

**REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH**

In the matter of:-

Sh. Gajraj Singh Sahrawat, S/O Late Sh. Raghunath Singh, R/O
House No. 1284, Sector 17-C (MDI Pocket) Gurgaon, Haryana, PIN-
122001

.....Complainant

Versus

Himland Executive Residences, (Himland Housing Pvt. Ltd.) Divya
Kunj, Officers Colony, Rajgarh Road, Solan H.P through its
Promoters/ Directors Smt. Ambika Kanwar Kainthla & Sh. Pradeep
Kumar Pathak

.....Non-Complainant/ Respondent promoter

Complaint no. HPRERA/OFL/ 2021-30

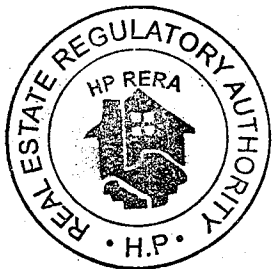
**Present: - Shri Vijay Kumar Arora, Advocate for the
Complainant, Shri Gajraj Singh Sahrawat**

**Sh. Arvind Kumar Singh, Advocate for respondent
promoter M/S Himland Housing Pvt. Ltd.**

**Sh. Abhishek Sood, Assistant District Attorney,
RERA Himachal Pradesh.**

Final date of hearing (Through WebEx): 18.08.2021.

Date of pronouncement of Order: 06.09.2021.

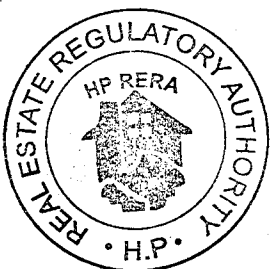


ORDER

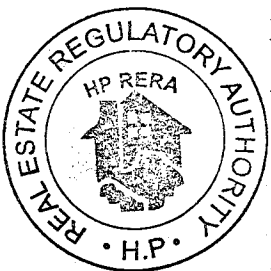
CORAM: - Chairperson and both Members

1. **BRIEF FACTS OF THE CASE:-**

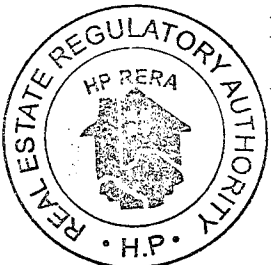
The present matter refers to an offline complaint bearing complaint no .HPRERA/OFL/ 2021-30 which was received in this Authority on 31st March, 2021. As per the complaint, the respondent company is controlled and managed by its Directors namely Sh. Vikram Singh, Smt. Ambika Kanwar Kainthla and Sh. Pradeep Kumar Pathak. It has been alleged in the complaint that the complainant had booked a flat no. A-305 on the third floor at Himland Executive Residences situated at Damrog, District Solan, Himachal Pradesh, having a super area of 760 sq. ft., with the respondent promoter vide application dated 30.05.2006. It has been further alleged that the complainant had paid an advance amount of Rs. 70,000/- (Rupees Seventy Thousand only) through cheque dated 31.05.2006 at the time of submitting his application form (Copy appended with the complaint as Annexure C-1).It is further averred that as per the terms and conditions of the application form, the possession was to be handed over to the complainant within a period of 18 months from the date of the



submission of aforesaid application and further as per the apartment buyer's agreement dated 20.04.2007 the construction was to be completed within 18 months from the date of execution of the aforesaid agreement subject to the payment by the buyer/complainant as per the payment plan (copy appended as Annexure C-2 to the complaint). It has been alleged that the complainant had remitted a total amount of Rs. 8,90,000/- (Rupees Eight Lakh and Ninety thousand) in favour of respondent promoter against a total consideration amount of Rs. 14,00,000/- (Rupees Fourteen Lakhs). A copy of a receipt issued in respect of the aforesaid amount of Rs. 8,90,000/- (Rupees Eight Lakh and Ninety thousand) by Sh. Pradeep Kumar Pathak (one of the directors of the respondent company) is appended as Annexure C-3 to the complaint. It has been further alleged in the complaint that the complainant had approached the respondent promoter in 2012 to inquire about the status of construction and was informed by the respondent promoter that they had failed to take necessary permissions from competent authorities and thus were unable to complete the project. Thereafter the complainant again approached the respondent promoter in the year 2015 to seek refund of the advance amount of



