

**REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH**

In the matter of:-

1. Complaint No.RERAHPSOCTA10190020

Sh. Sandeep KumarComplainant

Versus

Gupta Property Developers Private Limited
.....Non-Complainant/ Respondents

2. Complaint No HP/RERA/OFL-2020-06

Sh. Adit KansalComplainant

Versus

Gupta Property Developers Private Limited
.....Non-Complainant/ Respondents

Present: - Sh. Sandeep Kumar, Complainant in person
Sh. Adit Kansal, Complainant in person
Sh. V.K. Tripathi, Advocate for respondent Gupta
Property Developers Private Limited.
Shri Mayank Manta, Assistant District Attorney
for State of Himachal Pradesh/RERA Himachal
Pradesh



Final Date of Hearing (Through WebEx): - 12.10.2020

Date of pronouncement of Order: - 03.11.2020

ORDER

CORAM: - Shrikant Baldi ----- Chairperson

Rajeev Verma ----- Member

B.C. Badalia ----- Member

1. The present matter refers to two number of Complaints filed under the provisions of the Real Estate (Regulation and Development) Act, 2016(herein after referred to as the Act against Gupta Property Developers Private Limited, the respondent promoter who has developed a Real Estate Project in the name of “ New Town Baddi” at Baddi , District Solan, Himachal Pradesh. This Authority had also carried out a site inspection of the aforesaid real estate project including the property of both the Complainants on 5th September, 2020 and heard the arguments on 12th October, 2020. Since the cause of action in both the complaints is common in nature hence both these complaints were taken up together as the reliefs sought are also identical and hereby decided along.

2. Facts in case of complaint made by Sh. Sandeep Kumar bearing Complaint No.RERAHPSOCTA10190020:-

- i. Sh. Sandeep Kumar filed the complaint before the authority on 22-10-2019 in “form-M”. It has been stated in the complaint that the complainant had booked two residential flats i.e. 105-B and 106-B, Type-II, First Floor in project named “New Town Baddi” developed by Gupta Property Developers Private Limited, Near Fire Station, Baddi, District Solan- H.P by making full and final payment of Rs. Nine lakhs, eight thousand and nine hundred and eighty (Rs. 9, 08, 980/-) to the respondent for both the flats between November, 2015 to December, 2017. The respondent

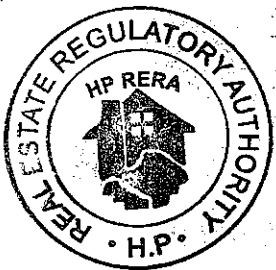


promoter had promised to hand over the physical possession to the complainant by July, 2016 as per agreement dated 4th January, 2016. (Page 12 - 13 of the complaint file).

- ii. The complainant has also stated in his letter dated 28th October, 2017 (appended at page 40 of complaint file) as under:-

"I have received many calls from respondent office to take possession. Your staff pretended to explain that there is no need of completion and occupancy certificate for the possession and possession can be handed over on the letter head of the respondent promoter. You are well aware that without obtaining completion and occupancy certificates, physical possession cannot be handed over to any person as per clause (i) of sub -Section (2) of Section 78(n) of the Himachal Pradesh Town and Country Planning Act, 1977, then why I am being pressurized to take possession without these important certificates."

- iii. Further the complainant had entered into a rent agreement with the respondent promoter on 10th December, 2018 in which the respondent promoter had agreed to pay Rs. Fifty five hundred (Rs. 5, 500/-) rent per month for each flat, totalling to Rs. Eleven thousand (Rs. 11, 000/-). He has further mentioned that the respondent promoter paid rent till May, 2019 and thereafter a balance of Rs. One lakh, forty five thousand and six hundred (Rs. 1, 45, 600/-) is still payable by the respondent promoter. The



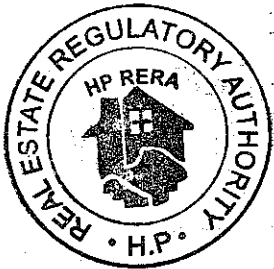
complainant has also annexed copy of advertisement dated 17th January, 2019 at page 25 of the complaint file, in which the respondent promoter had advertised that every buyer will get one % rent per month. The complainant has also pointed out that the project of respondent is yet to be registered with RERA,H.P. and therefore, respondent promoter was not authorized to issue advertisement in news papers. This is a clear violation of Section 3 (1) of the Act read with Section 59 of the Act *ibid*. The complainant has stated that the respondent promoter had sold many flats by making false commitment of rent and made rent agreement for 3 , 6 and 9 years . Once the prospective buyers paid money, the respondent promoter had stopped paying rent to them. The respondent promoter has offered illegal possession to the home buyers. More than 400 families have started living there without obtaining occupancy certificate in violation of Section 17 of the Act by the respondent. He has further stated that no individual electricity meters have been installed in the shops/ flats of the allottees. The respondent promoter has provided electricity from its own commercial connection which is illegal. There are no green areas in the premises. The parking space is very less as compared to number of flats constructed and quality of construction is very poor.



iv. The complainant has therefore prayed before this Authority that the entire Amount of Rs. Nine lakhs, eight thousand and nine hundred and eighty (Rs. 9, 08, 980/-) paid to the respondent promoter along with interest as per the Act and the Rules / regulations with compensation may be refunded, as respondent promoter has failed to hand over the possession on the promised time and further more he is not trustworthy.

