account no."39624498226", in State Bank of India, HP Secretariat Branch, Shimla , having IFSC Code.SBIN0050204, within a period of 60 days from the passing of this order.



B.C.Badalia
MEMBER



Dr.ShrikantBaldi
CHAIRPERSON



Rajeev Verma
MEMBER