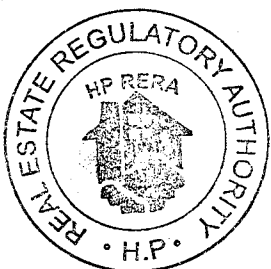
Rs.8,90,000/- (Rupees Eight Lakh and Ninety Thousand) paid by him along with interest till that point of time. It has been further averred in the complaint that after having waited till the end of November 2015, the complainant along with other buyers met with Sh. Ashok Kumar, the authorized representative of the respondent promoter. Thereupon, the respondent promoter agreed to give the possession of the flat by 15th October, 2016 and registration of apartment by 15th November, 2016 in terms of Memorandum of Undertaking (MOU) signed on 13th January, 2016 (signed only on behalf of the respondent promoter) which has been appended as Annexure C-4 with the complaint. It has been submitted that due to lack of trust, the payments were not made by the buyers including the complainant and Mr. Ashok Singh, authorized representative of the respondent promoter, agreed to complete the project without insisting on the balance amounts due from them. It has been alleged by the Complainant that even after numerous reminders, respondent promoter failed to abide by the terms of the aforesaid MOU forcing the complainant to file the present complaint. The complainant has prayed before this Authority to pass orders for the refund of amount of Rs. 8,90,000/- (Rupees Eight Lakh



and Ninety Thousand) along with 24% interest from the date of advancement of amount, Rupees Five Lakh for deficiency in services, Rupees Five Lakh for mental harassment, Rupees One lakh for cost of legal expenses or in the alternative a direction to the respondent promoter to hand over the possession of the flat in question to him immediately with costs.

2. REPLY TO THE COMPLAINT.

The respondent promoter has filed a detailed reply to the Complaint on 25th June, 2021. It has been contended in the reply by the respondent that the Complainant is himself responsible for the delay in the completion of the present project. It has been further submitted in the reply that the delay in the instant project has occurred due to the reasons which were beyond the control of the respondent and is duly covered under the condition of '*force majeure*', which is evident on account of changes in law/Acts, including repeal of the H.P. Apartment and Property Regulation Act, 2005 and amendment of Himachal Pradesh Town and Country Planning Act, 1977 in the year 2013 resulting in delay in obtaining requisite permissions with respect of present project from the competent authorities. Further it has been evidently stated in



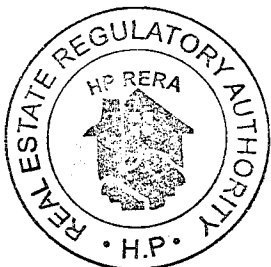
the reply that since the complainant had entered into a memorandum of undertaking dated 13th January, 2016 and due to his own default for non-payment of the pending amount as principally agreed upon between the contesting parties, the complainant is himself responsible for the non-completion of the project. It has been specifically submitted that total amount deposited by the complainant and other buyers is less than 50 % of the total price of their flats, whereas 80% of the work has been completed in the project. It has been further submitted that in view of the registration certificate issued by this Authority dated 11th May, 2020, the present project is supposed to be completed by 10th May, 2024. Therefore, the present Complaint is liable to be dismissed. To support the abovementioned claims, the respondent promoter has relied on various documents which are appended to the reply as Annexures R-1 to R-17.