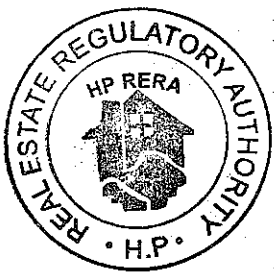
v. **Reply by the Respondent:**

The respondent in his reply has stated that Mr. Sandeep Kumar had approached him for the booking of two units in their project namely "New Town Baddi" developed by Gupta Property Developers private limited on 11.11.2015. In the reply, the respondent promoter had admitted the receipt of various payments as stated by the complainant. The respondent promoter in the reply has also mentioned that complainant had executed rent agreement in favour of the respondent and the rate of rent was fixed at Fifty five hundred (Rs. 5, 500/-) per unit per month. The respondent admitted that rent was paid till July, 2019 but due to some financial crisis the respondent promoter was not able to pay rent after that period.



3. Facts in case of complaint made by Sh. Adit Kansal bearing Complaint No HP/RERA/OFL-2020-06:-

i. The complainant Sh. Adit Kansal has purported to state in his complaint that he booked a shop No. 20-A on 27th July, 2013 in the respondent project, named "New Town Baddi" developed by Gupta Property Developers Private Limited near Fire Station, Baddi, District Solan-H.P on payment of entire amount of Rs. Eleven lakhs and twenty eight thousands (Rs. 11.28 lakhs) to the respondent promoter between the year 2013-14. The respondent promoter had entered into an agreement with him on 24th December, 2013 (Page 29 to 47 of the complaint file) in which the respondent promoter had agreed to hand over the possession of the shop by August, 2015. The respondent promoter had also entered into a rent agreement from January, 2018 to November, 2018 and then again another rent agreement from December, 2018 to November, 2021 for payment of monthly rent of Rs. Seven thousand one hundred and fifty (Rs. 7.150/-) per month. The respondent promoter paid the agreed rent amount up to May, 2019 but later stopped paying the same. On the date of complaint an unpaid rent amount of Rs. Fifty seven thousand and two hundred (Rs. 57, 200/-) was due. The complainant has further asserted that the respondent promoter had made false promises and the quality of construction is also very poor. The possession letter issued by the respondent promoter is against all norms, as he could not issue the same without getting electricity connection,



occupancy certificate and completion certificate. Therefore, the possession letter issued is a total fraud and has requested this Authority to penalize the respondent promoter for the same.

- ii. It has also been alleged by the Complainant in his complaint that he and his wife are serving as a teachers & had invested their hard earned money for booking of the shop. The complainant has prayed for the refund of entire amount of Eleven lakhs and twenty eight thousands (Rs. 11.28 lakhs) along with interest as per the provisions of the Act and the rules ibid along with compensation as the respondent promoter has failed to give the possession as per agreement.
- iii. **Reply by the Respondent**

The respondent in his reply has stated that the complainant Shri Adit Kansal had approached them for booking of one shop in their project namely "New Town Baddi" and admitted receipt of the payment. The respondent promoter has further stated that complainant has executed a rent agreement with the firm and he was paid the fixed amount of rent regularly. The promoter respondent further contented that the complainant has already taken the possession.



4. Site Inspection:

- i. The Authority during the course of hearing of the part arguments in both the cases on 5th September, 2020 felt that in addition to

the specific points raised by both the complainants, there are other issues of common areas and civic facilities which are needed to be looked into. Therefore, this Authority decided to carry out site inspection on 22nd September, 2020 in presence of the parties. The site inspection report reads as under:-

ii. **“Site inspection report**

The Authority, as decided in the last hearing on 5.9.2020 in the complaint matter of Sandeep Rana Vs Gupta Property Developers and Adit Kansal Vs Gupta Property Developers, visited site, New Town Baddi on 22.09.2020.

The Authority headed by Chairperson, Dr Shrikant Baldi along with both members, reached the office of CEO, BBND A at 2.15 pm and after holding a short meeting with the CEO and other officers of BBND A including officiating town planner, headed for site visit, New Township Baddi , where both the complaints and representative of Respondent promoter were asked to be present. The CEO BBND A along with other officers accompanied the Authority.

Both the complainants were present at the site whereas only a site supervisor was present from the respondent promoter side along with Advocate Sh. V.K.Tripathi.

The Authority proceeded to visit the premises under reference of complaint matter and visited the shop no 20 A, in Commercial Block A, which is a stilt plus four floors commercial building having 354 no. of units , allotted to the complainant Sh Adit Kansal.The said shop was seen in the presence of the complainant , representative of the respondent promoter and officers of BBND A. The said shop comprised of one room/ shop space, one kitchenette with a sink, one small balcony and a toilet



approachable from the balcony. The shop was approachable from a common central corridor and was found to be vacant and it was conveyed by the complainant, Sh Adit Kansal, that the same was occupied till recently and has been vacated only after the hearing of the case held on 5.9.2020 and even stated that a video of the occupied shop was made on the evening of the last date of hearing i.e. 5.9.2020.