3. REJOINDER TO THE REPLY.

The Complainant has responded to the reply so filed by the respondent by submitting a para-wise detailed rejoinder on 8th July, 2021. It has been submitted in the rejoinder by the Complainant that when the respondent promoter had failed to deliver the possession of the respective flats to him as well as



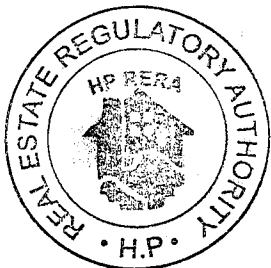
to other buyers in due time as per the terms of application forms and the apartment buyer's agreements, they had taken up the issue with its authorized representative from time to time but to no avail. It has been further submitted that it is evident from the reply itself that the respondent promoter did not have permissions from the competent authorities at the time when it had offered the flats to the complainant and other buyers. It has been submitted that malafide intention of the respondent promoter is evident from the fact that whereas the possession of the flat in question was to be delivered by 2009 (within 18 months from the date of submission of application form), however the respondent promoter obtained the permission under section 118 of the H.P. Land Reforms and Tenancy Act, 1972 on 31.08.2012. It has been further submitted by the complainant that he could not have paid any additional money in terms of MOU (signed only on behalf of the respondent promoter) dated 13.01.2016 because in spite of him having already invested a sum of Rs 8,90,000/- (Rupees Eight Lakh and Ninety thousand), the construction of the flat in question was incomplete till 2016. It has been further submitted that it is evident from the reply itself that the construction work is still ongoing and that the respondent



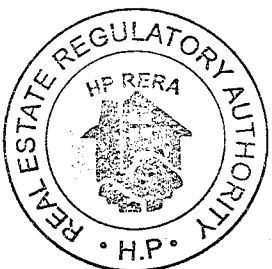
promoter even after a lapse of 13 long years has failed to provide possession of the flat to the complainant. It has been submitted that the respondent promoter is liable to refund the amount paid by the complainant alongwith the interest and also to compensate the complainant in terms of section 18 of the Real Estate (Regulation and Development) Act, 2016 as the respondent promoter has failed to complete and give the possession of the flat in question in accordance with the agreement of sale. In view of the above, the complainant has prayed the Authority to pass necessary orders for the refund of entire amount of Rs. 8,90,000/- (Rupees Eight Lakh, Ninety thousand) along with 24% interest from the date of advancement of amount, Rs. Five Lakh for deficiency in services, Rs. Five Lakh for mental harassment, Rs. One lakh for cost of legal expenses or in the alternative a direction to the respondent promoter to hand over the possession of the flat in question to him immediately with costs.

4. **WRITTEN SUBMISSIONS:**

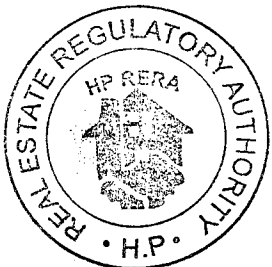
The Ld. Counsel for the complainant has not filed any written submissions in support of his case. The respondent promoter has filed written submissions dated 16.08.2021 before the Authority. It has been contended by the respondent promoter



in his written submissions that the complainant has only paid an amount of Rs 8,90,000 /- (Rupees Eight Lakh and Ninety thousand) out of Rs 14,00,000/- (Rupees Fourteen Lakh) which comes out to be only 63.5% of the total amount to be paid by the complainant in lieu of the flat in question. It has been further submitted that respondent company/promoters have invested huge amount from its own resources in addition to the amount paid by the complainant and have already carried out more than 80% work of the Project. The respondent promoter has further submitted that as per the ratio in the landmark judgment "Neel Kamal Realtors", the promoter has to utilize 70% of the deposited amount for cost of land and for carrying out construction and balance 30% can be enjoyed by the promoters. However, in the instant case the promoters have not only used 100% of the amount deposited by the complainant but also invested huge amount from their own resources. It has been reiterated by the respondent promoter that the complainant has failed to perform its part of the obligation under the Memorandum of Undertaking dated 13.01.2016 regarding payment of balance amount in three installments, whereas the respondent promoter had performed its part of the obligation in lieu of first installment in good