The Authority, thereafter, visited the premises of the other complainant, Sh Sandeep Rana , flat no 105 and 106 in the Residential Block B, which is a stilt / parking plus four storied building along with Residential Block A and both blocks having 350 no. of units, and situated next to the commercial block A. The said flats were seen in the presence of the complainant, representative of the respondent promoter and officers of BBND. Each flat comprised of one room, one kitchen, one toilet and one balcony and were modified internally to make one single flat, having three rooms, one kitchen, one toilet and a long balcony. The said flats are approachable from the common central corridor and was found to be vacant and it was conveyed by the complainant, Sh Sandeep Rana, that the same was occupied till recently and has been vacated only after the hearing of the case held on 5.9.2020 and even stated that a video of the occupied flat was made on the evening of the last date of hearing i.e. 5.9.2020.

Many other residents of the block B also gathered there and complained in one voice against the promoter about delaying the registration of the sale deeds of the flats despite of their repeated requests and high annual maintenance charges of the flats that includes the charges of electricity, water and upkeep of the premises. The residents demanded that they be provided the independent domestic electrical and water connections, the cost of



which has already been charged by the promoter in the full cost of the flat collected by the promoter.

The Authority took a round of the complete premises and noted that the upkeep of the buildings was very poor, no light bulbs were provided in the common areas and only holders were provided. The external and internal painting was of very basic quality and even that was not being maintained.

The green area, as per approved drawing, was not developed at all and the entire open area in the complex was concretised. Only a small portion was being developed as green area on one extreme side of the site and it was conveyed by the residents that the work has been done by putting a plastic sheet and stacking earth on the same, only to mislead the visiting Authority. The club house, constructed as a small basic structure with no facilities, called a community hall has been constructed but the residents complained that they are not allowed to use the same.

The rain water pipes have been left open in the entire complex and have not been connected to the rain water harvesting tank and rain harvesting system is not working.

The fire fighting pipes have been provided in the commercial block. The Sewage Treatment Plant is functional but is emitting foul smell.

One make shift barrier was provided at the entrance of the complex but there was no control on the entrance to commercial block 1 which also opens into the main complex on the rear side and thus free entry to the whole complex is there and residents complained about the same too.

The Authority, after the site visit, met both the complainants and the representative of the respondent promoter and Advocate Sh. V.K.Triapthi and heard both the parties.



The Authority, asked the representative and the Advocate of the respondent promoter about the timeline of the submission of the following documents pertaining to the case,

- i) Copy of approved completion certificate and occupancy certificate of all three blocks
- ii) Copy of NOC from Himachal Fire Services Deptt
- iii) Copy of "consent to operate" from HP Pollution Control Board
- iv) Tentative time period within which the sale deeds of all the allottees will be executed.
- v) Tentative time period within which the individual domestic permanent Electrical connections from HPSEB will be installed in each unit.
- vi) Time period within which all the facilities/ services as are required including improvement of general upkeep of the whole complex, will be provided.
- vii) Details of the formed Resident welfare Association, if formed already, otherwise time period within which the said association will be formed and all common areas and services handed over as per the provisions of the HP Real Estate (Regulation and Development) Act 2016.

The respondent Counsel was directed to file the response and submit all the information by 5th October, 2020 with a copy to complainants and Authority. The complainants are at liberty to file any other additional documents/ information, if any, with a copy to the respondent and Authority.

The case is listed for arguments on 12th October at 2.30 pm through Webex"

- iii. In view of the site inspection report, the respondent promoter has submitted a letter along with documents which is placed at page



62 in the file of the complainant no. 1 and at page 101 in the file of the complainant no. 2. The letter reads as follows:-

सेवा में,
चेयर पर्सन

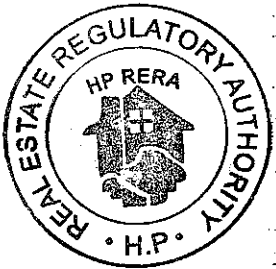
हि0प्र0 रीयल स्टेट रेगुलेटरी अथॉर्टी
शिमला (हि0प्र0)

विषय:- दस्तावेज जमा करने के सम्बन्ध में ।
माननीय महोदय,

आप द्वारा दिनांक 22.09.2020 को साइट निरीक्षण के बाद जारी आदेशों का पालन करते हुए मैं आपके सेवा में सम्बन्धित दस्तावेज प्रस्तुत कर रहा हूँ तथा समय सम्बन्धी सीमा का विवरण निम्नलिखित क्रमवार है ।

- कम्प्लिशन प्रमाण पत्र कापी संलग्न तथा आकुपेन्सी सर्टिफिकेट अभी प्राप्त नहीं हुआ है । डायरेक्टर टी0सी0पी0 के यहां प्रतीक्षा सूची में है क्योंकि रेरा का रजिस्ट्रेशन प्राप्त होने के बाद आगे की कार्यवाही हो सकेगी ।
- फायर प्रमाण पत्र प्रति संलग्न ।
- कन्सेट टू आपरेट कापी संलग्न ।
- रेरा रजिस्ट्रेशन के पश्चात आकुपेन्सी प्रमाण पत्र मिलने के बाद ही रजिस्ट्रेशन की प्रक्रिया संभव हो सकेगी ।
- उपरोक्त प्रक्रिया के बाद ही व्यक्तिगत मीटर संभव होगा ।
- शिघ्र ही सारी आप के द्वारा निर्देशित सारी कमियों को दूर कर लिया जायेगा ।
- जब तक कि पूर्णरूप से कम्प्लीशन प्रमाण पत्र एवं आकुपेशनल प्रमाण पत्र नहीं प्राप्त हो जाता है तब तक लोकल अथॉरिटी को ट्रांसफर प्रक्रिया संभव नहीं हो सकेगी । जैसे ही रेरा द्वारा रजिस्ट्रेशन प्रक्रिया पूरी होने के बाद उपरोक्त प्रक्रिया पूरी करने के बाद कामन एरिया लोकल अथॉरिटी को ट्रांसफर करने की प्रक्रिया पूरी होगी । ततपश्चात एक वेलफेयर एसोसिएन का रजिस्ट्रेशन करा कर सर्विस का कार्य वेलफेयर समिति को सौंप दिया जायेगा । जिससे आगे की देख रेख का कार्य समिति करती रहेगी ।

अतः माननीय महोदय से विशेष प्रार्थना है कि रजिस्ट्रेशन कार्य कुछ शर्तों के साथ यदि संभव हो सके तो देने की कृपा करें प्रार्थी सभी शर्तों को यथा संभव पूरा करने का पूरा



प्रयास करेगा महोदय की यह कृपा जनहित में होगी और लोगों का रजिस्ट्रेशन कार्य एवं अन्य सभी सुविधाएं प्राप्त हो सकेंगी प्रार्थी कम्पनी आपका इस कार्य के लिए आभारी रहेगी एवं शर्तों का अनुपालना करेगी ।

धन्यवाद,

प्रार्थी

हस्ता

अजय कुमार गुप्ता

Authorised Signatory

गुप्ता प्राप्टी डेवलपर्स प्राईवेट लिमिटेड

बददी सोलन (हिमाचल प्रदेश)

दिनांक: 06-10-2020

5. Arguments advanced:

- i. The final arguments in this case were heard on 12th October, 2020. Sh. Sandeep Kumar, complainant no.1 reiterated the points made by him in his complaint and supporting documents supplied by him. He specifically emphasised that he has deposited Rs 9.9 lakhs with the respondent promoter. However the respondent promoter had failed to transfer the property in his name because the occupancy certificate has not been obtained by the respondent promoter. He also highlighted that the respondent in various newspapers had advertised that one percent rent will be given to the prospective buyers till the registry (sale deed) is done. The details of such advertisement published in various newspapers from November, 2015 till January, 2019 has been given at page 26 of the complaint file. He also pointed out that the respondent promoter had enticed



the prospective small buyers by offering rent and then did not pay the rent as promised/ committed. In his case also an amount of Rs. One lakh, forty five thousand and six hundred (Rs. 1, 45, 600/-) rent is pending from June,2019 to July,2020. He requested that his entire money along with interest be refunded to him as he is no longer interested to buy this property.

- ii. Shri Adit Kansal, Complainant reiterated the points made in his complaints along with documents supplied by him. He argued that he made full and final payment for purchase of shop No. 20-A by November, 2014. The respondent had promised to hand over the physical possession by August, 2015 as per the agreement entered into between the parties. It is a matter of regret that the possession has not been handed over till today. The respondent had promised to pay a rent of Rs. Seven thousand one hundred and fifty (Rs. 7, 150/-) per month, till the sale deed is registered in his favour. However, the respondent has not paid any rent since June, 2019. The quality of construction is very poor. The respondent has failed to provide individual electricity and water connection and has not provided the common facilities in the complex. The letter of possession given by the respondent is an eye wash as no legal transfer has taken place. He further urged that he is a teacher



and he has invested his hard earned money to buy this shop. However, as the respondent had failed to hand over possession till August, 2015 and also due to poor quality of construction and lack of civic facilities, he prayed for the refund of entire amount along with interest.

iii. The Ld. arguing Counsel for the respondent Sh. V.K. Tripathi argued that the possession of property in both the cases has already been handed over to the complainants. He pointed out that in case of Sh. Sandeep Kumar rent agreement was entered on 10th December, 2018 for a period of 36 months to pay a monthly rent of Rs. Fifty five hundred (Rs. 5, 500/-) for each flat. The rent agreement was entered into after the respondent has been issued possession letter regarding flat No. 105-B and 106-B on 10th December, 2017. He further stressed that complainant has already taken possession and he is owner of both these flats and respondent is paying him rent in capacity of a tenant. On a query, he admitted that the rent is due since June, 2019 due to financial difficulty. However, he added that rent will be paid in due course.

iv. In the case of complainant, Sh Adit Kansal, the counsel for respondent pointed out that possession letter of shop No. 20-A was issued in his favour on 10th December, 2017. On the same day both the parties entered into rent agreement for 11



months. Again a fresh rent agreement was entered into on 27th November, 2018.