faith even without getting the first installment from the flat buyers including the complainant. It has been further reiterated by the respondent promoter in the aforesaid written submissions that there had been delay in the completion of the project due to several statutory changes all beyond the control and contemplation of the respondent promoter. The aforesaid changes amounted to '*force majeure*'. To support the aforementioned contention the respondent promoter has relied on the judgment of the Hon'ble Supreme Court in Satyabrata Ghosh v/s Mugneeram Bangur & Co. 1954 wherein it has been held that-"The determination whether a '*force majeure*' event has actually occurred does not centre around impossibility alone, a mere impracticability of performance (given the subject matter of contract) would suffice." It has been further reiterated that vide registration certificate dated 11.05.2020 granted by the Real Estate Regulatory Authority, Himachal Pradesh, the respondent promoter was permitted to carry out its project by 10.05.2024. It has been further submitted that the respondent company and its directors are having clean antecedents and that they have neither siphoned money of the investors in any other project nor have taken any loan from the bank/financial institutions. Lastly it has been

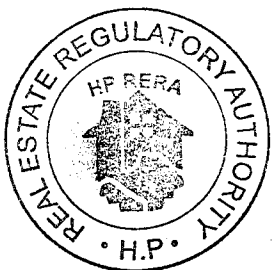


submitted that on account of severe economic slowdown caused by the COVID-19 pandemic and bar imposed by this Authority in respect of booking/sale/allotment etc. of the flats in the project in issue, the respondent promoter is not in a position to arrange funds to carry out remaining construction work.

5. **ARGUMENTS ADVANCED**

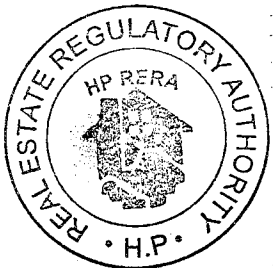
The final arguments in this case were heard on 18.08.2021. Sh. Vijay Kumar Arora, Ld. Counsel representing the Complainant has argued before this Authority that the complainant had booked the flat in question and paid Rupees Seventy Thousand as advance amount which is evident from the copy of the application form for the flat in question which has been appended as Annexure-C1 to the main complaint. He has further contended that a total amount of Rs. 8,90,000/- (Rupees Eight Lakh and, Ninety Thousand) has been paid by the complainant till date in respect of the flat in question and the same fact has been acknowledged by Sh. Pradeep Kumar Pathak (one of the directors of the respondent company) vide a receipt dated 11.12.2011. The copy of the aforesaid receipt has been appended as Annexure C-3 to the main complaint.

He has further contended that the aforesaid fact pertaining to



the total amount paid by the complainant is also proved from the Memorandum of Undertaking dated 13.01.2016 (Annexure C-4 to the main complaint) which clearly specifies the amounts paid by various buyers till the signing of the MOU. Thereafter the Ld. Counsel for the complainant has concluded his arguments by contending that the present case is squarely covered by the decision of this Authority in the matter of Sh. Anurag Khaitan V. M/S Himland Housing Pvt Ltd. dated 07.08.2020 which also pertains to this project. He has contended that the present case also needs be decided on the lines of the aforementioned case.

6. The Ld. Counsel for the respondent company has argued that the payment schedule appended to the complaint as Annexure C-2 does not convey the true information regarding the total money paid by the complainant. He has admitted that a sum of Rs. 8,90,000/- (Rupees Eight Lakh and, Ninety Thousand) has been paid by the complainant. He has further submitted that most of the buyers of flats in project in question have deposited about 50% of the amounts they were supposed to pay in respect of the respective flats and that the respondent promoter cannot give them the flats until the balance amounts are paid.



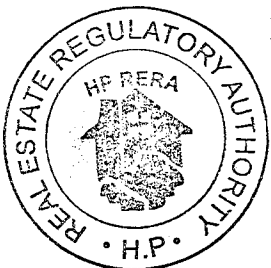
7. CONCLUSION/ FINDINGS OF THE AUTHORITY:-

We have heard the arguments advanced by the Ld. Counsels for the Complainant & Respondents and 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 three issues that requires the consideration and adjudication, namely:-

- A. Jurisdiction of the Authority.
- B. Whether the Complainant is entitled to get the refund of the money along with interest or not?
- C. Other Issues and directions including imposition of Penalty.