- v. Thus, he asserted that in both the cases the respondent has already handed over the physical possession of the flats and shop to the complainants. The complainants have no right to file the complaint before the Authority as the physical possession has already been handed over and the respondent is paying rent as tenant to the complainants. If they have any grievance regarding the payment of rent, they can file petition under the Rent Act.
- vi. He further stated that he is not able to get full completion certificate and occupation certificate as the project is yet to be registered under HP, RERA. He urged the Authority to consider registering this project, with certain conditions so that the respondent builder could obtain occupancy certificate and get the sale deeds registered in favour of allottees. On the query by the authority about the completion of common facilities and individual electricity connections, he replied that all the common facilities will be completed soon and individual electricity connections will be released, after receipt of the occupation certificate.

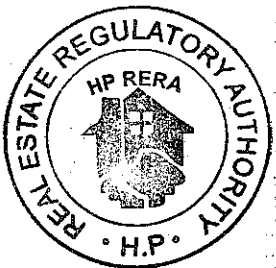


- 6. We have heard the arguments advanced by both the complainants and learned counsel for the respondent. We have

perused the record pertaining to both the cases and also made the site inspection. We have duly considered the entire submissions made before us during the course of arguments. The Authority is of the view that the following issues require consideration and adjudication in these cases:

- a) Jurisdiction of the Authority
 - b) Whether the complainants are entitled to get the refund of the money along with interest or not?
 - c) The issue of payment of rent to the complainants.
 - d) The issue of permanent individual domestic electricity connections in the name of individual flat owners.
 - e) The status of common areas & facilities and directions including imposition of penalty.
 - f) The status of transfer / registration of sale deeds to allottees and related issues including imposition of penalty.
 - g) Status of RERA registration and decision on that.
 - h) Other issues and directions.
- a) **Jurisdiction of the Authority:-**

To arrive at a conclusion, we would like to discuss various provisions of the Act in this regard. Section 31 of the Act prescribes that any aggrieved person can file a complaint before the Authority or the adjudicating Officers as the case may be for any violation of the provisions of the Act. Further, Rule 23 of the



Himachal Pradesh Real Estate (Regulation and Development) Rules 2017 provides the procedure of filing complaint with the Authority and prescribes "Form M" for filing a complaint. In this case, the complainants have filed the complaints in "Form-M."

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

" to ensure compliance of the obligation cast upon the promoter, the allottee and the real estate agent under this act and the rules and regulation made their under".

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

The promoter shall—

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

Section 17 of the Act ibid provides as under,

(1) *The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the*



association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

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

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-Section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

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

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

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

Further Section 38 (1) of the Act says

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



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

Thus from the reading of the above provisions of the Act, it is very clear that the Authority has power to adjudicate various matters, including refund, interest and imposition of penalty under the Act.

b) Whether the complainants are entitled to get the refund of the money along with interest or not?

In the present case, the complainant Sh. Sandeep Kumar has paid Rs. Nine lakh, eight thousand nine hundred and eighty and Sh. Adit Kansal has paid Rs. Eleven lakh, twenty eight thousand, and has asked for the refund due to inordinate delay in possessions of the flats/shop. The Hon'ble Supreme Court in case "**Pioneer Urban Land and Infrastructure Ltd. versus Govindan Raghavan, 2019**"



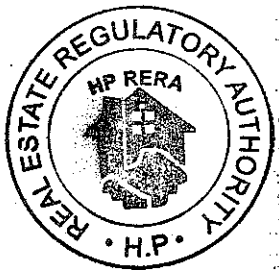
SCC Online SC 458, has held that the inordinate delay in handing of the flat clearly amounts to deficiency of service. The Hon'ble Court further held that a person cannot be made to wait indefinitely for possession of the flat allotted to him and is entitled to seek refund of the amount paid by him.

In the present case there is an inordinate delay in the delivery of the flats and shop whereas in accordance with the terms and conditions of the buyers' agreement, the possession was to be delivered in case of Sh. Adit Kansal by August, 2015 and in case of Sh. Sandeep Kumar by July, 2016.

Section 19 (4) provides as follows:-

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

It is an admitted fact that the respondent has failed to obtain the occupancy certificate of the property whereas he is responsible to obtain the same under Section 11 (4) (b) of the Act *ibid*. He is also responsible for execution of registered conveyance deed as required under Section 11 (4) (f) of the Act. The alleged handing over of the possession to the complainants has no meaning



in the eyes of law, till a conveyance deed is registered under the provisions of Transfer of Property Act, 1882. The respondent was duty bound to get the conveyance deed executed as provided under the buyers' agreement which was to be done in the year of 2015 and 2016 respectively. However the respondent promoter has completely failed in discharging the obligations. Therefore both the complainants are entitled to get refund of their money deposited with the respondent as per provision of Section 18 read with Section 19 (4) of the Act *ibid*.

The second issue is about the interest that the complainants have sought. The Hon'ble Bombay High Court in the landmark judgement of "*Neel Kamal realtors*" in para 261 of judgment has held "*In my opinion, Section 18 is compensatory in nature and not penal. The promoter is in effect constructing the apartments for the allottees. The allottees make payment from time to time. Under the provisions of RERA, 70% amount is to be deposited in a designated bank account which covers the cost of construction and the land cost and has to be utilized only for that purpose. Interest accrued thereon is credited in that account. Under the provisions of RERA, 30% amount paid by the allottees is enjoyed and used by the promoter. It is, therefore, not unreasonable to require the promoter to pay interest to the allottees whose money it is when the project is delayed beyond the contractual agreed period.....*"



The Hon'ble Supreme Court in "*Pioneer urban land & infrastructure case*", has also held that the flat purchaser is entitled to get refund of the entire amount deposited by him with interest."

Thus, the complainant is entitled to get interest as prescribed as per the Section 18 of the Act, read with rule 15 of the Himachal Pradesh Real Estate (Regulation and Development) Rules 2017.

c) The issue of payment of rent to the complainants.

Sh. Sandeep Kumar complainant has mentioned in his complaint that respondent had agreed to pay rent @ 11,000/- for both the flats and same has not been paid by him after May, 2019. He has further stated that a rent of Rs. 1,45,600/- is due till July, 2020. He has also pointed out that the respondent issued various advertisements in newspapers from November, 2015 till June, 2019. He has given a list of 55 such advertisements which is placed at page 26 in the complaint file. He has also annexed one advertisement by the respondent at page 25 where Gupta Property Developers have assured the buyers that 1 percent rent would be provided every month to every buyer. He has thus contested that these are the gimmicks played by the respondent promoter to allure the prospective buyers. He requested for the payment of rent till the final refund of this money. The other complainant, Sh. Adit Kansal, has also presented the same arguments in respect of the payment of due



rent to him. The counsel for the respondent has admitted the fact about the payment of the rent but has argued that the recovery of rent can be made only under the Rent Act, before the appropriate court.

Section 12 of the Act, puts an obligation on the promoter regarding veracity of the advertisement. It also puts an obligation that any false statement included therein shall be compensated by the promoter. The Section 11(2) of the Act mandates that before issuing any advertisement, the promoter shall mention prominently the website address of the Authority wherein all details including the registration number will be mentioned. In the present case the promoter has applied but not yet received the RERA registration, for want of submission of requisite documents. Therefore he has issued the advertisements in News papers, in contravention of the provisions of Section 11 (2).

It is an admitted fact that both the parties have entered into rent agreement. The respondent has also paid rent for some period and then has discontinued. The respondent has been advertising, about payment of rent per month while marketing the said project. The respondent basically was paying some monthly amount in lieu of non- completion of project in time, and termed it as rent. As he had



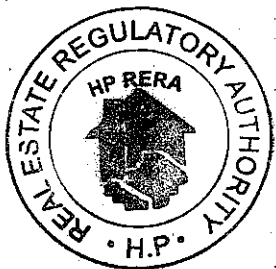
admitted that this amount is to be paid, therefore this amount is to be paid, till the refund of money with interest.

d) The issue of permanent individual domestic electricity connections in the name of individual flat owners:

The Authority has made the site inspection of the project. From the site visit it was clear that the respondent promoter has taken one electricity connection and then supplying electricity to the individual flat owners. The respondent promoter has failed to provide permanent individual domestic electricity connection as he has not completed the project and is unable to get NOCs for the individual electricity connections for allottees.

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

In State of Karnataka vs. Narasimhamurthy (AIR 1996 SC 90) SCC p. 526, para 7: JT at p. 378, para 7), the Hon'ble Apex Court held that, *"Right to shelter is a fundamental right under Article 19(1) of the Constitution. Right to shelter, therefore, includes adequate living*



space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads etc. so as to have easy access to his daily avocation ...”

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

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

68. The Respondent ought to have visualised the difficulties of the women, children and aged persons, living in the huts for several years, without Electricity. Electricity supply is an essential and important factor for achieving socioeconomic rights, to achieve the constitutional goals with sustainable development and reduction of poverty, which encompasses lower standards of living, affects education, health,



sanitation and many aspects of life. Food, shelter and clothing alone may be sufficient to have a living. But it should be a meaningful purpose. Lack of Electricity denies a person to have equal opportunities in the matter of education and consequently, suitable employment, health, sanitation and other socioeconomic rights. Without providing the same, the constitutional goals, like Justice, Liberty, Equality and Fraternity cannot be achieved.”

Therefore the respondent is directed to complete the project and ensure providing permanent individual electricity connections to the entire flat/ shop buyers in the project, within next three months.

e) The status of common areas & facilities and directions including imposition of penalty.

The authority in its site inspection report has distinctively and categorically has observed that:-

‘The Authority took a round of the complete premises and noted that the upkeep of the buildings was very poor, no light bulbs were provided in the common areas and only holders were provided. The external and internal painting was of very basic quality and even that was not being maintained.