8. 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. Thus, this Section provides that a separate Complaint be lodged with the Authority and the Adjudicating Officer, “as the case may be.” Accordingly Rule 23 of the Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 provides the procedure of filing Complaint with the



Authority and prescribes 'Form M' for filing a Complaint. In this case, the Complainant has filed the Complaint in 'Form-M.'

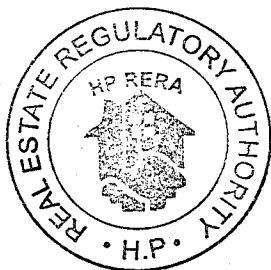
The Section 34 (f) of the Act prescribes that the function of Authority shall include

"to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the Rules and regulations made there under".

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

The promoter shall—

"be responsible for all obligations, responsibilities and functions under the provisions of this Act or the Rules and regulations made there under 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.”

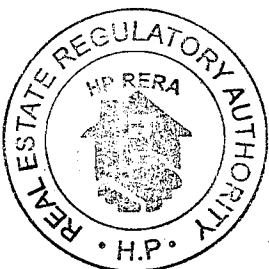
Section 19 (4) of the Act provides as under:

“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

“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 Section 34(f) of the Act empowers the Authority to ensure compliance of the obligations cast upon the promoters



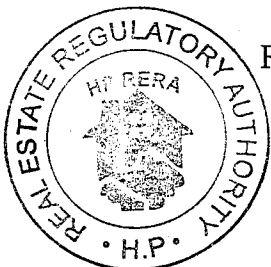
and Section 11(4) (a) (Supra) cast obligation on the promoter to implement “agreement for sale”. Further, Section 37 of the Act empowers the Authority to issue directions in discharge of its function provided under the Act. The Authority also has power to impose penalties under Section 59 to 63 for various 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 and interest under Section 18 of the Act whereas the compensation is to be adjudged by the Adjudicating Officer under Section 71 of the Act *ibid*.

9. **B. Whether the Complainant is entitled to get the refund of the money along with interest or not?**

Coming to the question that whether the Complainant is entitled for the relief of refund of amount of Rs. Eight Lakh and Ninety Thousand (Rs. 8,90,000/-) along with interest, under provisions of the Act and the Rules made thereunder.

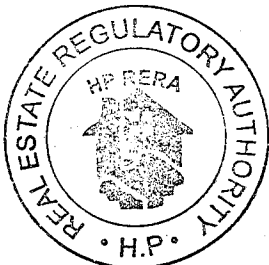
The complainant in the present case had booked a residential Flat no. A-305 on third floor of Himland Executive Residences,



Solan with the respondent promoter. It is per se admissible from the perusal of the record placed before us in shape of pleadings including the copy of complaint, documents and reply on behalf of respondent promoter and rejoinder thereof that the respondent has bound himself to complete the construction work and hand over possession of the apartment to the complainant within 18 months from the date of submission of application form i.e. 30.5.2006 and further within 18 months from the date of execution of apartment buyers agreement dated 20.4.2007 but not later than 1.1.2009 (the date of delivery of possession pleaded by respondents in their reply). But the respondent has failed to do so and none of the reasons given by the respondent promoter are justified.