The green area, as per approved drawing, was not developed at all and the entire open area in the complex was concretised. Only a small portion was being developed as green area on one extreme side of the site and it was conveyed by the residents that the work has been done by putting a plastic sheet and stacking earth on the same, only to mislead the visiting Authority. The club house, constructed as a small basic structure with no facilities, called a community hall has been constructed but the residents complained that they are not allowed to use the same.

The rain water pipes have been left open in the entire complex and have not been connected to the rain water harvesting tank and rain harvesting system is not working.



The fire fighting pipes have been provided in the commercial block. The Sewage Treatment Plant is functional but is emitting foul smell.

One make shift barrier was provided at the entrance of the complex but there was no control on the entrance to commercial block 1 which also opens into the main complex on the rear side and thus free entry to the whole complex is there and residents complained about the same too."

Thus the Authority after site inspection was really pained to see that the respondent promoter has collected money from the poor home buyers but has failed abysmally to provide the common facilities, as required under the sanctioned plans. The respondent has collected huge money from the low income group allottees, but has not completed the common facilities and services and whatever little has been provided is of a very poor quality. Even the lifts provided in the residential buildings were not fully functional. The green areas have not been developed, as per sanctioned plan. Thus the Authority directs the respondent to complete all the common facilities and services within next three months. He will also be liable to pay the penalty as ordered later on in this order.

f) The status of transfer / registration of sale deed to allottees and related issues including imposition of penalty.

During the site visit the authority observed that a large number of home/ shop buyers under this project have paid the full money for the allotment, but the respondent has not executed the conveyance deed.

The Section 11 (4) (f) provides as follows:-



'execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under Section 17 of this Act'.

Similarly Section 17 of the Act also mandates that promoter shall execute the sale deed in favour of allottees. Thus, the promoter respondent is legally duty bound to get the conveyance deed registered in favour of all the allottees, which have paid the full amount as per agreement. However, it appears that the respondent promoter due to his own omission and commission has failed to get the completion and occupancy certificates from the competent authority under the provisions of H.P. Town and Country Planning Act and Rules. Further, he has failed to register this project with H.P RERA, due to non-submission of required documents. The respondent promoter is directed to get the conveyance deeds executed in case of all the allottees that have paid full amount by completing all the codal formalities, within next five months. If the respondent promoter fails to execute the conveyance deed in favour of the allottees in the given time period, then he will be liable to pay the penalty as directed in the later part of this order.

g) Status of RERA registration and decision on that.



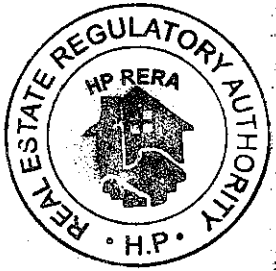
The respondent promoter was required to register his project within a period of three months from the commencement of the Act, i.e. 1.08.2017 as per Section 3 of the Act being an ongoing project. However, the respondent promoter applied for the registration only on 27th March 2019. The respondent promoter was asked to submit various documents required as per the Real Estate (Regulation & Development) Act, 2016 and the H.P. Real Estate (Regulation & Development) Rules, 2017. Even, till today the respondent promoter has not uploaded the latest income tax returns of the company. However, he has uploaded a certificate from the C.A. that the latest returns have not been filed. On a query by the authority to the respondent, the counsel intimated that the returns have not been filed by the company due to losses. Non-filing of Income tax returns is not an excuse, as it is required as per Law. However the Authority notes that if the project is not registered with RERA, then the respondent will not be able to get the occupancy certificate and consequently will not be able to execute conveyance deed to the allottees. Therefore, as a special case the Authority directs the Director of the respondent company Sh. Subhash Gupta to upload his affidavit that his company M/s Gupta Property Developers have not filed income tax returns for the assessment year 2017-18, 2018-19 and 2019-20 ,within one week from the issue of this order. Once this affidavit is uploaded the Authority will register the project



expeditiously, keeping in view that the low income group home buyers interests are linked with the registration of the project.

7. Keeping in view the above mentioned facts/discussion, this Authority in exercise of power vested under various provisions of the Act issues the following orders/directions:

- i) Both the complaints are allowed. The respondent promoter is directed to refund an amount of Rs. Nine lakhs eight thousands nine hundred and eighty (Rs. 9, 08, 980/-) to Sh. Sandeep Kumar along with interest at the SBI highest marginal cost of lending rate plus 2 % as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules 2017. The present highest MCLR of SBI is 7.3 % hence the rate of interest would be 7.3%+2 % i.e. 9.3%. It is clarified that the interest shall be payable from the dates on which different payments were made by the Complainant to the respondent
- ii) The respondent is directed to refund an amount of Rs. Eleven lakhs and twenty eight thousands (Rs.11.28 lakhs) to Sh. Adit Kansal along with interest at the SBI highest marginal cost of lending rate plus 2 % as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules 2017. The present highest MCLR of SBI is 7.3 % hence the rate of interest would be 7.3 %+2 % i.e. 9.3%. It is clarified that the interest shall



be payable from the dates on which different payments were made by the Complainant to the respondent