10. This Authority while adjudicating upon the issue of refund is guided by the judgment of the Hon'ble Apex Court in Civil Appeal nos. 3207-3208 of 2019 titled as "Marvel Omega Builders Pvt. Ltd. versus Shrihari Gokhale and anr." Dated 30.07.2019, whereby the Hon'ble Court under para 10 has observed as under,

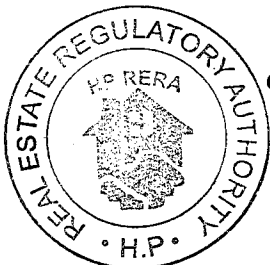
"10. The facts on record clearly indicate that as against the total consideration of Rs.8.31 crores, the Respondents had paid



Rs.8.14 crores by November, 2013. Though the Appellants had undertaken to complete the villa by 31.12.2014, they failed to discharge the obligation. As late as on 28.05.2014, the Revised Construction Schedule had shown the date of delivery of possession to be October, 2014. There was, thus, total failure on part of the Appellants and they were deficient in rendering service in terms of the obligations that they had undertaken. Even assuming that the villa is now ready for occupation (as asserted by the Appellants), the delay of almost five years is a crucial factor and the bargain cannot now be imposed upon the Respondents. The Respondents were, therefore, justified in seeking refund of the amounts that they had deposited with reasonable interest on said deposited amount. The findings rendered by the Commission cannot therefore be said to be incorrect or unreasonable on any count.” The Complainant is therefore entitled to refund of amount in the present case due to delayed delivery of possession.

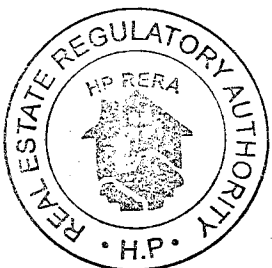
11. In the present case, there exist, clear and valid reasons for holding down that the flat buying Complainant is entitled for refund of total payment advanced to the respondent promoter.

There has been a breach on the part of the developer/promoter/ respondent in complying with the



contractual obligation to hand over possession of the flat to the complainant within 18 months from the date of submission of application form i.e. 30.5.2006 and further within 18 months from the date of execution of apartment buyers agreement dated 20.4.2007 then by 1.1.2009 i.e. the date of delivery of possession as submitted by respondents in their reply and further within 9 months from 13th January, 2016, the date of execution MOU between the contesting parties. The failure of the respondent promoter to hand over possession amounts to contravention of the provisions of the Real Estate (Regulation & Development) Act, 2016. The respondent promoter failed miserably in fulfilling all obligations as stipulated in Section 11 read with Section 14 of the Act *ibid*. There has been a gross delay on the part of the Respondent promoter in completing construction for almost 13 years. Having paid a substantial amount of the consideration price to the respondent, the purchaser is unable to obtain possession of that flat as the same has not been completed even after such a long period which is the subject matter of present case.

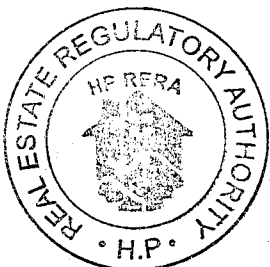
12. The flat purchaser/ Complainant invested hard earned money. It is only reasonable to presume that the next logical



step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the application form dated 30.5.2006. But the submission of the respondent promoter's own issues cannot abrogate and take away the rights of the Complainant under the Act *ibid*. We do not find any substance in the pleas raised by Ld. Counsel for the respondent thereof.

13. In the present case the Complainant has paid Rs. Eight Lakh and Ninety Thousand (Rs. 8,90,000/-) and has asked for the refund due to inordinate delay of possession of the flat along with 24% interest from the date of advancement of amount. 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 Apex 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."

14. In the present case there is an inordinate delay of 13 years in the delivery of the flat. Therefore, there is no option with the Authority but to order the refund of the amount of Rs. Eight Lakh and Ninety Thousand (Rs. 8,90,000/-).



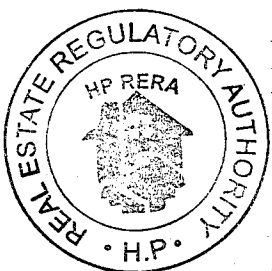
15. The issue is about the interest that the Complainant has sought before this Authority in addition to refund of amount. The Hon'ble Bombay High Court in the landmark judgement of "*Neel Kamal realtors*" in para 261 of judgment has held that "*In my opinion Section 18 is compensatory in nature and 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 Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 that clearly states



that the rate of interest payable by the promoter to allottee or by the allottee to the promoter, as the case may be, shall be the highest marginal cost of lending rate of SBI, plus two percent.

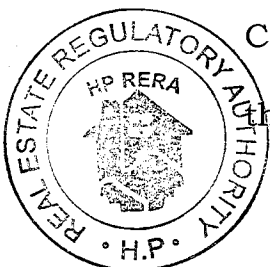
16. We do not find any substance in the plea raised by Ld. Counsel for the respondent promoter that the Complainant shall be entitled to claim possession as per the contents of MOU and only after realization of the remaining sum thereof within a year. This declaration is given unilaterally by the respondent promoter based upon a contingent condition, which is not legally tenable. The Complainant had no opportunity to raise any objection at that stage, so this unilateral act of mentioning the terms and conditions of the covenant/ clauses to the MOU including the date of completion of project by the respondent promoter will not abrogate the rights of the Complainant under the apartment buyer's agreement entered into by the parties.

17. The functions of this Authority established under the Act is to safeguard the interest of the aggrieved persons, may it be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The respondent promoter cannot be allowed to take any undue advantage of his



dominant position and to exploit the needs of the home buyer. This Authority is duty bound to take into consideration the legislative intent i.e. to protect the interest of consumers/allottees in real estate sector. Thus, the contentions of the respondent promoter are ex-facie one sided, unfair and unreasonable, which constitute the unfair trade practice on the part of the respondent. There is no denial to the fact that respondent promoter was in dominant position. The Complainant on the contrary has already parted with his hard earned money, so he had no option but to abide by the MOU on the dotted lines. The discriminatory terms and conditions of such MOU will not be final and binding. The respondent has utterly failed in fulfilling his obligation to deliver the flat as per the agreement for sale and even under the MOU and has failed to offer possession even till today.

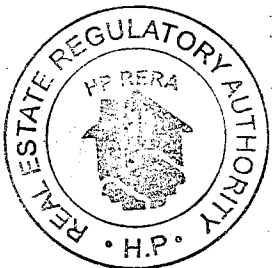
18. The plea taken by the respondent promoter that their case is covered by the clause 21 of the terms and conditions of the format of apartment buyer's agreement annexed as Annexure R-16 of the reply, which clearly provides that the completion and possession of the flat was to be delivered to the Complainant by the respondent after the complete payment of the flat which is still due and payable at the end of the



Complainant. The said terms and conditions form part and parcel to the '*force majeure*', on account of pending permissions of their project with the competent authority is also devoid of merits. The plea that the project of the respondent could not be completed on account of pending permissions with the competent authority cannot be said to construe as '*force majeure*' as the same is beyond the scope and purview of the aforesaid expression. Even otherwise this Authority finds no merit in the submissions of the respondent promoter that on account of outspread of COVID-19 in the entire Country including the State of Himachal Pradesh the completion of the project has been delayed. The delay for completion of the project from last twelve long years cannot be attributed to the issue of '*force majeure*'. Hence, the plea of '*force majeure*' is hereby declined by this Authority.

19.C. Other Issues and directions including imposition of Penalty.

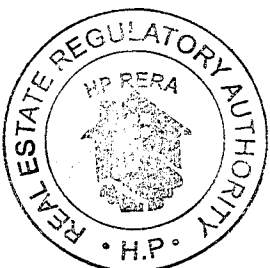
The Respondent Promoter has not shown any sincerity in delivering possession of the flat booked by the Complainant. The Authority is of this firm view that Respondent Promoter must be held accountable and penalised under Section 61 of the Act *ibid* for his failure to fulfil his obligations as promoter



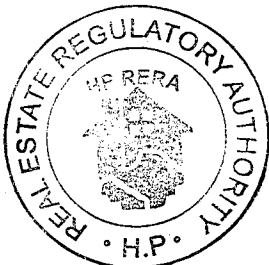
as prescribed in Section 11 and 14 of the Act *ibid* which should act as a deterrent for all the Respondent Promoters for repeating such Act with any other allottee/ prospective buyer in future in any of his existing or proposed real estate projects in future. In this case, there are glaring violations of Section 11 & 14 of the Act *ibid*, committed by the Respondent promoter that calls for imposition of a penalty under Section 61 of the Act *ibid*.