- iii) The refund along with interest is to be paid by the respondent promoter as well as the Directors jointly and severally to the complainants within sixty days from the date of this order.
- iv) The so called 'rent' offered by the respondent is actually a monthly payment as advertised by him. He is under obligation to pay this monthly amount in view of the provisions of Section 11 and 12 of the Act.
- v) The flat buyers/shop buyers are entitled to get permanent individual electricity connections. The respondent promotor is directed to obtain all the NOCs to ensure that all the allottees are in a position to get individual domestic electricity connection within next three months.
- vi) Section 61 of the Act, prescribes that the maximum penalty that could be imposed for the contravention of any other provision of the Act other than Section 3 and 4, as five percent of the total cost of the project. The total estimated cost of the project in this case, when calculated on the basis of average price of Rs. Four lakhs and fifty five thousands (Rs. 4, 55, 000/-) per flat, for 350 flats, and average price of Rs. Eleven Lakhs and twenty eight thousands (Rs. 11, 28, 000/-) per shop, for 354 shops, club house etc. comes to approx Rs. 56 Crores approximately and a penalty at a rate of



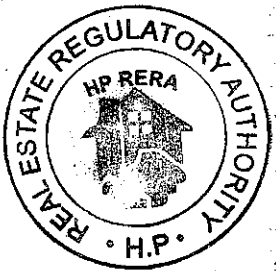
five percent of the total estimated cost works out to Rs. Rs. Two crores and eighty lakhs (Rs. 2, 80, 00, 000/-). The respondent promoter has miserably failed in providing the common facilities to the allottees. The Authority was at pain to see that the respondent promoter has collected huge amount from the low income group families but failed to complete the common facilities and services. The Authority, considering all facts of the case, deems appropriate to impose a penalty amounting to Rs. Twenty five Lakhs under Section 61, 69 read with Section 38 of the Real Estate (Regulation & Development) Act, 2016 on the respondent promoter for failing to meet their obligations as prescribed under Section 11 & 14 of the Act *ibid*. The penalty imposed shall be deposited in the bank account of this Authority, operative in the name of "Himachal Pradesh Real Estate Regulatory Authority Fund" bearing account no. "39624498226", in State Bank of India, HP Secretariat Branch, Shimla, having IFSC Code SBIN0050204, within a period of two months.

- vii) The respondent promoter is further directed to complete all the common facilities and services within next three months including but not limited to completion of the provision of all green areas as per approved drawings, provision of main gate at suitable location in consultation with the allottees to prevent any unauthorised entry of anyone in the complex and to prevent the menace of stray



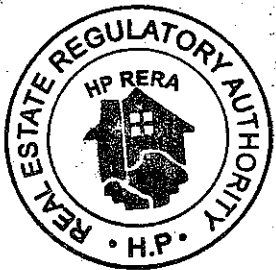
animals and suitable arrangement to maintain the cleanliness and hygiene of the entire complex including residential as well as commercial blocks , internal and external painting of all blocks and common areas in the complex, functioning/ operation of all lifts in all blocks, completion of club house with all facilities, improvement of sewage treatment plant and construction of rain water harvesting tank as well including the required plumbing system to use the said collected rain water for the watering / irrigation of landscaped / green areas and removal of the makeshift office from the parking area immediately after the completion of all above cited works . If he is unable to complete these facilities within next three months to the satisfaction of the competent officer under the TCP Act, then the penalty will be enhanced to Rs fifty lakhs.

- viii) On behalf of respondent company Sh. Subhash Gupta is directed to upload affidavit on RERA website that his company has not filed income tax returns for the year, 2017-18, 2018-19 and 2019-20. Once the affidavit is uploaded, the Authority assures to grant the RERA registration expeditiously in the interest of allottees.
- ix) The respondent is directed to obtain the completion and the occupancy certificates for the whole project within three months from the RERA registration. After that, he should ensure registration of conveyance deed in favour of all the allottees within



subsequent two months. Thus, the respondent promoter company as well as all its Directors are directed to ensure registration of conveyance deeds in favour of all such allottees that have paid full amount, within five months from issue of this order. If the respondent fails to complete this task, he will be liable to pay a penalty of Rs. Fifty Five lakhs.

- x) Non-compliance or any delay in compliance of the above directions shall further attract penalty and interest on the ordered amount of refund under Section 63, 69 and Section 38 of the Act *ibid*, apart from any other Action; the Authority may take under Section 40 or other relevant provisions of the Act.
- xi) It is further ordered that the respondent is barred from selling/ allotting/ booking any flats/ shop etc in the present project, till the compliance of this order. Further no withdrawals from the bank accounts of the respondent pertaining to this project shall be made, till payment as ordered is made to the Complainant and penalty in the account of the Authority. Further, there shall not be any sort of alienation of any movable or immovable assets of the project till the time the amount along with interest is refunded to the Complainant and penalty amount deposited in the account of the Authority.
- xii) The respondent is directed to submit the details of the Bank accounts pertaining to this project within fifteen days.



xiii) The Complainant(s) shall be at liberty to approach the Adjudicating Officer for compensation under Section 71 of the Act
ibid.

Shikant
Dr. Shrikant Baldi
CHAIRPERSON

Badalala
B.C. Badalia
MEMBER

Rajeev Verma
Rajeev Verma
MEMBER