20. The Hon'ble Apex Court in ***Writ Petition (C) no. 940 of 2017 along with connected matters titled as "Bikram Chatterji & ors. Versus Union of India & ors."*** *Vide its judgment dated 23rd July, 2019* has observed as under:-

"Para 141. It goes to indicate how at large-scale middle-class home buyers have been defrauded of their hard-earned money, taken away by the affluents and the officials in connivance with each other. Law has to book all of them. We are hopeful that law will spread its tentacular octave to catch all culprits responsible for such kind of fraud causing deprivation to home buyers. It is shocking and surprising that so many projects have remained incomplete. Several Lakh of home buyers have been cheated. As if there is no machinery of law left to take care of such situation and no fear left with the



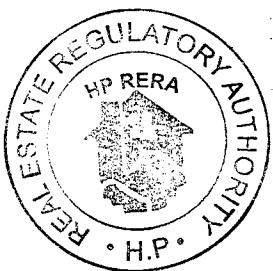
promoters/builders that such acts are not perceivable in a civilised society. Accountability is must on the part of everybody, every institution and in every activity. We fail to understand the standard of observance of the duties by public authorities has gone so down that such frauds take place openly, blatantly, and whatever legal rights exist only on papers and people can be cheated on such wide scale openly, brazenly and with the knowledge of all concerned. There is duty enjoined under the RERA, there has to be a Central Advisory Council as well as the role of the State Government is not ousted in order to protect against such frauds. We direct the Central Government and the State Government to take appropriate steps on the time-bound basis to do the needful, all other such cases where the projects have remained incomplete and home buyers have been cheated in an aforesaid manner, it should be ensured that they are provided houses. The home buyers cannot be made to suffer when we are governed by law and have protective machinery. Question is of will power to extend the clutches of law to do the needful. We hope and trust that hope and expectation of home buyers are not going to be belied.”



21. **RELIEF:-**

Keeping in view the abovementioned facts, this Authority in exercise of power vested in under various provisions of the Act issues the following orders/directions:

- i. The Complaint is allowed and the Respondent promoters are directed to refund a sum of Rs. Eight Lakh and Ninety Thousand (Rs. 8,90,000/-). 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 till date the amount and interest thereon is refunded .
- ii. The refund along with interest is to be paid by the respondent promoter to the Complainant within 60 days from the date of this order.
- iii. That in view of Section 61 of the Act which prescribes 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 Authority, considering all facts of the case, deems appropriate to impose a penalty of Rs. Three Lakh in case the respondent promoter fails to comply with the present order/directions passed by this Authority within stipulated period of sixty days. If the order is not complied within sixty days then there will be additional penalty of Rs five thousand per day for every day during which such default continues (after sixty days), till compliance of the order.

- iv.* It is further ordered that the respondent promoter is barred from selling/leasing/allotting/booking any remaining flats/land in the present project, till the compliance of this order. Further, no withdrawal from the bank account of the projects to be made till payment as ordered is made to the complainant and penalty is deposited into the account of Authority. Further, there shall not be any alienation of any movable and immovable assets of this project till compliance of this order.



- v. The respondent promoter (s) are directed to intimate the details of their bank accounts pertaining to this project within fifteen days.
- vi. The Complainant shall be at liberty to approach the Adjudicating Officer for compensation under Section 71 of the Act *ibid*.


B.C. Badalia
MEMBER


Dr. Shrikant Baldi
CHAIRPERSON


Rajeev Verma
MEMBER

